

ABERDEEN CITY COUNCIL

COMMITTEE	Enterprise, Strategic Planning & Infrastructure
DATE	12 November 2013
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	Aberdeen Local Development Plan Policy on Affordable Housing Requirements for New Development
REPORT NUMBER:	EPI/13/178

1. PURPOSE OF REPORT

- 1.1. The Development Management Sub-Committee at its meeting on the 8th of November (2012) considered an application for 81 units at Friarsfield Road, Cults (this site will be developed to the extent of 280 units as per the Local Development Plan). The Sub-Committee discussed the affordable housing allocation for the site and the overall affordable housing policy.
- 1.2. The Sub-Committee approved the application and also made a number of further recommendations, one of which was “that a report be presented on the policy of 25% affordable housing provision and when it is appropriate for the planning authority to accept a commuted payment, and the calculation of that payment to maximise affordable housing provision in the City.” A commuted payment is a financial contribution made in lieu of providing affordable homes as a part of the housing development proposed.
- 1.3. Subsequent reports (EPI/12/277 on 22 January 2013 and EPI/13/093 on 21 May 2013) set out the issues around affordable housing and commuted payments and sought agreement for officers to consult on proposals to amend the commuted payment and report back to this Committee with the results of this consultation with a proposed figure or method of calculation to be agreed.
- 1.4. This report summarises the results of this consultation and makes recommendations on the role of commuted payments.

2. RECOMMENDATION(S)

- 2.1. It is recommended that the Committee agree:
 - a) Not to implement the change in the methodology for calculating commuted sums at this time, but for officers to continue to investigate

the potential of a change in the methodology and give detailed consideration to the consultation responses.

- b) Work with officers in Housing and Legal to incorporate target prices for affordable units to be incorporated within legal agreements and monitor the effects of this approach.
- c) Report back to this Committee March 2014 with an up-date on progress of recommendation b) and responses to comments from recommendation a).

3. FINANCIAL IMPLICATIONS

- 3.1. There will potentially be a financial implication resulting from this report related to legal advice. This cost will be met through the existing Local Development Plan Budget.

4. OTHER IMPLICATIONS

- 4.1. There are no other implications resulting from this report.

5. BACKGROUND/MAIN ISSUES

- 5.1. The Aberdeen Local Development Plan contains a policy that requires new housing developments of 5 units or more to contribute no less than 25% of the total number of units as affordable housing. Further guidance on the provision of affordable housing from new development is available in Supplementary Guidance, available at: <http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=31814&sID=14394>. This is consistent with guidance set out in PAN 2/2010. The Supplementary Guidance details that for developments of 20 units or more the provision will be expected to be delivered on-site. This approach helps to deliver mixed communities, assist in the eradication of existing concentrations of deprivation and create more sustainable communities where there is a range of housing opportunities. This provides support for individuals and families and supports them as they age, as their household size changes and as their income increases or decreases. Another benefit is providing Registered Social Landlords (RSLs) with land or property to deliver affordable housing. At present RSLs do not hold extensive land banks in Aberdeen City and without land in the control of RSLs there are limited sites where affordable housing can be delivered when funding is available.
- 5.2. Within the current Aberdeen Local Development Plan Policy there is an allowance for a commuted payment, but this should only be considered for smaller developments (less than 20 units). The current methodology is to apply a standard payment of £25,000 per house, which is a figure consistent across the Aberdeen Housing Market Area (the Aberdeen Housing Market Area covers Aberdeen and the surrounding areas of Aberdeenshire).

- 5.3. There are difficulties in the delivery of affordable housing on-site, as discussed in the previous report, related to the level and overall amount of funding available. With the difficulties in the delivery of housing on-site the simple £25,000 commuted payment is an easier way for a developer to meet the requirements of the policy and there is the incentive that, depending on the location, there could be significant gains in providing more private housing on-site instead of affordable housing. It should be noted, however, that in some instances there are benefits to a developer of providing on-site affordable housing, especially in the early phases as there will be a guaranteed buyer for a set number of units and this may help to finance some of the early infrastructure investment.

Consultation on Proposed Methodology

- 5.4. Consultation was undertaken on a proposed formula to calculate and then negotiate payments on a case by case basis. The proposal would link the payment to the increase in land value that would be generated by the substitution of affordable housing with private housing. **Appendix 1** provides more detail on the proposed methodology.
- 5.5. Responses were received from Homes for Scotland, Stewart Milne Homes, CALA Homes (East) Ltd., Barratt North Scotland, Churchill Homes, CHAP Homes Ltd. and Aberdeenshire Council's Affordable Housing Forum. Full copies of all responses are contained in **Appendix 2**.
- 5.6. A summary of the issues raised were:

5.6.1 Stewart Milne Homes

Stewart Milne Homes objected to the proposed change to the methodology for commuted sums in lieu of on-site affordable housing. They believe the current approach to arriving at the value of the commuted sum based on comparable evidence is the correct way in which to value such monies. They state that the contribution should be based on the cost of land for affordable housing. They also state there has been no change in policy which has provided a need to change the methodology in arriving at such sums. However, they accept that the figure should be reviewed on a regular basis based on evidence of affordable housing land purchase transactions, as suggested by Supplementary Guidance on Affordable Housing. Stewart Milne Homes also suggest that the 'proposed tax' based on the formula proposed will only frustrate the delivery of both affordable and mainstream housing at a time supply is critical in the north east to meet demand and secure the economic viability of the area. They further this by stating that the Council are being contradictory in what they are seeking to achieve, as the Council wish to be flexible and secure additional commuted sums to help deliver affordable homes

but are seeking to implement a tax that will slow down the delivery of housing.

Stewart Milne Homes are also dismayed at the way in which the consultation has been carried out as it is disappointing that this policy change is being brought forward when it contradicts the recommendations of the City's Affordable Housing Forum (which Stewart Milne Homes is a member of).

5.6.2 Homes for Scotland, CALA Homes (East) Ltd. and Barratt North Scotland

Homes for Scotland, CALA Homes (East) Ltd. and Barratt North Scotland oppose the proposed alteration to the current approach to the valuation of commuted sums for affordable housing on the grounds that:

- i) In the absence of any relevant supervening change in law, policy or economic circumstance, the development industry is entitled to expect that the current approach will remain in place during the life of the Aberdeen Local Development Plan (2012), and
- ii) The proposed 'site by site' formula is unworkable and that it has the potential to set the value of the commuted sum at a level that is greater than the difference between the open market and affordable housing residual land values, it would constitute an unlawful 'tax' on housing development.

Homes for Scotland, CALA Homes (East) Ltd. and Barratt North Scotland would be prepared to endorse an amendment to the adopted statutory guidance which directed that the annual review of the standard sum should be carried out on an upward only basis. This would provide certainty over the life of the current plan that the commuted sum would not fall below its current level of £25,000 per unit. They also welcome the opportunity to assist the Council in setting out a reasoned justification for the introduction of a policy change at this point in time.

Homes for Scotland, CALA Homes (East) Ltd. and Barratt North Scotland propose that paragraph 2.1 of the existing Supplementary Guidance is amended so that the following sentences are removed:

'Committed sums will be negotiated between the developer and the Council. The figure for committed sums is set by the Council, and the figure per plot is currently £25,000 (as of August 2010). This figure is subject to change and the figure is reviewed annually. Any changes will be consulted on and published in advance of implementation on the Council's website.'

and replaced with the following:

'Commuted sums will be initially calculated on a fixed contribution per unit basis (currently £25,000) and thereafter reviewed by the Council annually on an upwards only basis following consultation with the house building industry by reference of appropriate comparison evidence of sale prices of development land for the average price for affordable housing within the development land for the average price for affordable housing within the Aberdeen Housing Market Area or, in the absence of such evidence, the residual land value method set out in the relevant edition of the RICS Guidance Note, Scotland on the 'Valuation of land for affordable housing'. In the absence of agreement as regards the appropriateness or availability of the available comparison evidence or, as the case may be, the assessment of the average residual land value, the Council will refer the matter to an independent expert for final and binding determination.

The date of the annual review shall be fixed by reference to the month (currently August) on which the commuted sum for the preceding year was agreed or, as the case may be, determined. The figure fixed for the preceding year shall continue to be the relevant figure for the purposes of the application of Policy H5 until such time as the reviewed figure has been agreed or, as the case may be, determined.

The reviewed figure will be published on the Council's website.'

Homes for Scotland, CALA Homes (East) Ltd. and Barratt North Scotland ask the Council to reject the proposed alterations pending the next review of the local development plan because no valid reasons have been put forward, contrary to national and local planning policy and the advice set out in the Chief Planners letter of 15 March 2010. Furthermore, it would 'stifle the delivery of housing development...leading to house price inflation'. They also ask that the modifications proposed above are approved.

In supporting the proposal for the mixed use of on-site and commuted sum provision, it is assumed that the method of valuation would continue to be based on the current approach whereby the value of the standard sum is calculated by reference to the average price that an affordable housing provider would pay for land for affordable housing (currently £25,000). Homes for Scotland, CALA Homes (East) Ltd. and Barratt North Scotland believe mixed use on-site and commuted sum provision would improve the delivery of both mainstream and affordable housing. They suggest there is merit if complete flexibility were to be introduced into the guidance whereby a developer was permitted to deliver the 25% policy requirement entirely in the form of a commuted sum in circumstances where it was known that no Housing Association Grant funding would be available.

5.6.3 Churchill Homes

Churchill Homes think the proposed change is inappropriate, unlawful and will make the already difficult process of delivering housing impossible. It would also make the viability of developments questionable and not fundable. Churchill Homes' understanding is that the process would remain the same throughout the existence of the adopted Local Development Plan.

Churchill Homes thinks that the methodology appears to have been written with larger sites in mind because affordable housing is inappropriate on smaller sites with large housing plots. This is because of the small size of affordable unit plots.

Churchill Homes are of the mind that the proposed change of methodology is unworkable and requires major change because the 0.33 proportion is 'unjustified' and is a figure at the top end of the market and does not apply to the majority of sites. The proposed change to the methodology 'focuses on the selling price' of properties. Churchill Homes sees this as a means of increasing revenue to the Council to supplement the reduction of grant funding received from the Government which does not comply with the Plan, Supplementary Guidance or PAN 2/2010. The proposal for negotiation to be based on concluded missives will be unacceptable to most developers and all landowners.

Churchill Homes are of the mind that the current methodology reflects the value of a commuted sum and should not be amended.

Churchill Homes are of the opinion that a mix of on-site delivery of affordable housing and commuted payments has merit on sites of 20 or more units. If it were possible to allow this amendment without changing the methodology, then the proposed mix of provision should be conditional – the overall cost to the developer should not change. There are extreme impacts of this policy on smaller developments which will have a profound impact on their viability.

5.6.4 CHAP Homes Ltd.

CHAP Homes Ltd do not think it is appropriate to link the value of the commuted sum payment to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement. They think the commuted sum payment should be linked to the provision of affordable housing.

CHAP Homes Ltd are of the mind that the existing system has been very successful for many years and believe an annual review of the sum is more appropriate and practical than a review of methodology. They think this would allow flexibility to adjust to changing situations.

CHAP Homes Ltd. believe that a mix of on-site delivery and commuted sum payments will help improve the overall delivery of affordable housing. It will allow cross subsidy to deliver probably less than 25% but with reduced public contribution.

CHAP Homes Ltd. wish to object to the proposal and would urge the Council to acknowledge comments from the industry as put forward by Homes for Scotland (please see above).

5.6.5 Aberdeenshire Council's Affordable Housing Forum

Aberdeenshire's Affordable Housing Forum agree that a review of the methodology is appropriate, however the proposal appears complex and would likely require additional resources to facilitate. They feel that a more flexible and pragmatic approach is required and suggest the approach be transparent, provide a degree of certainty for developers as well as being efficient to manage and implement. However, to allow a mix of on-site delivery and commuted payments it is felt that this is an appropriate option to assist in the delivery of affordable housing.

Evaluation

- 5.7. The consultation responses all make reference to difficulties that the implementation of this policy will cause. It is suggested that to increase the commuted payment to the levels that would be generated through the proposed methodology would be unviable. The responses from developers state that the current figure of £25,000 is based on comparison evidence of what affordable housing providers are actually paying for sites and that this figure should be retained. It has also been made abundantly clear that Homes for Scotland would consider instigating judicial review should the Council press ahead with the proposed changes. That could ultimately impact not just on the Supplementary Guidance, but also potentially the adoption of the new Local Development Plan should the Council wish to pursue this approach through that Plan. Through consultation it has been suggested that the proposed approach will delay and in some cases stop development. The impact of policy on the viability of development and delay of development is of concern as new housing in Aberdeen is essential for the economy. The proposed methodology does allow for negotiation on the payment where it impacts on development viability, but there may be delays during the negotiation and the lack of certainty may cause difficulties for some developments.
- 5.8. There has been an alternative suggested in some responses. This alternative would be to maintain the standard commuted payment, but review this figure annually, and only review the figure upwards. This option would retain clarity in the approach ensuring that legal agreements are not delayed. This approach could be prepared in agreement with developers avoiding impact on development viability. It

is suggested that if this approach is taken forward discussions are held to gather evidence on which to base a standard payment. This option would not reflect differences across sites.

- 5.9. There are positives and negatives with both approaches and the consultation has raised some concerns with the legality of such an approach. In light of the responses received it is recommended that more time is given to consider the issues including obtaining legal advice. In the interim it is recommended that a clause be inserted into legal agreements to ensure that units or land would be offered to an RSL at a value that is equivalent to the end use as an affordable house. This will ensure that where the Council decides that affordable housing is to be incorporated into a development that an RSL will be in a position to afford to deliver affordable housing. This approach ensures that developers meet their obligations and that the Council can make progress towards delivering much needed affordable homes.

6. IMPACT

- 6.1 This Report is focused on ways that we can maximise the delivery of affordable housing and sustainable mixed communities. This has a direct link to the high-level priority in the 5 Year Business Plan 2013/14 – 2017/18 to “improve access to affordable housing in both the social rented and private sectors, by supporting first time buyers, regenerating areas within the city and by working with developers to maximise the effective use of planning gain contributions.” This would also support priorities under Smarter Living to reduce levels of inequality and meet national targets on homelessness.
- 6.2 This report is seeking agreement to undertake further work and consultation and there is no impact on equalities and human rights resulting from this report.

7. BACKGROUND PAPERS

Supplementary Guidance: Affordable Housing:

<http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=31814&sID=14394>

8. REPORT AUTHOR DETAILS

Daniel Harrington
Senior Planner
dharrington@aberdeencity.gov.uk
01224 523329

Appendix 1: Proposed Methodology

In calculating commuted payments the payment will be equivalent to the increase in the residual land value gained by substituting private housing for sale at the open market value in lieu of the affordable housing proposed. The use of commuted payments should be limited, but in the case that a commuted payment is acceptable it will be negotiated between the developer / land owner and the Council using this principle. The preferred method for agreeing payments will be to share the concluded missives in confidence to determine the gain in land value. Where concluded missives can not be shared the assumption will be that the area of land required for affordable housing will have nil value.

In calculating the commuted payment, and the starting point for negotiation, the following formula will be used.

a = the number of private development houses for sale, gained in lieu of the affordable housing proposed.

b = the mean (weighted average) current selling price for the mix of private development houses for sale gained in lieu of the affordable housing proposed.

0.33 = an estimate of the residual land value

$(a \times b) \times 0.33 = \text{Commutated Payment.}$