

Strategic Planning, Sustainability and Transportation Committee

18 August 2015

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Policy H1(12) Haynes, Ashford Road and further modifications to Policy DM24 Affordable Housing

Final Decision-Maker	Strategic Planning, Sustainability and Transportation Committee
Lead Director or Head of Service	Rob Jarman, Head of Planning and Development
Lead Officer and Report Author	Sue Whiteside, Spatial Policy Team Leader and Andrew Thompson, Principal Planning Officer
Classification	Non-exempt
Wards affected	All wards

This report makes the following recommendations to the final decision-maker:

1. That site H1(12) Haynes, Ashford Road, Maidstone for 200 dwellings be deleted from the draft local plan, to reflect the fact that the site is no longer available for residential development; and to incorporate its deletion in the further public consultation on key changes to policies and site allocations (Regulation 18¹).
2. That reference to the site at H1(12) Haynes, Ashford Road is deleted from draft policy DM24 and its supporting text, and that the cross reference to the Springfield site is confirmed as policy H1(11) in policy DM24:

DM24(1)(i) Maidstone urban area 30% with the exception of policy H1(11) Springfield, Royal Engineers Road 20%; and

3. That the removal of references to vacant building credit and the exemption of small developments from making affordable housing contributions following a High Court ruling and consequent amendments to the National Planning Practice Guidance be noted.
4. That the modifications to policy DM24 Affordable Housing, set out in Section 4 of the report, be approved for inclusion in the Regulation 19 consultation version of the Maidstone Borough Local Plan.

¹ The Town and Country Planning (Local Planning) (England) Regulations 2012

This report relates to the following corporate priorities:

- Keeping Maidstone an attractive place for all
- Securing a successful economy for Maidstone Borough

Timetable	
<i>Meeting</i>	<i>Date</i>
Strategic Planning, Sustainability and Transportation Committee	18 August 2015

Policy H1(12) Haynes, Ashford Road and further modifications to Policy DM24 Affordable Housing

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Following the Committee's consideration of Affordable Housing Policy under agenda item 15 of the meeting of 14 July 2015 and agenda item 8 of the adjourned meeting on 23 July 2015, to advise the Committee of an error in the previous reports and, as a consequence, provide clarification of the recommendations upon which decisions were made.
 - 1.2 To advise the Committee of the High Court ruling on vacant building credit and the threshold at which affordable housing can be sought. A technical note responding to the High Court decision on thresholds has been prepared by consultants Peter Brett Associates (Appendix A), in order to assist the Committee in making decisions on revisions to the draft affordable housing policy.
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2. INTRODUCTION AND BACKGROUND

- 2.1 On 23 July 2015, the Committee approved amendments to draft policy DM24 for affordable housing for inclusion in the Regulation 19 version of the Maidstone Borough Local Plan. At the same time, the Committee considered an urgent update report dated 14 July 2015 and additionally made the following decisions:
 1. *"Site H1 (12) Haynes, Ashford Road, Maidstone for 200 dwellings be deleted from the draft local plan, to reflect the fact that the site is no longer available for residential development and, for completeness, to include its deletion in the additional public consultation (Regulation 18).*
 2. *The criterion 1(i)(a) Haynes, Ashford Road 20% Affordable Housing be deleted from the recommended policy DM24 Affordable Housing on page 10 of the report to Committee published on 16 July 2015 with the agenda for the meeting of 23 July 2015.."*
- 2.2 This report recommends amendments to the decisions set out in paragraph 2.1 above in order to update and correct the wording, and to clarify the decisions made by the Committee.
- 2.3 The supporting text to draft policy DM24 correctly referred to the Haynes site as policy H1(12) and the Springfield site as policy H1(11). However, policy DM24 itself reversed the policy numbers. Consequently, it is recommended that not only are references to the Haynes site deleted from policy DM24 and its supporting text, but that the cross reference to the Springfield site is amended:

DM24(1)(i) Maidstone urban area 30% with the exception of policy H1(11) Springfield, Royal Engineers Road 20%; and

- 2.4 Since the consideration of the affordable housing policy by the Committee on 14 and 23 July, Government policy which exempted small developments from affordable housing contributions and applied a “vacant building credit” has been removed from the National Planning Practice Guidance (NPPG). This follows a High Court ruling handed down on 31 July after a challenge to the policy by Reading Borough Council and West Berkshire District Council. As a result of the changes, there is no longer a national minimum threshold of 11 units or 1,000 m² floorspace, and councils will be expected to justify their proposed thresholds on the basis of local viability evidence.
- 2.5 The policy approved by the Committee on 23 July was informed by the Revised Plan and CIL Viability Study (June 2015) undertaken by Peter Brett Associates (PBA), which had been guided by these national thresholds. As a result of the ruling by the High Court, the policy and its evidence base are no longer consistent with national guidance and will require review. PBA has since been instructed to undertake further viability assessments to examine the potential for lower thresholds, and a technical note (Appendix A) has been prepared to support the reconsideration of the threshold at which affordable housing contributions will be sought under policy DM24.
- 2.6 The technical note confirms the need for local evidence to support the setting of affordable housing thresholds, and it is clear that the evidence supporting the previous thresholds can no longer be considered up-to-date. PBA has tested a range of additional typologies to determine their viability at alternative thresholds, and has recommended that the threshold be reduced to five or more dwellings for both urban and rural areas.
- 2.7 The additional testing demonstrates a clear distinction between the viability of sites of less than five units and those of five or more units, when the agreed rates of affordable housing (30% urban and 40% rural) are applied. All brownfield typologies under five dwellings are shown to be unviable at these rates, although five of the six typologies providing five or more dwellings are shown to be viable.
- 2.8 Given that the study is a high level strategic assessment of viability, PBA have recommended that individual site circumstances may improve the viability of these sites further, and there is of course potential for flexibility within the development management process. Where an applicant is able to demonstrate that the proposed rates of affordable housing are not viable, the policy already allows for negotiation on schemes, including on mix and tenure, and so the policy does not require modification to reflect this.
- 2.9 The National Planning Policy Guidance (NPPG, paragraph 21) explained that *“where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought.”* The vacant building credit therefore restricted the provision of

affordable housing under certain conditions that have now been removed. The policy itself is unaffected by the change but the constraints to its implementation are removed, thus securing affordable housing on sites that may have previously qualified for the exemption.

3. AVAILABLE OPTIONS

- 3.1 Option A1: The Committee could choose not to agree the revisions to the decisions made on 23 July 2015, but this would not resolve any confusion that may arise over the cross referencing of land allocation policies.
 - 3.2 Option A2: That the Committee agree to revise the decisions made on 23 July 2015.
 - 3.3 Option B1: The Committee could choose not to agree the modifications to the threshold at which affordable housing is required under policy DM24, but this would risk the policy being found unsound at examination as the evidence for the policy is not up-to-date or consistent with national policy or guidance.
 - 3.4 Option B2: That the Committee approves the modifications to the threshold at which affordable housing is required under policy DM24, and associated changes to text, to ensure the policy is consistent with national policy, guidance and up-to-date evidence.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 It is recommended that the Committee agrees to amend and replace the original decisions made on 23 July 2015 in accordance with Option A2 as set out below.

That site H1(12) Haynes, Ashford Road, Maidstone for 200 dwellings be deleted from the draft local plan, to reflect the fact that the site is no longer available for residential development; and to incorporate its deletion in the further public consultation on key changes to policies and site allocations (Regulation 18).

That reference to the site at H1(12) Haynes, Ashford Road is deleted from draft policy DM24 and its supporting text, and that the cross reference to the Springfield site is confirmed as policy H1(11) in policy DM24:

DM24(1)(i) Maidstone urban area 30% with the exception of policy H1(11) Springfield, Royal Engineers Road 20%; and

- 4.2 It is recommended that the Committee approves the modifications to the threshold at which affordable housing is required, in accordance with Option B2, and that revised policy DM24 is approved for Regulation 19 consultation as set out below. The amendments reflect the recent High Court ruling and draw on the evidence of the Technical Note, and also incorporate the amendments to the policy set out under paragraph 4.1 above. The policy has been amended in

consultation with the Head of Housing & Community Services. Following the approval of policy DM24 at the Committee's meeting on 23 July 2015 for inclusion in the Regulation 19 version of the local plan, further additions to the policy are in **bold text** and further deletions in ~~strike through text~~.

Policy DM24 - Affordable Housing

- 4.3 The Maidstone Strategic Housing Market Assessment supports the approach of seeking a proportion of dwellings to be provided on site for affordable housing needs. The council has a net affordable housing need of 5,800 homes from 2013 to 2031², equivalent to 322 households each year. This is a significant need for the borough and a clear justification for the council to seek affordable dwellings through new development schemes.
- 4.4 **Viability testing indicates that affordable housing is achievable across the borough on sites of five or more dwellings.** ~~The NPPG refers to circumstances where infrastructure contributions through planning obligations should not be sought from developers. Affordable housing should not be sought from developments of 10 units or less, and which have a maximum combined floorspace of 1,000m². The viability testing has assumed the national threshold of 11 dwellings for affordable housing.~~ To support community integration, affordable housing will be provided on site, and alternative provision will not be accepted unless there are exceptional circumstances that justify it. Any proposals for off-site or financial provision must be made at the time of the application.
- 4.5 Affordable housing targets will differentiate across the borough by geographical area and existing land use, due to relative issues such as ~~land price~~ **sales values** and policy considerations. Further viability testing has confirmed that the rural areas in Maidstone are more viable than urban locations, and brownfield sites (previously developed land) within urban areas are less viable than greenfield sites. Viability testing demonstrates that a 40% affordable housing rate can be achieved in the rural areas and a 30% rate within the **redefined** urban area. A 30% affordable housing requirement for ~~two the~~ **the** strategic urban brownfield site allocation **at Springfield (policy H1(11))**, ~~which is that are~~ important for the delivery of the local plan, would result in limited capacity to provide for necessary supporting infrastructure because of site constraints. The Springfield (H1(11)) ~~and Haynes (H1(12))~~ residential site allocation can accommodate a rate of 20% affordable housing which allows for an appropriate balance of affordable housing with the need to provide for infrastructure.
- 4.6 In order to respond to the identified need for affordable housing of different tenures through the period of the plan, the council will seek an indicative target of 70% affordable rented or social rented housing, or a mixture of the two, and 30% intermediate affordable housing (shared ownership and/or intermediate rent). This ratio was used for strategic viability testing purposes and has been shown to be viable. Specific site circumstances may affect the viability of individual proposals and the council recognises that the need for different tenures may also vary over time.

² Maidstone Strategic Housing Market Assessment (June 2015)

- 4.7 To ensure proper delivery of affordable housing, developers are required to discuss proposals with the council's housing department at the earliest stage of the application process, to ensure the size, type and tenure of new affordable housing is appropriate given the identified needs. Where economic viability affects the capacity of a scheme to meet the stated targets for affordable housing provision, the council will expect developers to examine the potential for variations to the tenure and mix of provision, prior to examining variations to the overall proportion of affordable housing.
- 4.8 Retirement homes (sheltered housing) and extra care homes (assisted living) are not as viable as other residential uses in Maidstone. A 20% affordable housing rate will be sought for such developments, which will allow for an appropriate balance between affordable housing need and supporting infrastructure provision.
- 4.9 Residential care homes or nursing homes, where 24 hour personal care and/or nursing care are provided, are shown to be even less viable than retirement homes. Population projections predict that 18% of the borough's residents will be over 70 years of age by 2031, compared with 12% in 2011, resulting in a need for 960 additional care home places in the borough. Despite significant investment in recent years, the care homes market shows weak prospects in terms of providing any affordable housing so a zero rate is set.
- 4.10 Developers will be required to pay for viability assessments and any cost of independent assessment. The council will only consider reducing planning obligations if fully justified through a financial appraisal model or other appropriate evidence.
- 4.11 The affordable and local needs housing supplementary planning document will contain further detail on how the policy will be implemented.

Policy DM 24

Affordable housing

On housing sites or mixed use development sites of ~~14~~ **five** residential units or more, ~~and which have a combined floorspace of greater than 1,000m²~~, the council will require the delivery of affordable housing.

1. The target rates for affordable housing provision within the following geographical areas, as defined on the policies map, are:
 - i. Maidstone urban area 30% with the exception of **policy H1(11) Springfield, Royal Engineers Road 20%; and**
 - ~~a) Policy H1(11) Haynes, Ashford Road 20%, and~~
 - ~~b) Policy H1(12) Springfield, Royal Engineers Road 20%; and~~
 - ii. Countryside, rural service centres and larger villages 40%.

2. Affordable housing provision should be appropriately integrated within the site. In exceptional circumstances, and where proven to be necessary, off-site provision will be sought in the following order of preference:

- i. An identified off site scheme; or
- ii. The purchase of dwellings off-site; or
- iii. A financial contribution towards off-site affordable housing.

3. The indicative targets for tenure are:

- i. 70% affordable rented housing, social rented housing or a mixture of the two; and
- ii. 30% intermediate affordable housing (shared ownership and/or intermediate rent).

Developers are required to enter into negotiations with the council, in consultation with registered providers, at the earliest stage of the application process to determine an appropriate tenure split, taking account of the evidence available at that time.

4. The council will seek provision of 20% affordable housing for schemes that provide for retirement housing and/or extra care homes.

5. Where it can be demonstrated that the affordable housing targets cannot be achieved due to economic viability, the tenure and mix of affordable housing should be examined prior to any variation in the proportion of affordable housing.

The affordable and local needs housing supplementary planning document will contain further detail on how the policy will be implemented.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 The draft Maidstone Borough Local Plan was subject to public consultation between March and May 2014. The key issues that were raised by respondents on the plan's affordable housing policy (DM24), together with officer responses and recommendations were considered by the Committee on 14 and 23 July 2015 and have helped to refine the draft policy.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 The revised policy DM24 in respect of affordable housing will be included in the Regulation 19 consultation version of the Maidstone Borough Local Plan.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The adoption of the local plan will assist in the delivery of the council's corporate priorities.	Head of Planning & Development
Risk Management	Risk management has included cross-departmental consultation with Housing Officers; the appointment of consultants to update viability testing to reflect current market conditions; a review of updated national policy and guidance; and an assessment of the key issues raised by respondents to policy DM24 during public consultation.	Head of Planning & Development
Financial	The receipts from CIL, referred to in the report, have the potential to be substantial and will be administered by the council's finance section. The resources will contribute to the delivery of the infrastructure required by the Local Plan. The costs of the viability consultants referred to in this report are accommodated within the existing local plan budget.	Head of Finance & Resources
Staffing	Regulation 19 consultation can be managed within existing staff resources.	Head of Planning & Development
Legal	The legal implication of not following decided law (i.e. a High Court ruling) could lead to a challenge to the Council's decision.	Kate Jardine, Solicitor, Team Leader (Planning), Mid Kent Legal Services
Equality Impact Needs Assessment	The policy was informed by the EqIA for Regulation 18 public consultation on the Maidstone Borough Local Plan, which will be reviewed to support the Regulation 19 version of the local plan. The Regulation 19 version of the local plan will be considered by SPS&T Committee before approval by Full Council.	Policy & Information Manager
Environmental/Sustainable Development	N/A	Head of Planning & Development
Community Safety	N/A	Head of Planning & Development

Human Rights Act	N/A	Head of Planning & Development
Procurement	Peter Brett Associates who have prepared technical evidence to support the local plan have been appointed in accordance with the council's procurement procedures.	Head of Planning & Development
Asset Management	None	Head of Planning & Development

8. REPORT APPENDICES

Appendix A: Peter Brett Associates Technical Note – Response to the High Court decision to quash government guidance in respect to affordable housing thresholds and development contributions from small sites (August 2015).

9. BACKGROUND PAPERS

None