

The Vale of Glamorgan Council

Cabinet Meeting: 5 February, 2018

Report of the Cabinet Member for Regeneration and Planning

Review of the Implementation of LDP Policy MG4 and Affordable Housing Supplementary Planning Guidance

Purpose of the Report

1. Review of the Implementation of LDP Policy MG4 and Affordable Housing Supplementary Planning Guidance

Recommendations

1. That Cabinet note the findings of the review and endorse the proposed amendments to the SPG (attached at Appendix B).
2. That this report and the amended Affordable Housing SPG be reported to Planning Committee for consideration, and any comments or amendments proposed shall be reported back to Cabinet for further consideration. If no comments or amendments are proposed by Planning Committee, the amended SPG shall be adopted for development management purposes and replace the previous version of the SPG.

Reasons for the Recommendations

1. For Cabinet to consider the findings of the review and to support amendments to the Council's Affordable Housing SPG.
2. To seek the views of Planning Committee prior to adoption of the amended SPG.

Background

2. The Council's latest Local Housing Market Strategy (2015-2020) identifies a net annual need for 559 Affordable Housing units per annum over the study period (2015-2020), comprising of 331 social rented, 115 low cost home ownership (LCHO) and 113 intermediate rented dwellings. with the highest areas of need identified in Penarth and Barry, followed by Llantwit Major, Dinas Powys, Cowbridge, Rhoose, Sully, St Athan, Wenvoe, Peterston Super Ely, Llandow/Ewenny and St Bride's Major.
3. Policy SP4 of the Adopted Vale of Glamorgan Local Development Plan (LDP) sets a target for the provision of 3,252 affordable dwellings over the plan period 2011-2026 to help address the identified affordable housing need. The plan envisages that the

majority of the target (2,627 dwellings) shall be met through the delivery of affordable housing on sites allocated for residential development within the LDP, and the remaining 625 dwellings secured via large and small site windfall contributions.

4. Policy MG4 of the LDP is the Council's primary means of securing of affordable housing through the planning system. The policy identifies three tiers of threshold and percentage requirements that were identified in the Council's development viability evidence prepared in support of the LDP. For Barry the requirement is a 30% provision on sites of 5 or more dwellings. For Llantwit Major, Rhoose and St. Athan the requirement is 35% provision, again on sites of 5 or more dwellings. For the areas outside of these settlements Policy MG4 requires the provision of 40% affordable housing on sites resulting in a net gain of 1 dwelling (or a net gain of 2 dwellings where the development would involve the conversion of an existing building).
5. On small sites of less than 10 units the policy indicates that affordable housing contribution may be provided either on site or in the form of a financial contribution, or a combination of both. In all cases the policy indicates that the provision of affordable housing will be considered on a site by site basis taking into account development viability.
6. Section 38 of The Planning and Compulsory Purchase Act 2004 requires that in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026, which was formally adopted by the Council on 28 June 2017. These policies (including Policy MG4 Affordable Housing) can only be amended through a formal review of the LDP, which includes independent examination by an appointed Inspector. It is anticipated the next formal review of the Vale of Glamorgan Adopted Local Development Plan 2011-2026 will be 4 years following adoption i.e. 2021.
7. LDP Policy MG4 is supported by the Council's Affordable Housing Supplementary Planning Guidance, which was formally adopted by Cabinet on the 31st July 2017 following public consultation. The SPG provides further detail in respect of how the Council will implement the policy requirements of Policy MG4, and covers matters relating to the Council's use of section 106 agreements; the approach to off-site provision of affordable housing and financial contributions; and development viability. The SPG also provides further explanation of the Council's approach to rural exceptions site affordable housing. Whilst the policy itself is not expected to change until formal plan review in 2021 (and only then if the evidence supports a change) the Council can vary the way in which the policy is implemented through its Affordable Housing SPG. Therefore, it is important to keep this under review and consider the evidence around its implementation.
8. The requirement to provide affordable housing on major development sites is well established in the Vale of Glamorgan. As a matter of practice, the Council has sought affordable housing on sites of 10 or more dwellings since 2007. In doing so the Council has successfully secured a significant increase in the amount of new affordable housing being delivered through the planning system. However, in setting the threshold at 10, a significant proportion of smaller developments were failing to contribute towards the delivery of affordable homes, which are much needed in the Vale of Glamorgan. Small sites of fewer than 10 dwellings contribute approximately

8% of the housing supply in the Vale of Glamorgan (on average 57 dwellings per year) (LDP Policy MG1 refers).

Relevant Issues and Options

9. This review report focuses on the impact of the change in policy implementation which seeks affordable housing on small sites (fewer than 10 dwellings), as implemented through Policy MG 4 and the Affordable Housing SPG. Anecdotal evidence and feedback received from applicants and planning agents who regularly operate in the Vale of Glamorgan, indicate that they feel the policy is likely to deter self-builders and small / medium housing developers from building in the Vale of Glamorgan. This review has sought to consider whether there is any evidence that this is the case.
10. In practice, the policy has been applied since January 2016 when Cabinet resolved to approve the previous draft Affordable Housing SPG for Development Management purposes. However, it has only had substantial weight since the formal adoption of the LDP in June 2017. Therefore, a review at this early stage in implementation needs to consider the relatively short time in which the policy has had to 'bed-in'. Residential development economics are complex and the market can take time to respond to changes in planning policy. There needs to be an appropriate balance found between allowing a policy the necessary time to 'bed-in' to allow the market to respond appropriately, balanced against the need to ensure that development is not hampered by overly restrictive or burdensome policy approaches that render development wholly unviable. In addition, developments often take several years to be implemented once permission is granted and many of the applications referred to below have only been granted consent within recent months.
11. To undertake this review, officers have considered planning applications that have been assessed under the new policy framework, and considered the effect the policy is having on those developments. The overall number of planning applications for minor residential developments does not appear to have been affected by the policy as it has fluctuated between 100-150 per year over the last decade.

Implementation of Affordable Housing policy on small sites since Jan 2016

12. Since implementing this policy in January 2016, 7 planning applications for small sites (see Appendix A) have agreed to meet the policy requirements in full securing a total of **£444,071.40** which can be used to deliver new affordable housing in the Vale of Glamorgan. It should be noted that 1 of these developments has since submitted a new application seeking to remove the affordable housing requirement on the grounds of development viability, this application is undetermined to date.
13. A further 11 planning applications for small sites (see Appendix A) have not made provision for affordable housing because development viability was demonstrated to be an issue if an affordable housing contribution was required.
14. A number of applications have been refused planning permission because the applicant was unwilling to contribute towards affordable housing, and failed to present an appropriate viability case, and where they have appealed the results are summarised at [Appendix A](#). They show that prior to the adoption of the LDP, various appeal decisions gave no weight to the draft affordable housing SPG or emerging LDP policy which clearly weakened the Council's ability to successfully implement the policy and draft SPG at that time. However, since the adoption of the LDP in June

2017, the Council has received support from the Planning Inspectorate in terms of its application of LDP Policy MG4 and this is encouraging.

15. The evidence demonstrates the policy is working effectively at present and there is no indication that the policy is deterring small sites from coming forward for development. However, this review has highlighted a number of ways in which the SPG could be amended to redress some of the concerns raised by the developers of small sites. These are set out throughout the report and included in an amended SPG attached at [Appendix B](#).

Calculating Off-site Affordable Housing Contributions

16. Whilst the policy preference is for affordable housing to be provided on site, Policy MG4 enables residential developments below 10 dwellings to provide affordable housing either on site, through a financial contribution or a combination of both. Offsite financial contributions are generally permitted where the level of proposed development would result in a contribution equal to less than a whole affordable unit, or where it is evidenced that on site provision is unviable.
17. The SPG sets out how the financial contribution is calculated based upon the Welsh Government's Affordable Housing Acceptable Cost Guidance (ACG) which is the notional development cost of an affordable home, and includes land acquisition. At present the amount of contribution required by the Council is set at the ACG equivalent to the size of dwelling being proposed. This is often a 4 or 5+ bedroom house as these smaller developments often involve building larger homes.
18. To illustrate how the contribution works in practice, based on current ACG amounts (updated January 2018) a scheme with 1 net gain in any of the minor rural settlements would require payment of a financial contribution shown below based on the size of dwelling relevant:
 - 7 person 4 bed house = £62,268.80
 - 6 person 4 bed house = £57,327.20
 - 5 person 3 bed house = £49,207.20
 - 4 person 3 bed house = £46,075.20
 - 4 person 2 bed house = £44,428.00
 - 3 person 2 bed bungalow = £43,639.20
 - 3 person 2 bed flat = £34,428.80
 - 2 person 1 bed flat = £27,770.40
19. It has been suggested that the application of the policy in this regard disproportionately favours large-scale developments over smaller projects. By comparison, on larger sites, developers make on-site provision of affordable housing with the range and mix being agreed in discussion with the Council's Housing Team and often involving the provision of smaller 1, 2 and 3 bedroom units to reflect the highest 'need' for affordable housing types in the area. The pro-rata cost of affordable housing is therefore generally less for larger developments. However, it should be noted that the other section 106 obligations, such as sustainable transport, education facilities, community facilities etc. are generally only sought on developments of 10 or more dwellings and on average equate to around £10,000 per unit. In addition on-site provision also has a land 'cost' to the developer.
20. To address this slight disparity it is recommended that the method for calculating off-site contributions is amended in the SPG so that the ACG value used is equivalent to the housing need identified in the locality i.e. if a proposal is for a 4 bed house but the

highest demand in housing need is for 2 bed houses, and this is what the Council would be seeking to use the contribution to build, then the contribution paid should be calculated on that basis. This would provide more equity between large and small-scale development proposals.

21. Therefore, it is proposed to amend the Affordable Housing SPG as follows:

*5.5 Commuted sums will be directly linked to what the contribution would have been if the affordable dwellings would have been on site, and calculated using the Welsh Government's current Acceptable Cost Guidance (ACG), this being the notional development cost of an affordable home, and includes land acquisition. For the Vale of Glamorgan the ACG band is 4 within Barry, Rhoose and St Athan areas and band 5 elsewhere. The ACG value will reflect ~~the type of market dwellings being proposed on the site~~ **the type of house that the Council would seek to build off-site to meet housing need in the locality e.g. 2-bed flats or 4-bed houses. Therefore, it is recommended that developers seek advice from the Council's Housing Strategy Team at an early stage so that the relevant need for house types / size can be established as part of the application process.***

Development Viability Considerations

22. LDP Policy MG4 was written having regard to the viability evidence that was prepared to support the LDP. In setting strategic policy, it is recognised that it may not always be appropriate for all cases and there will be exceptional circumstances which negate policy compliance. The policy states: *"The provision of affordable housing will be negotiated on a site-by site basis taking into account the evidenced viability of the development."* As indicated at paragraph 12 above, the Council has received (and approved) a number of applications where viability has been demonstrated to negate the need for an affordable housing contribution.
23. At present Section 6 of the SPG provides advice on the amount and type of evidence required to demonstrate viability issues. However, this process can still be quite difficult, particularly for small site developers and self-builders who may not have the expertise to present this information. Therefore it is recommended to provide more help and support to applicants to enable them to demonstrate their case if viability is a genuine restraint on development, specifically limiting the opportunity to make provision for affordable housing.
24. A new annex to the SPG is proposed as a template to submit viability information to the Council setting out what is required. In addition, the amended guidance highlights the availability of planning officers to give specific advice about development viability matters and to assist in submitting the required evidence.
25. It is proposed to amend the Affordable Housing SPG as follows:

*6.1 Planning Obligations and affordable housing will have an impact on land values and landowner expectations, therefore the Council will expect that applicants have considered in full the overall cost of development, including the required planning obligations and any abnormal costs, when negotiating the purchase of land. The Council has developed this document alongside the Planning Obligations SPG to enable Developers to undertake this assessment. **A template is provided at Appendix A for developers to complete to demonstrate the viability assessment of their proposals and the Council's Section 106 Officer or Planning Case Officer will be able to provide advice and support to***

applicants on the information required. *In addition the Council offers pre-application advice to Developers to fully establish the policy position in respect of these matters in advance.*

Exemptions from the Affordable Housing Policy

26. Policy MG4 exempts certain types of development which typically have more viability constraints than others, for example conversions only resulting in a net gain of 1 dwelling. Rural enterprise dwellings are in themselves a form of affordable housing (restricted by planning condition) that do not trigger the need for additional affordable housing contributions.
27. We have received representations suggesting that self-build homes should be exempt from paying affordable housing contributions. This is already the case with Community Infrastructure Levy (albeit this is not operational in the Vale of Glamorgan) as the Government recognised this exemption as a means to encourage self-build projects and prevent development sites being 'moth-balled'.
28. Whilst we do not specifically collect self-build data in the Vale of Glamorgan, an analysis of recent small scale developments suggests around 0-5 dwellings per year in the Vale are self-build plots. It is likely that the majority of these would be able to demonstrate viability issues under Policy MG4 in any event. Therefore, it is recommended that a self-build exemption is introduced as a mechanism to encourage more self-building in the Vale of Glamorgan. Such an exemption is unlikely to have a significant effect on the overall level of income received through the implementation of Policy MG 4. Nonetheless, this can be kept under review.
29. Therefore, a new section is proposed in the SPG setting out how the self-build exemption would operate in practice (see section 10 in the amended SPG at Appendix B).

Resource Implications (Financial and Employment)

30. This review and report has been carried out within existing budgets.
31. The affordable housing contributions sought through the planning system are an important source of funding for new affordable housing schemes in the Vale of Glamorgan, and once received and allocated to a project are part of the Council's Capital Programme.

Sustainability and Climate Change Implications

32. Securing more affordable housing helps to create sustainable communities meeting local housing needs. There are no climate change implications from this report.

Legal Implications (to Include Human Rights Implications)

33. Affordable Housing contributions are secured under Section 106 of the Town and Country Planning Act 1990 (as amended) and The Community Infrastructure Levy Regulations 2010.

Crime and Disorder Implications

34. None applicable to this report.

Equal Opportunities Implications (to include Welsh Language issues)

35. In reviewing the implementation of the Affordable Housing SPG, the Council adhered to equal opportunities policies. An equalities impact assessment was carried out for the LDP and as the SPG is based upon the policies within the LDP it is determined that equal opportunities implications have been assessed sufficiently with regard to the review of the Affordable Housing SPG.

Corporate/Service Objectives

36. The wellbeing objective for “Providing decent homes and safe communities “is included within the Corporate Plan (2016-20), the Affordable Housing SPG will contribute to meeting this objective (as detailed in the Service Plan for Regeneration and Planning 2017-18).

Policy Framework and Budget

37. The policy framework for the SPGs is the Vale of Glamorgan Local Development Plan and the contents of this report are a matter for Executive decision by Cabinet.

Consultation (including Ward Member Consultation)

38. The wellbeing objective for “Providing decent homes and safe communities “is included within the Corporate Plan (2016-20), the Affordable Housing SPG will contribute to meeting this objective (as detailed in the Service Plan for Regeneration and Planning 2017-18).

Relevant Scrutiny Committee

39. Environment and Regeneration
40. Homes and Safe Communities

Background Papers

The Adopted Vale of Glamorgan Local Development Plan 2011-26
Affordable Housing Supplementary Planning Guidance 2017
Local Housing Market Assessment 2015
Planning Obligations Supplementary Planning Guidance 2017

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