

TECHNICAL NOTE

Job Name: Maidstone Borough Council Revised Plan Viability and CIL Study

Note Title: Viability Addendum Report

Note No: 1

Date: 7th August 2015

Prepared By: Mark Felgate

Subject: **Response to the High Court decision to quash government guidance in respect to affordable housing thresholds and development contributions from small sites**

Item	Subject
1.	<p><u>Background</u></p> <p>The Maidstone Revised Plan Viability and CIL Study was prepared on the basis of Government guidance contained within the National Planning Practice Guidance (NPPG) on setting thresholds for development contributions, including affordable housing on small sites. The guidance required local authorities to impose a threshold of more than 10 homes, or 5 homes in designated rural areas. Effectively this meant that schemes of 10 units and less (or which have a maximum combined floorspace of 1,000 sq.m) or of 5 or less in designated rural areas, were exempt from contributing to affordable housing or tariff based S106 infrastructure requirements.</p> <p>In terms of recommending affordable housing policy and CIL rates the Study assumed that affordable housing would be zero on the majority of developments of 10 or under dwellings and that on this basis a CIL rate of £93 (in the urban area) and £99 (in the rural area) were viable.</p> <p>Since the national threshold policy was put in place in December 2014, there have been a number of concerns expressed by a range of organisations as to the effect the policy will have on affordable housing delivery and whether the government were justified or allowed to bring in such a policy through the NPPG. The latter concern was acted upon with two local authorities mounting a legal challenge to the guidance and taking the Government to Court. Following a High Court decision on the 31st of July 2015, which found in favour of the two local authorities, the Government intends to remove the guidance relating to a threshold for development contributions.</p> <p>In the absence of any national standard for threshold it is for the local authority to determine what threshold they want to set for affordable housing. However, for a sound and robust development plan this threshold needs to be set on the basis of (viability) evidence that supports the approach and provides for a deliverable plan.</p> <p>Therefore, Maidstone Borough Council have requested PBA to review the viability testing and make recommendations based on any necessary revised testing as to whether the Council's policy towards affordable housing and approach to CIL requires amending.</p>
2.	<p><u>Revised testing</u></p> <p>The removal of the national thresholds means that the Maidstone Borough Council need to consider their local circumstances in respect of setting affordable housing policy and CIL rates.</p> <p>The previous viability work set out in the Revised Plan and CIL Viability Study, July 2015 tested a range of typologies based on future supply of housing and other development. In respect of housing, a range of site sizes and locations were tested, however these were considered in respect of the national policy on thresholds.</p>

TECHNICAL NOTE

Item	Subject																																																																																					
	<p>PBA have reviewed the typologies used in the original study to test whether they presented sufficient examples on which to base a threshold policy. It was considered that there was a gap in testing between 1 and 5 dwellings and 9 and 20 dwellings.</p> <p>In addition it was also considered that when considering an appropriate threshold reference should also be made to how any threshold may impact on supply. Whilst there are some smaller allocations, most of the supply from smaller sites to which a threshold policy may effect is from windfall sites. Windfall sites by their very definition are hard to anticipate, however some comfort can be taken from past performance as an indication of potential future supply.</p> <p>The Council has analysed the past performance of windfall development and found that in the urban area the majority of sites were brownfield and above 5 dwellings, however in the rural area the picture is more balanced with smaller sites (under 5 dwellings), contributing to around half of the supply. Therefore it is considered that further testing of fewer than 5 dwellings is required to test the impact of affordable housing and CIL on sites under 5, in particular in the rural areas and in the interests of filling a gap in the typologies a further test of 12 dwellings in both rural and urban areas.</p>																																																																																					
3.	<p><u>Revised testing results</u></p> <p>The following tables show results for the testing of a range of smaller site typologies both existing ones from the July 2015 report (1,5,9 and 20 dwellings) and the new typologies (3 and 12 dwellings). The results are shown with affordable housing at zero (Table 3.1) and with affordable housing at the respective recommended rate of 30% in the urban area and 40% in the rural area (Table 3.2). It should be noted that all other assumptions are the same as set out in the July 2015 report.</p> <p>Table 3.1 – Testing results – Zero Affordable housing</p> <table><tr><th>Typology</th><th>Value Area</th><th>Land type</th><th>AH %</th><th>Headroom</th></tr><tr><td>1 unit Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>0%</td><td>£70</td></tr><tr><td>3 units Brownfield</td><td>Urban Area</td><td>Small Brownfield</td><td>0%</td><td>£110</td></tr><tr><td>5 units Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>0%</td><td>£290</td></tr><tr><td>9 units Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>0%</td><td>£229</td></tr><tr><td>12 units Brownfield</td><td>Urban Area</td><td>Small Brownfield</td><td>0%</td><td>£278</td></tr><tr><td>20 units Brownfield (UA)</td><td>Urban Area</td><td>Brownfield</td><td>0%</td><td>£357</td></tr><tr><td>1 unit Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>0%</td><td>£338</td></tr><tr><td>3 units Greenfield</td><td>Rural</td><td>Small Greenfield</td><td>0%</td><td>£308</td></tr><tr><td>5 units Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>0%</td><td>£418</td></tr><tr><td>9 units Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>0%</td><td>£376</td></tr><tr><td>12 units Greenfield</td><td>Rural</td><td>Small Greenfield</td><td>0%</td><td>£430</td></tr><tr><td>1 unit Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>0%</td><td>£251</td></tr><tr><td>3 units Brownfield</td><td>Rural</td><td>Small Brownfield</td><td>0%</td><td>£216</td></tr><tr><td>5 units Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>0%</td><td>£324</td></tr><tr><td>9 units Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>0%</td><td>£274</td></tr><tr><td>12 units Brownfield</td><td>Rural</td><td>Small Brownfield</td><td>0%</td><td>£391</td></tr></table>	Typology	Value Area	Land type	AH %	Headroom	1 unit Brownfield (UA)	Urban Area	Small Brownfield	0%	£70	3 units Brownfield	Urban Area	Small Brownfield	0%	£110	5 units Brownfield (UA)	Urban Area	Small Brownfield	0%	£290	9 units Brownfield (UA)	Urban Area	Small Brownfield	0%	£229	12 units Brownfield	Urban Area	Small Brownfield	0%	£278	20 units Brownfield (UA)	Urban Area	Brownfield	0%	£357	1 unit Greenfield (Rural)	Rural	Small Greenfield	0%	£338	3 units Greenfield	Rural	Small Greenfield	0%	£308	5 units Greenfield (Rural)	Rural	Small Greenfield	0%	£418	9 units Greenfield (Rural)	Rural	Small Greenfield	0%	£376	12 units Greenfield	Rural	Small Greenfield	0%	£430	1 unit Brownfield (Rural)	Rural	Small Brownfield	0%	£251	3 units Brownfield	Rural	Small Brownfield	0%	£216	5 units Brownfield (Rural)	Rural	Small Brownfield	0%	£324	9 units Brownfield (Rural)	Rural	Small Brownfield	0%	£274	12 units Brownfield	Rural	Small Brownfield	0%	£391
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	<p>Table 3.2 – Testing results – 30% and 40% affordable housing</p> <table><tr><th>Typology</th><th>Value Area</th><th>Land type</th><th>AH %</th><th>Headroom</th></tr><tr><td>1 unit Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>30%</td><td>-£162</td></tr><tr><td>3 units Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>30%</td><td>-£117</td></tr><tr><td>5 units Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>30%</td><td>£139</td></tr><tr><td>9 units Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>30%</td><td>£52</td></tr><tr><td>12 units Brownfield (UA)</td><td>Urban Area</td><td>Small Brownfield</td><td>30%</td><td>£124</td></tr><tr><td>20 units Brownfield (UA)</td><td>Urban Area</td><td>Brownfield</td><td>30%</td><td>£188</td></tr><tr><td>1 unit Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>40%</td><td>£107</td></tr><tr><td>3 units Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>40%</td><td>£56</td></tr><tr><td>5 units Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>40%</td><td>£240</td></tr><tr><td>9 units Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>40%</td><td>£170</td></tr><tr><td>12 units Greenfield (Rural)</td><td>Rural</td><td>Small Greenfield</td><td>40%</td><td>£260</td></tr><tr><td>1 unit Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>40%</td><td>-£38</td></tr><tr><td>3 units Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>40%</td><td>-£97</td></tr><tr><td>5 units Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>40%</td><td>£83</td></tr><tr><td>9 units Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>40%</td><td>-£1</td></tr><tr><td>12 units Brownfield (Rural)</td><td>Rural</td><td>Small Brownfield</td><td>40%</td><td>£196</td></tr></table> <p>Table 3.1 shows that all sites are viable with no affordable housing. However, when affordable housing is introduced at the proposed rates of 30% in the urban area and 40% in the rural area it can be seen that sites under 5 dwellings in all areas are negative, as is a brownfield site of 9 dwellings in the rural area. This suggests that viability is more difficult for the very small sites and that a threshold of 5 dwelling or more contributing to affordable housing may be appropriate.</p> <p>In terms of CIL rates if these are applied at the proposed rates of £93 in the urban area and £99 in the rural area then at the respective affordable housing rates for all sites that sites 1, 3 and 9 dwellings in the urban area would not be able to afford the CIL rate and in the rural area the 3 unit greenfield site and the 1, 3, 5 and 9 unit brownfield sites would also struggle to pay a CIL rate.</p> <p>However, if we assume that affordable housing will only be liable on 5 dwellings and more the only typologies where a CIL rate may be a concern are the 9 unit scheme in the urban area and the 5 and 9 unit brownfield schemes in the rural area. Bearing in mind that the majority of supply in the rural area is on sites below 5 dwellings and that all the greenfield typologies are viable and that affordable housing requirements are subject to negotiation, it is considered that this is not a significant issue.</p>	Typology	Value Area	Land type	AH %	Headroom	1 unit Brownfield (UA)	Urban Area	Small Brownfield	30%	-£162	3 units Brownfield (UA)	Urban Area	Small Brownfield	30%	-£117	5 units Brownfield (UA)	Urban Area	Small Brownfield	30%	£139	9 units Brownfield (UA)	Urban Area	Small Brownfield	30%	£52	12 units Brownfield (UA)	Urban Area	Small Brownfield	30%	£124	20 units Brownfield (UA)	Urban Area	Brownfield	30%	£188	1 unit Greenfield (Rural)	Rural	Small Greenfield	40%	£107	3 units Greenfield (Rural)	Rural	Small Greenfield	40%	£56	5 units Greenfield (Rural)	Rural	Small Greenfield	40%	£240	9 units Greenfield (Rural)	Rural	Small Greenfield	40%	£170	12 units Greenfield (Rural)	Rural	Small Greenfield	40%	£260	1 unit Brownfield (Rural)	Rural	Small Brownfield	40%	-£38	3 units Brownfield (Rural)	Rural	Small Brownfield	40%	-£97	5 units Brownfield (Rural)	Rural	Small Brownfield	40%	£83	9 units Brownfield (Rural)	Rural	Small Brownfield	40%	-£1	12 units Brownfield (Rural)	Rural	Small Brownfield	40%	£196
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4.	<p><u>Recommendations</u></p> <p>In the July 2015 study, there was a consideration as to whether the authority should seek affordable housing on sites with 6 – 10 dwellings as allowed by the regulations at that time, albeit through commuted sums rather than on site. At that time the only typology that was within this category was the 9 dwelling scheme on a brownfield site in the rural area. As shown in Table 3.2 this was not shown to be viable and in the interest of simplicity at that time (especially in explaining to applicants as to whether their development was in a ‘designated’ rural area) it was recommended that a separate rate was not introduced.</p> <p>The situation has now changed and rather than considering just one typology, the evidence now looks at a greater range as it is up to the Council to set policy rather than Government and unlike previously there has to be evidence to support this position.</p>																																																																																					

TECHNICAL NOTE

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	<p>The analysis above in section 3 shows that there is a need to recommend an alternative approach to the threshold as which affordable housing will be sought; however there is no need to amend the approach to CIL.</p> <p>In the interest of a simple, clear and understandable approach it is not proposed to further test different proportions of affordable housing other than those already varied by urban and rural areas. In addition there has been no further consideration of introducing a differential CIL rate by reference to size as the proposed CIL rates work across the typologies.</p> <p>In summary it is recommended that:</p> <ul style="list-style-type: none"> • The threshold for affordable housing is set at five or more dwellings in both urban and rural areas • The CIL rate is retained at £99 per sq m in the rural area and £93 per sq m in the urban area <p><u>Approach to 'unviable' sites</u></p> <p>As set out above the generic site testing shows that 3 of the tested typologies would be marginal or unviable if the threshold policy was brought in and the CIL set at the recommended rates. The guidance (on CIL) is quite clear on this matter that it is not expected that all sites will be viable and the real test is whether a CIL rate puts at risk delivery of the Plan. Within that context it is acceptable for some sites not to be viable within the testing.</p> <p>However, whilst the tested sites are just examples albeit reflecting the market, it is likely that there will be circumstance where development are proposed that those promoting will claim they are unviable. In these circumstance there are a number of options available to the Council to help deliver those sites –</p> <ul style="list-style-type: none"> • The Council could suggest to the promoter a change in the mix or size of housing to achieve a better return – on small sites this can make a big difference • If affordable housing is an issue then a change in the type of affordable housing tenure could help improve viability – i.e. agree on more valuable tenures • It could be suggested that land deals could be renegotiated as the CIL liability is intended to come out of land value rather than development value, so this should be reflected in the price paid for the land • Finally if all these measures don't realise sufficient value then affordable housing is negotiable and could be reduced to allow the development to become more viable <p><u>A note of caution</u></p> <p>Whilst the High Court has quashed the guidance, it is likely the Government will appeal the decision because of the wider implications for future changes to policy. Even if this decision is maintained the Government may well seek to alter policy through other means or through a revised consultation process. Therefore in making any decisions on future policy approach and CIL, the potential for further changes should be made clear.</p>