
Housing and Community Safety Policy & Scrutiny Committee

14 July 2021

Report of the Chair and Vice Chair of Housing and Community Safety Policy & Scrutiny Committee

Scrutiny Review into the Provision of Affordable Homes on New Developments

Summary

1. This is the final report of the scrutiny review into the provision of affordable homes on new developments. It contains a number of recommendations that members are invited to approve.

Background

2. At its meeting on 28 October 2019¹, the committee considered a referral from the 5 September 2019 meeting of the Area Planning Sub Committee which requested that the committee consider the impact of service charges on the delivery of social rented housing by housing associations through the planning gain process.
3. The committee discussed this referral and resolved to form a task group whose aim would be to better understand the current situation with regard to the delivery of affordable dwellings arising from new developments with planning permission. The initial objectives of the review would be:
 - a. To Investigate the delivery of homes for discounted sale resulting from the granting of planning permission for a new development;
 - b. To investigate the council's working relationship with housing associations in relation to the allocation of properties for

¹ <https://democracy.york.gov.uk/ieListDocuments.aspx?CId=963&MIId=11584&Ver=4>

social rent resulting from the granting of planning permission for a new development;

- c. To explore what barriers exist that make it difficult for housing associations to take up affordable housing contributions and what policy options could help to overcome any barriers.

4. At the committee's meeting on 23 December 2019² a Scoping Report was considered. It was agreed that Cllrs Fenton, Pavlovic, Wells and Baker would form the Task Group. Following a review of the initially-agreed objectives, it was agreed that the Task Group would consider the following:

- a. The importance of S106 affordable housing historically and looking ahead – data around numbers of homes delivered since 1998 by tenure and the numbers projected during the life of the local plan. The number of S106 affordable homes compared to those delivered on non-S106 sites to illustrate the critically important contribution of planning gain
- b. An overview of how S106 policy has evolved over time and why, including changes in government planning policies; for example, definitions of 'affordable' housing and exemptions for developers from providing affordable housing in certain circumstances
- c. The importance of on-site provision wherever possible – mixed income/tenure communities
- d. The importance of 'pepper-potting' affordable housing on private developments
- e. An overview of off-site contributions (commuted sums) and the mix of reasons historically why these have sometimes been agreed
- f. The proposed affordable housing policy in the submitted local plan – and the Supplementary Planning Guidance that will be written to support it (including consultation on this)
- g. The role of the Local Authority as strategic housing authority
- h. The role of Registered Providers (Housing Associations) in the delivery of affordable homes. This will cover how this has evolved over the years as land values have increased and council owned sites sold or gifted to HA's has reduced (most

² <https://democracy.york.gov.uk/ieListDocuments.aspx?CId=963&MId=11586&Ver=4>

recently with the council developing its own development programme), and their perspectives on the delivery of homes through planning gain.

5. It was agreed that the Task Group would also consider the following:
 - a. Are the current S106 delivery mechanisms - where housing associations competitively tender for the homes – fair and best value for money?
 - b. Challenges to achieving a good specification for affordable housing from private developers
 - c. The issue of prohibitive service charges – examples, scale
 - d. A growing trend for very small homes – studio flats, quarter houses – which can challenge space standards most Housing Associations want (and the wider question of how we can cover this in policy terms)
 - e. Site layouts combining an unbalanced housing mix of larger 4+ bedroom market houses with most of the smaller houses identified for affordable housing
 - f. Policy options such as commuted sums, separate blocks for freehold and other site-specific approaches.
6. The intention was that the scrutiny review would be completed by July 2020. The Task Group held its first meeting on 10 January 2020 at which it discussed with Andrew Bebbington (CYC Housing Strategy & Development Officer) how best to approach the review. The outbreak of the Covid pandemic in March 2020 meant that work on the scrutiny review was paused before any meaningful progress had been made.
7. An informal meeting of the Housing & Community Safety Policy & Scrutiny Committee was held on 20 October 2020 at which it was agreed to re-start work on the review, with a focus on two key aspects – the bidding process and service charges – and for Cllrs Fenton and Pavlovic to take this forward.

Information gathering

8. Cllrs Fenton and Pavlovic held virtual meetings between 29 January and 15 March 2021 with a number of stakeholders in order to better understand the operation of current processes in York, to hear the views of some of those involved in these

processes and to learn about the approaches used in other local authorities. Meetings took place with individuals from the following organisations

- Harrogate Borough Council
- Joseph Rowntree Housing Trust
- Yorkshire Housing
- Persimmon
- Barratt Homes
- City of York Council Local Plan team
- York Housing Association
- Karbon
- Stockport Borough Council
- Home Builders Federation
- York Property Forum
- Northstar Developments

9. The committee is grateful to all of those who participated in these meetings for their time and willingness to engage.

10. Prior to each meeting, a list of questions was circulated to participants to help inform the discussion:

- a. Positives and negatives from your general experience of section 106 affordable housing in York
- b. What are your views on York's section 106 competitive tender approach?
 - i. Including comparison to those elsewhere where relevant
 - ii. How would you ensure that the developer delivers appropriate quality standards?
- c. What kind of difference in transfer prices (saving) would you expect between a competitive tender vs. fixed price approach?
- d. Do you have any experience of taking apartments as part of section 106 schemes in York or elsewhere –
 - i. As a whole freehold block that you manage yourselves?
 - ii. As individual leasehold apartments in a block that is managed by the block owner?

- e. Could you give some examples of typical service charge levels from privately managed blocks, and from blocks you manage?
- f. What is the maximum level of service charges that would be viable under York's 80% social rented / 20% discount sale split?
- g. Could you suggest improvements the council could make to achieve more on site section 106 opportunities?

Findings

11. Set out below are some key findings from the conversations held with stakeholders, split by theme.

Positives and negatives from your general experience of section 106 affordable housing in York

12. Registered Providers (RPs) and developers were united in wanting to see a Local Plan for York adopted as soon as possible in order to increase the supply of land for development. Some RPs have an appetite to take on entire sites and develop them for affordable homes, potentially in partnership with councils.
13. CYC's rigid approach in respect of the types of affordable homes that can be provided (only social rent or discounted sale) was a source of frustration, and there were calls for more flexibility, for example to include shared ownership options. It is noted that a recent planning application for housing on the Burnholme site (part of the CYC Housing Delivery Programme) includes shared ownership as an intermediate tenure in place of discounted sale.
14. We heard from Stockport Borough Council about the approach they have developed over a number of years which includes development both through the Housing Revenue Account (HRA) and a development company, with tenure mix varying across 'zones' within the borough.
15. There were some concerns raised about the section 106 legal agreement template that CYC uses, which is apparently more unwieldy than that which some other councils use. We were told that there is a new standard clause which York didn't adopt – the Mortgagee In Possession (MIP) clause. There were also concerns about post-planning delays in the section 106 process.

16. RPs and developers like to be able to liaise with councils at an early stage and want there to be sufficient resource to enable councils to be able to respond positively to these approaches, including having conversations before a scheme has been designed. It came across clearly in discussions that officers at CYC are well-respected. One RP said that they would like to see CYC adopt a stronger policy approach on quality standards.

What are your views on York's section 106 competitive tender approach?

17. We heard from Harrogate that their matching panel / fixed transfer price system is well-established (though it has no legal basis and so RPs and developers are not compelled to engage with it). RPs pay £10k to the council to fund the development team that runs the process. RPs and developers do work with the process, but we got a sense from our conversations that they do not think that its implementation in York would deliver benefits in terms of increasing the number of affordable homes being built (at least whilst land is in short supply). We heard that RPs and developers feel that the current competitive bidding process does give them a degree of control.
18. We heard that there is a network of strong working relationships between RPs and developers and that they prefer to work with partners who share their vision and ethos. This relationship helps to underpin conversations about quality standards, and we heard of an approach whereby an RP purchases plots from the developer (after the bidding process) and then the developer builds the homes. We got a sense from some RPs that they would rather work in partnership with a council than have to compete against them for affordable housing plots on private developments. It is noted that CYC has recently agreed to a proposal from Joseph Rowntree Housing Trust to purchase a plot of CYC-owned land adjacent to Sturdee Grove and Foss Way on which JRHT propose to build eight affordable homes.
19. We did not get a sense that there would be support at the present time for introducing a fixed transfer price similar to that used in Harrogate, though the idea of setting a maximum transfer price per square metre did come up in some of the later discussions. The RPs and developers with whom we discussed

this said that any such approach would need to have flexibility built in to guard against unintended consequences such as causing a development to stall or leading to a lower quality specification being agreed for the homes. The CYC Local Plan team explained that the transfer value is set out in the viability assessment document and that any move to establish a fixed transfer price and/or ceiling would need to be subject to a policy assessment.

20. Developers highlighted escalating costs due in part to labour shortages and cost of materials.

Do you have any experience of taking apartments as part of section 106 schemes in York or elsewhere?

21. We heard support from RPs for having the ability to take on a discrete block within a development rather than random pepper-potting of apartments. We heard that early engagement between RPs and developers at the design stage makes it more likely that apartment developments can deliver on-site provision of affordable units and that service fees can be largely 'designed out'. Developers were willing to consider passing on the freehold of a block to an RP.

22. Where it proves impossible to achieve on-site provision of apartments, some RPs and developers said that a commuted sum would be the best outcome in order to deliver affordable homes elsewhere.

23. It was suggested that some costs on a new development could be better controlled if CYC took on responsibility for managing open space and play areas rather than this being handed over to a management company.

24. Some RPs said that council tax banding, rather than service fees, can make an 'affordable' property unaffordable.

Conclusions

25. Having completed the information-gathering exercise, Cllrs Fenton and Pavlovic met with the Executive Member (Cllr Craghill) and CYC officers to brief them on the emerging findings. They also sought input from members of the committee and officers at an informal meeting of this committee held on 24 May 2021.

26. Having sought and considered feedback on the emerging findings, and having taken into consideration recent policy announcements from Government, set out below are the key questions the review has sought to address, and our conclusions.

Question 1 – Should CYC adopt any or all aspects of the Harrogate matching panel / fixed transfer price approach?

27. The clear feedback from the discussions with stakeholders was that there is not support (at least not at present) for adopting wholesale the Harrogate model.

Question 2 – Should CYC change its current default policy under which homes delivered through the section 106 competitive tender approach must be social rent or discounted sale?

28. Prior to the Government announcement on the First Homes initiative³ we believed that there was a strong case for change here, which would have the support of RPs and developers who told us that shared ownership tenure models are increasingly popular.
29. The picture is changed however by the First Homes initiative, under which 25% of all homes delivered through developer contributions as part of planning obligations agreed under section 106 should be available to buy with a minimum discount of 30% below their full market value as First Homes. These homes would retain their discount in perpetuity and would need to be sold on to other eligible purchasers at a discounted price.
30. So although there is support for increased flexibility to enable shared ownership tenures to be provided, the implementation of First Homes in York means that any shared ownership homes delivered through developer contributions as part of planning obligations agreed under section 106 would be at the expense of homes for social rent. With First Homes to account for 25% of homes, the proportion of homes for social rent is already due to fall from 80% to 75%, and we do not believe that a further reduction would be appropriate given the high demand for social rent homes in York. We therefore recommend that, when the First Homes

³ <https://www.gov.uk/government/consultations/changes-to-the-current-planning-system/outcome/government-response-to-the-first-homes-proposals-in-changes-to-the-current-planning-system>

initiative comes to be implemented in York, 75% of homes delivered through developer contributions as part of planning obligations agreed under section 106 should be for social rent.

31. We note that there is also a new model for shared ownership being introduced by Homes England⁴ under which the minimum initial share to be purchased is 10% rather than 25%, which will hopefully support the provision of this popular tenure type.

Question 3 – Is there scope for more partnership working between CYC and RPs in developing sites for the provision of affordable housing and maximising the proportion of affordable homes on CYC sites?

32. We believe that there is a strong appetite among RPs for more partnership working, and we note the recent example of an RP (JRHT) purchasing a plot of CYC land in order to build eight affordable homes. We recommend that for future iterations of the CYC Housing Delivery Programme CYC actively considers sale to - or joint working with - RPs for potential housing development sites. We also recommend that for future iterations of the CYC Housing Delivery Programme officers consider how the programme can be structured and financed in a way that would deliver an increased proportion of affordable homes.

Question 4 – Are there steps that could be taken to maximise on-site provision in apartment developments and make apartments more 'affordable'?

33. We heard that early engagement between RPs and developers at the design stage makes it more likely that apartment developments can deliver on-site provision of affordable units and that service fees can be largely 'designed out,' for example through minimising indoor communal areas. There was a recognition that where this proves impossible, then a commuted sum would be an appropriate outcome.
34. With regard to outdoor amenity space, we have concerns that the trend for space being managed by companies who charge all residents (regardless of tenure) a set fee can undermine the affordability of some homes for some residents. We recommend

⁴ <https://www.gov.uk/government/consultations/new-model-for-shared-ownership-technical-consultation/new-model-for-shared-ownership-technical-consultation>

that officers review what steps could be taken to make it more likely that open space can be managed by CYC, particularly on CYC Housing Delivery Programme sites.

Question 5 – Are there any other changes that could be made to support RPs and developers?

35. We heard about frustrations with the section 106 legal agreement template that CYC uses, and post-planning delays, and we recommend that officers consider how this situation might be improved. We also heard that RPs and developers want to be able to liaise with officers at an early stage and so we recommend that officers to consider how they might be able to more positively respond to these approaches.

Recommendations

36. It is proposed that the following recommendations are approved by this committee for consideration by Executive:

- Recommendation 1 - When the First Homes initiative comes to be implemented in York, 75% of homes delivered through developer contributions as part of planning obligations agreed under section 106 should be for social rent
- Recommendation 2 - For future iterations of the CYC Housing Delivery Programme, CYC actively considers sale to - or joint working with - RPs for potential housing development sites
- Recommendation 3 - For future iterations of the CYC Housing Delivery Programme, officers consider how the programme can be structured and financed in a way that would deliver an increased proportion of affordable homes
- Recommendation 4 - Officers review what steps could be taken to make it more likely that open space can be managed by CYC, particularly on CYC Housing Delivery Programme sites
- Recommendation 5 – Officers consider improvements that can be made to the section 106 legal agreement template and steps that could be taken to reduce the risk of post-planning delays

- Recommendation 6 - Officers consider how they might be able to more positively respond to approaches from developers and RPs for informal discussions at an early stage, prior to a scheme proposal being submitted

Cllr Stephen Fenton (Chair) and Cllr Michael Pavlovic (Vice Chair)
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