

Report of the Assistant Director – Legal & Governance

**Social Rented housing on new developments – Referral from the Area  
Planning Sub Committee**

**Summary**

1. This report informs Members about a referral from the 5 September 2019 Area Planning Committee meeting to this Committee to consider the impact of service charges on the delivery of social rented housing by housing associations through the planning gain process.
2. To further inform members about this topic the Chair of this Committee has also submitted a topic request form at Annex 1 suggesting the committee to consider the effectiveness of the Council's current planning policies for the delivery of affordable housing on private housing developments.

**Background**

3. On the recently approved development on the Terry's site, it was noted at the Area Planning Committee on the 5<sup>th</sup> September that no Housing Association or Registered Provider had taken up the affordable housing allocation. It was suggested by some Members that service charges and management costs contributed to this situation which undermines intended mixed tenure provisions and social housing delivery in council planning policy documents on affordable housing.
4. The York Central development is estimated to generate 2,500 new homes with 500 of these to be provided through planning obligations around affordable housing. As it is expected that most of these will be apartments the issues raised here are especially pertinent to that application.
5. CYC has committed to developing 600 new homes across York in 8 council owned locations:
  - Lowfield Green

- Duncombe Barracks
  - Askham Bar
  - Former Manor School
  - Hospital Fields Road and Ordnance Road Lane
  - Clifton Without Primary School
  - Woolnough House
6. The housing delivery programme has as a key aim of “building accommodation suitable for a wide range of households, meeting a full range of affordable housing. Affordable housing commuted sums paid in lieu of onsite homes constitute an important part of the funding for this programme.

### **Planning Policy regarding Affordable Housing**

7. As the local planning authority, CYC under the National Planning Policy Framework (NPPF) and the policies of its submitted Local Plan ensure that new developments given planning permission with 15 or more units deliver on site affordable housing under planning obligations. Brownfield sites must provide 20% affordable housing and Greenfield sites 30%.
8. Smaller sites may have an obligation to provide an offsite commuted sum in respect of affordable housing, in accordance with the NPPF and Local Plan policies
9. Housing Associations and Registered Providers are identified in the Local Plan as key delivery partners of affordable housing.
10. The Local Plan sets out the types, tenure mix and provision mix of affordable housing. Affordable housing includes social rented and intermediate housing with a ratio informed by the Strategic Housing Market Assessment of 80% Social and affordable rented and 20% intermediate split. Intermediate housing comprises low cost home ownership tenures including the council’s preferred Discount Sale, shared ownership and Rent to Buy.
11. The Local Plan states that affordable homes are pro rata of the market homes based on local need, integrated with “tenure build” layouts contribute to a sustainable community, making homes on sites indistinguishable from one another on market grounds. Pepper potting of

affordable homes in a development is encouraged on the grounds of integration.

12. There are examples of housing developments in other parts of the country that physically segregate less well-off tenants from wealthy homebuyers by forcing them to use separate entrances, or “poor doors”, in blocks of apartments. This is not considered acceptable under the CYC Local Plan and would undermine efforts to create and encourage an inclusive and mixed community of residents in new housing developments.
13. The exception to pepper potting is apartment blocks if they are to be transferred freehold to registered providers, for reasons discussed below.
14. Although affordable housing on developments above the 15 homes threshold are expected to be on site, however if it is robustly justified a commuted sum may be paid in lieu to the council. The commuted sums are calculated as the difference between the transfer price and the market value of the specific home (s) on that site using the following formula, as the estimated cost of providing the homes elsewhere:
15. Affordable housing commuted sum = market value of affordable homes - affordable transfer value of homes
16. For example, if 10x affordable apartments cannot be provided on site and have a market value of £200,000 each, and an affordable transfer value of £75,000 each:
17. Affordable housing commuted sum = (10 x £200,000) – (10 x £75,000) = £1.25m.

### **Use of Commuted sums**

18. Section 106 agreements are negotiated between a developer and council to help make new home schemes more attractive to communities. It can be used to help provide affordable housing as well as roads, parks and youth services
19. CYC is currently using section 106 receipts to develop and build affordable housing itself, with 58 homes for council rent and 9 for shared ownership completed over the past 5 years. Affordable housing expenditure as a result of commuted sums is as follows:

Affordable housing commuted sums 2014/15 – 2018-19	
S106 funding received	£3,765,622.34

Received funds spent on affordable housing programme	£1,826,478.30
Approved capital programme via commuted sums	£2,418,522

### **Management Service charges**

20. Currently service charges on new developments are dependent on a number of factors including maintenance and service expectations by new purchasers in the private sector as well as the council's own expectations around high quality homes. Whilst some of these can be covered by Housing Benefit / Universal Credit, this is not always the case, especially for more expensive charges.
21. For apartments aimed at the high value end of the market expensive service charges can cover maintenance of large entrance and indoor communal areas, costly management of external gardens, and other facilities. If the Housing Association does not own the freehold of the whole block, these will be arranged by a management company and the Housing Association has little control over the charges. In addition to the cost of rent or a mortgage on a Discount Sale property it is not uncommon for residents to pay substantial service charges, which can be unaffordable for residents on low income. For the Hungate scheme where recent phases have provided an offsite commuted sum contribution, typical service charges are in the region of £1,500-2,000/year.
22. Housing Associations have made clear that they are unable to take on apartments with significant service charges without owning the freehold and having control of the service charges. An effective design approach can also minimise charges by avoiding unnecessarily costly maintenance features. This is an approach taken in many developments across the UK, including apartment schemes considered to represent national best practice.

### **Key delivery partners**

23. As per the Local Plan, key CYC partners in the delivery of affordable housing are Housing Associations who are usually non-profit making organisations providing a range of accommodation for rent (and in some cases purchase, including Discount Sale and shared ownership).

24. CYC 'nominate' (put forward) tenants to these homes in accordance with the section 106 agreement; terms, conditions, size, type and location of homes vary from one scheme to another. A full list of CYC Housing Association partners can be found at Annex 2.

### **Completion of council housing**

<b>Development</b>	<b>Homes delivered</b>
Fenwick Street	8 apartments
Pottery Lane	6 houses
Lindsay House	14 apartments
Beckfield Lane	9 houses 9 flats
Hewley Avenue	8 flats
Ex right to buy repurchase scheme	4 houses
CYC 2 <sup>nd</sup> hand and off the shelf purchases for shared ownership	4 houses 5 flats

### **Consultation**

25. This report has been produced after meetings held with officers from the Housing and Development Services team.

### **Relevance and Feasibility**

26. In 2015 the NHBC Foundation and Homes and Communities Agency published 'Tenure integration in housing developments', which considered the success of different approaches to mixed-tenure developments. It found that:
- Financing is the main barrier to mixed tenure development.
  - If the design and quality of the overall development is to a high standard, property prices are not necessarily affected.

- A wider range of typologies and unit sizes enables people to move from one type to another and so stabilises neighbourhoods.
- Management structures and costs should be agreed before building commences.
- The boom of the private rented sector and buy to let has changed the anticipated tenure mix.
  
- Of the back of the 2015 report, CYC has carried out its own research in order to further understand the challenges of creating mixed tenure and reducing service charges to ensure affordability on new developments for those on low income. The result of the research found the following:
  - Whilst some tensions are inevitable, mixed tenure development carries with it less stigma and is normally a far better solution than exclusive living in marketing terms.
  - It requires well considered design and layout solutions from the outset, backed up with thorough management and maintenance plans.
  - Inclusivity doesn't have to mean literal pepper potting throughout apartment blocks. Shared entrances, public spaces, play areas and access to community facilities can help to encourage healthy interaction and ease tensions.
  - Service charges can be lowered through considered design and by having a menu of services which residents can opt in or out of.

## **Options**

### **The Committee can**

- i. Consider whether it wishes to look in more detail at the issues raised in this report in light of the referral from Area Planning Sub-Committee and of Cllr Fenton's specific topic request; or;
- ii. Decide that no further work is required on the issues raised either in this report or Cllr Fenton's topic request.

## **Analysis**

27. From 2013-14 to the present, there have been 44 flats and 102 houses completed as affordable housing through the section 106 planning provisions. Of these flats, 42 were located in 3 blocks:
  - Former York College site – 16
  - Shipton Street former school – 6
  - Terrys / The Chocolate Works – 20
28. By comparison, affordable housing commuted sums were provided in respect of a total of 93 apartments that would have been required as affordable housing through the planning process. 81 of those were apartment blocks at the Hungate site.
29. There have not been any houses 'lost' from onsite provision in this way.
30. Most of the Hungate development has comprised large 5-8 storey blocks where multiple conversations with Registered Providers made clear that the affordable housing could not be provided on site. Due to the size and layout of the block it was impossible to achieve a suitable freehold transfer for affordable housing, so commuted sums of £1.5m-£3m have been agreed for each phase (dependent on the number and type of apartments).
31. Of the schemes where a commuted sum was agreed in lieu of onsite affordable housing, there were a variety of factors such as listed building status and specialist older people's provision which resulted in their unsuitability to deliver on site affordable housing.
32. Additionally there are planning law requirements which can reduce the affordable housing contribution to a low level where it is not practical to provide onsite, principally the viability review process and the Vacant Building Credit.
33. Viability reviews are a long standing process where the developer provides evidence that it is not viable to provide the policy level of affordable housing – so the development could not go ahead without a reduction.
34. The Vacant Building Credit was introduced by the government in recent years and provides a substantial reduction in affordable housing for vacant building floor space, including in cases where the affordable housing policy could have been viably delivered.

35. Developers also now have Permitted Development Rights to convert office buildings into apartments, and no affordable housing can be secured in these cases.
36. The Local Plan policies and NPPF are used to engage developers at an early stage, ideally through the pre-application process, to maximise the affordable housing contribution and to achieve a design which facilitates on site delivery wherever possible.

### **Council Plan**

37. The Council is currently reviewing and consulting upon its new Council Plan for 2019-23. It is scheduled to be considered by the Executive at its meeting on 24 October. The Plan will, no doubt, contain suitable priorities in relation to housing matters.

### **Implications**

38. There are no financial, human resources, equalities, Legal, crime and disorder, property of other implications arising from the recommendations in this report.

### **Risk Management**

39. There are no risks associated with the recommendations in this report.

### **Conclusions**

40. According to the research undertaken by CYC, experience shows that the longer a scheme takes, the likelier that the actual mix will change from initial expectations. One example is if houses built for sale fail to attract individual purchasers, then the developer may choose to sell to housing associations or other bodies which will rent out, thereby essentially altering the mix from planned allocation
41. Mixed tenure estates and properties are now the norm for many developers looking to develop on brownfield or greenfield sites with an obligation to conform to planning policy that promotes balanced and sustainable communities.
42. But competing interests – those of private owners, tenants living in affordable homes for rent, and businesses/commercial interests all on the



same development – can lead to significant policy and legal difficulties for landlords and owners.

43. The pitfalls often centre on the competing expectations of owners and tenants around service levels and related cost expectations. It is vital, therefore, for estate managers and housing officers to be able to navigate their way around leases whether shared ownership or outright, tenancy agreements and other occupancy agreements, so as to ensure a well-managed estate. This is greatly facilitated by the Housing Association taking freehold ownership of the block.

### Recommendations

44. That Members to comment on the issues raised within this report and Cllr Fenton’s topic request and consider whether to undertake a more detailed review is merited and if so to set an appropriate remit for consideration.

Reason: To comply with Scrutiny protocols and procedures.

### Contact Details

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**Report Approved**  *tick* **Date** 26/10/2018

**Wards Affected:** *List wards or tick box to indicate all* **All**

**For further information please contact the author of the report**

## **Further reading**

Grenfell Tower: Social Housing resident reveals segregation of rich in Luxury apartments

## **Annexes**

Annex 1 Topic Request Form by Cllr Fenton

Annex 2 List of Housing Associations working Partnership with CYC

## **Abbreviations**

CYC- City of York Council

NFFP- National Planning Policy Framework

NHBC- National House Building Council

RP- Registered Provider