

SHROPSHIRE COUNCIL
EXAMINATION OF THE SITE ALLOCATIONS & MANAGEMENT OF
DEVELOPMENT (SAMDev) PLAN

AFFORDABLE HOUSING

Invitation to make further comments

RESPONSE FROM

STEPHEN MULLOY 11th FEBRUARY 2015

As requested, I write in response to the 'Written Ministerial Statement' regarding the Government changes to provision of Affordable Housing Contributions (AHC) on development schemes of 10 units or less, and my comments on how this may have implications on the delivery of affordable housing and the soundness of the SAMDev Plan.

Shropshire Council's affordable housing policy has been flawed from the outset because of the disproportionate burden of developer contributions on small-scale developers and for it being introduced during a recession. The draft 'Type and Affordability of Housing' SPD (Nov 2010) was put before the Inspector at the examination of the Shropshire Core Strategy and the final report said at Paragraph 68:

"Policy CS11 confirms that the 'open-book' approach will be applied, ensuring that the policy reflects site-specific circumstances and is flexible to changing economic conditions. This should only apply in a minority of cases, but ensures that economic viability issues are properly considered, ensuring a sound policy."

However, the adopted Type and Affordability of Housing SPD (16th March 2011) introduced new wording at paragraph 4.29 as follows:

"Assessing the financial viability of a scheme is only one part of the process. There are also wider issues for the Council to consider when reaching a conclusion about whether a scheme should be allowed to proceed at a lower level of affordable housing provision."

This was subsequently reworded (Para 30) in the amended SPD dated 12th September 2012 (the current SPD) but still left it open to the Council to refuse discretionary relief under 'wider issues' until the Growth & Infrastructure Act of 2013 forced LPA's to provide such relief.

What is clear from the above is that the draft SPD put before the Inspector at the Core Strategy Examination was worded in such a fashion to be found sound at that time by providing discretionary relief from AHC, but the subsequent addition of paragraph 29, before adoption, effectively removing it with the addition of 'wider issues' to be considered.

This cynical approach was demonstrated during an appeal in August 2012 (APP/L3245/A/12/2176986) when the Inspector, who upheld the appeal, made the following comment at paragraph 14:

“The Council drew attention to the importance of seeking AHC on all sites, regardless of scale, because of the high proportion of small sites in the Council’s housing land supply. It was argued that, because the SVI (Shropshire Viability Index) ensures deliverability at a plan-wide level, the deliverability of an individual small site is of less importance. It was also suggested that the Council does not have the capacity to discuss and negotiate the appropriate level of contributions on large number of small sites. Whilst I appreciate the value of the SVI (My note: now referred to as the SDVI - Shropshire Dynamic Viability Index) to securing the delivery of the plan as a whole, it does not follow that the delivery of individual sites can be regarded as unimportant. Such an approach would be inconsistent with the Framework which stresses housing delivery and seeks to ensure that development is not stalled by planning obligations. Moreover, it would not be consistent with the SPD which requires an overall judgement to be made in relation to each scheme.”

The evidence to underpin policy CS11 was provided by Fordham Research Ltd who were commissioned by Shropshire Council to conduct a viability study ‘Affordable Housing Viability Study (AHVS 2010)’. This study has mathematical errors in the analysis of the ‘benchmark’ site used, and the SDVI, which was only supported by legal opinion (not an Economist) suggests the concern was more about legal challenge, rather than whether the SDVI actually worked. This can be demonstrated by the following exercise:

If for ease of calculation, we assume a build cost of £100,000 on a 100m² property, then the SDVI, currently set at 15% would mean an AHC of £13,500 (100m² x £900m² x 15%).

However, if the build cost were to reduce by 5% (£95,000) but there was no change in the house price index, then the SDVI would move the AHC up to 27%. This would mean £24,300 was payable. Therefore the developer would have to pay an additional £10,800 AHC, when the build cost has only fallen £5,000!

Although I am sure that the Council would argue that the SDVI is used as a starting point, and any assessment would need to ‘feel good’, it does question the value of the underpinning evidence, particularly when the consultants used were actually in liquidation at the time of conducting the AHVS(2010), and the principal, Dr Richard Fordham, was subsequently disqualified from acting as a company director for six and a half years in April 2013 (see attached press release from Insolvency Service).

The premise of the AHC (and CIL) is that it comes off the land value and thereby the cost of the contribution will in effect already have been calculated into any development scheme. The problem is that many small developers had already purchased land without knowledge of the developer contribution liability, and some still are. Therefore it has become an impediment to development by making many schemes unviable. Whilst this has been addressed by the Growth & Infrastructure Act of 2013, it has come too late for a lot of developers (myself included) and resulted in schemes either being abandoned, or S106

agreements being signed causing financial pressure which threatens the completion of some schemes as experienced by myself.

In order for the developer contributions to have been introduced effectively, it was essential that as much publicity as possible was given to the policy so that those affected could make provision at the earliest opportunity. This did not happen, and some critics would say that this was because the LPA did not wish to see a flurry of applications submitted to avoid the policy and result in no contributions at all during the early years.

Technical consultation took place with the Shropshire Developer Panel, but this consists of 3 Registered Housing Providers, 7 Major Developers, and 1 land Agent. There was, and is, no representative of the small developer on that panel, and I would suggest that just this fact alone breaches Sect 149 of The Equality Act.

Consultation, and indeed notification of the developer contributions policies was dependent upon the Shropshire Council Statement of Community Involvement (SCI) which in itself is ineffective and has no mandate for consultation because it only received 29 responses to its own consultation (14 parish councils & 15 'others'). I have provided evidence to this effect in my earlier submissions to this examination.

The advertising for the developer contribution consultation was buried amongst the classifieds in the Shropshire Star (See attachment) and does not impart the importance of the developer contributions, not just on individuals and small developers, but on the Shropshire and national economy as a whole.

In short, the developer contribution policies in Shropshire have been introduced with reckless hurry in an unseemly haste to be seen as a frontrunner in Government initiatives. There is no doubt value in a 'land tax' policy, but it must be more carefully thought through and ensure that it does indeed come off the land value and not impede development. To do so creates subsequent impacts on affordable housing and infrastructure needs which have been calculated into a Local Authorities budgetary forecasts with potential consequences as we are about to see with the recent changes to the AHC threshold.

I have read through the Council's response on this matter and they make it clear that the recent changes to the threshold will result in 92% of all applications not contributing to affordable housing. However, the Council argue that in anticipation of these changes, some landowners/developers have held back from signing S106 agreements, but the Council made a resolution at its Cabinet meeting of 21st January 2015 as follows:

"That the Council continues to give full weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites." (See attachment).

The Core Strategy set the overall housing requirement for the Plan period (2006 – 2026) of around 27,500 new homes. The annual requirement varies during the Plan period but averages out at 1375 per year. Last year only 800 homes were added to the Council tax

register so the undersupply continues and will only get worse with the annual requirement now at over 2,000 dwellings (during the 5 year housing land supply period). This situation is acknowledged by Shropshire Council in their letter to the then Planning Minister, Nick Boles, of the 14th April 2014 (See attached) which says:

“There is real concern that, even on adoption of a NPPF compliant Site Allocations DPD, Councils may not be able to demonstrate a 5 years supply or, if they can, it will only be able to do so for a year or two.”

What is clear is that Shropshire Council policies are not working at the present time, and the under-delivery continues. There is a lack of confidence from the small developer that the Council is understanding and supportive of their needs. The Government's intention with this latest announcement is that they wish to remove any obstacles that may prevent housing developments coming forward and thereby boost the economy. Shropshire Council, in my view, is taking a 'parochial' approach with their main consideration being revenue into their treasury. They have set budgets on anticipated revenue from AHC contributing towards affordable housing provision without any real consideration of the impacts on the small developer. The policy was not thought through, is too far down the road to be salvaged without serious impact on some sector or other, and with the latest announcement to reduce the threshold, this will severely affect the provision of affordable housing which is already undersupplying by over 1500 dwellings against planned targets.

I cannot agree with the assumption that what would have been affordable housing will now simply become open market units because figures put forward by the Council show that 81% of applications that would normally have contributed to affordable housing are of schemes of 5 units or less. These provide a financial contribution rather than on site-provision, so the number of dwellings in this respect will be the same, the main benefit will be that small developers may feel more encouraged to invest and proceed with additional schemes, but is the land available for them to do so?

In summary, on the main point, I believe that the recent announcement of changes to AHC thresholds will impact severely on the provision of affordable housing (as agreed by Shropshire Council) but I cannot agree that there will be a corresponding uplift in open market housing within the confines of the SAMDev as presented for examination. Therefore the announcement will impact on the soundness of the SAMDev and the Shropshire Development Plan. As such, in my view, the SAMDev cannot be found sound as it currently stands.

What needs to be done?

In my opinion, Shropshire Council needs to go back to policy CS4 and apply paragraph 4.66 in a meaningful way. They need to ensure that communities conduct intelligent analysis and make a determination on whether to become a Hub or Cluster based on the sustainability and needs of their individual settlements. That is obviously what was intended by policy CS4, but has not happened in practice with only 29 parishes completing the 'Rural Toolkit'.

Many parish councils are confused about their part in the process, so there needs to be a meeting between Shropshire Council and a representative of all parish councils to explain the responsibility that rests with the parish council. A parish council must understand that their decision to not take any development at all impacts on the development Plan as a whole and therefore is not something that can be taken lightly with a 'nimby' approach. I strongly believe that this will result in far more development land coming forward in places where communities are prepared to accept some development in the knowledge that they have a responsibility to make their settlements more sustainable. The role of parish clerks in the smaller rural parishes needs to be looked at as there are some who are not even qualified or have a contract, yet they sit in an influential position, particularly were the Chairman may need support, and unduly influence the local development plan without understanding the broader context.

I believe that Shropshire Council should use this breathing space they have at the moment where they have a stated 5 years housing land supply to go back to negotiate and explain how dire the situation is whilst they still have some control over housing supply policy. If left unchecked, and without being encumbered by AHC, developers will be seeking ever more development in rural communities without them having any say at all!

The Shropshire SCI needs an urgent review, re-drafting and further meaningful consultation to ensure that policies are engaging with those that will be affected, and of course the Shropshire Developer Panel needs restructuring to ensure that there is a fair balance of representation from small developers and policy is taken forward in a collaborative way rather than the combative style we see at the moment.

In conclusion, I have never believed the SAMDev to be sound, if for no other reason than it has breached Sect 149 of The Equality Act by relying on electronic communication for consultations which has disenfranchised many sections of society. The Equality Impact Assessment was done at the end of the process when it should have been at the start to identify any issues, so it can only be considered lip-service to that legislation.

Shropshire Council has not complied with Core Strategy policy CS4 in identifying Hubs & Clusters so cannot be found sound for that reason, and as to identifying sufficient land to meet the development plan, I believe it fails here also and this will only correct itself when there is a stated lack of 5 years housing land supply again and again.

Stephen Mulloy

