

# CHESHIRE EAST COUNCIL

## Cabinet

---

<b>Date of Meeting:</b>	21 <sup>st</sup> April 2015
<b>Report of:</b>	Executive Director Economic Growth and Prosperity – Caroline Simpson
<b>Subject/Title:</b>	Notice of Motion – Affordable Housing in Cheshire East
<b>Portfolio Holder:</b>	Councillor Don Stockton, Housing and Jobs

---

### 1.0 Report Summary

- 1.1 The purpose of this report is to consider and respond to the following motion which had been moved by Councillor Laura Jeuda and seconded by Councillor Mo Grant at the Council meeting on 26<sup>th</sup> February 2015 and referred to Cabinet for consideration:

*“Cheshire East will resist the Government’s recent policy of allowing property developers to ‘opt out’ of providing affordable homes when submitting planning applications.”*

### 2.0 Recommendations

- 2.1 That for the reasons set out in this report, Cabinet reject the motion referred to in paragraph 1.1.
- 2.2 That Cheshire East consider applications in accordance with all appropriate policies and do not ‘opt out’ of Policy Guidance but consider all applications on their relative merits.
- 2.3 Where a conflict exists between the Councils Interim Statement on the Provision of Affordable Housing and the National Planning Practice Guidance (NPPG) the determination of applications should be in accordance with the NPPG and not require provision of affordable housing on sites of 10-units or less, and which have a maximum combined gross floor space of no more than 1000sqm (gross internal area) unless the failure to provide affordable housing renders the scheme unsustainable in the overall planning balance.

### 3.0 Reasons for Recommendations

- 3.1 To ensure that planning applications are assessed in the light of current planning policies and national planning guidance as appropriate such that all material considerations are balanced accordingly.

## **4.0 Wards Affected**

- 4.1 All

## **5.0 Local Ward Members**

- 5.1 All

## **6.0 Policy Implications**

- 6.1 The changes to national planning policy and this Notice of Motion have policy implications for the amount of affordable homes across Cheshire East by changing the threshold for negotiations with developers.

## **7.0 Implications for Rural Communities**

- 7.1 National Planning Policy Guidance (NPPG) reduces the threshold for affordable houses on sites of 10 or more dwellings. Cheshire East policy currently seeks to negotiate for affordable units on sites of 3 dwellings or 0.2hectares in the rural areas. The changes to the NPPG will therefore be a material planning consideration in negotiation on sites of 3 to 9 dwellings within rural areas.

## **8.0 Financial Implications**

- 8.1 To disregard national planning policy could result in an increase in planning appeals. This has financial implications in terms of increased staff costs but also the risk that the Planning Inspectorate will find the Council has acted unreasonably by not following National Planning Policy and will award costs to the Applicants against the Council. The Council is already under financial pressure in this area due to the suspension of the Local Plan Inspection, and further pressure caused by additional appeals and potential costs will be difficult to meet.

## **9.0 Legal Implications**

- 9.1 National planning guidance is a material consideration that lawfully must be taken into consideration on each planning application along with the development plan and any other material consideration. The Council would be acting unlawfully if it did not have regard to national planning guidance.

## **10.0 Risk Management**

- 10.1 There would be legal and financial implications if Cheshire East Council did not take into consideration national planning guidance as detailed above.

## **11.0 Background and Options**

- 11.1 This report addresses the issues raised by the motion referred to in paragraph 1.1.

### **Context**

- 11.2 On 28 November 2014 National Planning Policy was changed with regard to Section 106 planning obligations. The main change that has implications for Cheshire East is as follows:
- 11.3 For sites of 10 units or less, and which have a maximum combined gross floorspace of 1,000 square meters, affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions.
- 11.4 Changes are also proposed to the threshold for designated rural areas under Section 157 of the Housing Act 1985, however for Cheshire East, this only includes the National Park which has its own planning authority.
- 11.5 These changes in national planning policy will not apply to Rural Exception Sites. However affordable housing and tariff style contributions should not be sought in relation to residential annexes and extensions.
- 11.6 In addition the changes include a financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This will not however apply to vacant buildings which have been abandoned.
- 11.7 The purpose for these changes is to lower the construction cost and increase housing supply. Government believes that it will encourage development on smaller brownfield sites and boost small and medium sized developers.

### **Planning Policy**

- 11.8 Cheshire East Council have sought to ensure the delivery of brownfield sites as a priority, through both our existing Development Plan and the emerging Local Plan Strategy. Where applications for development on such sites are received a full and thorough test of site viability is undertaken at an early stage to ensure that proposals are in accordance with planning law.
- 11.9 Planning law requires that planning applications must be determined in accordance with the development plan, unless material considerations

indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004).

- 11.10 For Cheshire East, the development plan currently consists of the saved policies within the adopted Local Plans for the former local authorities. However since Cheshire East was formed, the Council has approved for development control policies an Interim Planning Statement on Affordable Housing. In addition the Cheshire East Local Plan Strategy (March 2014) has been submitted to the Inspectorate however the examination has been formally suspended.
- 11.11 The Interim Planning Statement on Affordable Housing was produced because the three adopted Local Plans contained differing policies for affordable housing, did not reflect the most up to date Strategic Housing Market Assessment and was superseded National Planning guidance. It was adopted by the Council in February 2011 for the determination of planning applications pending the adoption of the forthcoming Local Plan Strategy. Therefore while it is not part of the development plan it is a material planning consideration.
- 11.12 This Interim planning statement sets the threshold for negotiation to 15 units or more or greater than 0.4 hectare in settlements of 3,000 or more and in settlements of less than 3,000 then 0.2 hectares or 3 dwellings.
- 11.13 The Local Plan Strategy (Submission Version – March 2014) sets the threshold for negotiation at 15 or more dwellings (or 0.4 hectares) in the Principal Towns and Key Service Centres and 3 or more dwellings (or 0.2 hectares) in Local Service Centres and all other locations.
- 11.14 The implications of the changes to the national planning policy will therefore currently only impact on future planning decisions on windfall sites of less than 10 units within settlements of less than 3,000 population. It does not apply to any Rural Exception sites. It may affect sites of 3-9 dwellings within Local Service Centres once the Local Plan Strategy is adopted.

### **Consequences**

- 11.15 The Interim Planning Statement on Affordable Housing is a material planning consideration, along with Local Plan Strategy (Submission Version – March 2014), and national planning guidance. National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG) provide the national policy framework and guidance for consideration of applications. These all must be considered, as a material consideration, when each planning application is assessed. If the Council was to disregard current national planning guidance and make a decision contrary to that guidance it is likely that a planning applicant would appeal against that decision.

- 11.16 In the event of such an appeal it is likely that any Planning Inspector would give greater weight to national planning guidance and, in the event of the applicant claiming that the Council has acted unreasonably and therefore seeking costs, then costs would be awarded against the Council.
- 11.17 In any event, the policy is only the starting point for negotiations and just one of many material planning considerations in any planning application. For example viability and specific site constraints must also be considered. Therefore while this may reduce the number of affordable units to some degree the impact is likely to be limited.
- 11.18 Furthermore, affordable housing may be secured if there is a specific identified need or other circumstances require it. However, this will be a judgement based on balancing the various planning issues to reach a sustainable decision.

### **Conclusion**

- 11.19 Cheshire East cannot 'opt out' of Government policy without associated risks. Cheshire East should continue to consider applications in accordance with all appropriate policies, national guidance, and on their relative merits, in accordance with planning law.
- 11.20 The impact of the changes on Cheshire East Council will be limited by reason that it will only impact on sites of less than 10 dwellings in settlements of less than 3,000 population, and it does not affect any Rural Exception sites. Any potential impact will also be reduced by reason of the other recent planning reforms, for instance, requiring a better housing mix of house types, and the continued emphasis on brownfield development, prioritised in the existing development plan for the Borough and in the emerging Local Plan Strategy.
- 11.21 These reforms will ensure that Cheshire East's housing needs are more than adequately met and that Cheshire East Council will continue to support our most vulnerable and in need residents, particularly the needs of working families and older people through the development of suitable accommodation, including single storey developments.
- 11.22 Therefore, where a conflict exists between the Councils Interim Statement on the Provision of Affordable Housing and the National Planning Practice Guidance (NPPG) the determination of applications should be in accordance with the NPPG and not require provision of affordable housing on sites of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm (gross internal area) unless the failure to provide affordable housing renders the scheme unsustainable in the overall planning balance.

## **12.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Adrian Fisher  
Designation: Head of Strategic & Economic Planning  
Tel No: 01270 686641  
Email: [Adrian.fisher@cheshireeast.gov.uk](mailto:Adrian.fisher@cheshireeast.gov.uk)