

**Agenda Item No:** 9.4 **Report No:** 151/15

**Report Title:** Lewes District Joint Core Strategy – Affordable Housing Policy

**Report To:** Cabinet **Date:** 23 November 2015

**Cabinet Member:** Cllr Tom Jones – Lead Member for Planning

**Ward(s) Affected:** All

**Report By:** Nazeya Hussain, Director of Business Strategy and Development

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**Purpose of Report:** To seek an endorsement from Cabinet to recommend to Full Council that the proposed modification to the Council’s affordable housing policy, as set out in the Joint Core Strategy, is withdrawn and that the Council reverts to the version of the policy as presented in the Joint Core Strategy - Submission document.

**Officers Recommendation(s):**

- 1 To recommend to Full Council that the proposed Main Modification MM15 to the Joint Core Strategy is withdrawn and that the Council makes it clear to the Planning Inspector, through the ratification of the letter of 5 October 2015 to the Inspector (Appendix 3), that it wishes to adopt and implement the Submission version of Joint Core Strategy Core Policy 1 (affordable housing), subject to minor alterations (as set out in Appendix 2).

**Reasons for Recommendations**

In order to reflect the recent removal of national planning policy and guidance and revert to an appropriate affordable housing policy for the district, that is based upon and reflects robust local evidence of need and development viability.

**Report**

**1 Background**

- 1.1 In partnership with the South Downs National Park Authority, the District Council has been preparing the Joint Core Strategy (JCS) over a number of years. The JCS is currently at an advanced stage in the examination process and it is anticipated that it will be adopted in early 2016.

1.2 As part of the examination into the JCS, the Planning Inspector wrote to the authorities to set out his initial findings on the plan. In turn, the authorities were invited to submit proposed modifications to the plan that would overcome some of the issues that had arisen during the examination. These proposed modifications were agreed for publication, consultation and subsequent submission to the Planning Inspector at the Council meeting held on the 16<sup>th</sup> July 2015.

## **2 Core Policy 1 – Affordable Housing**

- 2.1 One of the Main Modifications (MM15)<sup>1</sup> proposed to the JCS was to amend Core Policy 1, which relates to the provision of affordable housing. The modification was proposed solely to ensure that Core Policy 1 would be consistent with the Government's Written Ministerial Statement of 28<sup>th</sup> November 2014, and the associated advice in the National Planning Practice Guidance (NPPG). This statement and guidance set a national threshold for development size below which affordable housing contributions could not be sought. This threshold was 11 units, although an allowance was made for financial contributions towards affordable housing provision to be sought on schemes between 6 and 10 units within certain designated rural areas, including the South Downs National Park.
- 2.2 Prior to the publication of the Ministerial Statement and NPPG additions, the Council and National Park Authority had proposed that Core Policy 1 would seek 40% affordable housing on schemes delivering 10 or more units. On schemes of between 3 and 9 net additional dwellings a graduated threshold and target was set out, which allowed for levels of less than 40% affordable housing to be delivered on these smaller developments, consistent with local viability evidence.
- 2.3 The nationally prescribed policy position set out in the Ministerial Statement and NPPG was challenged in the High Court by West Berkshire District Council and Reading Borough Council. The judgement, handed down on the 31<sup>st</sup> July 2015, advised that the challenge had been successful and therefore the decision to adopt the new policy by way of Written Ministerial Statement has been quashed, together with the associated sections of the NPPG which have subsequently been deleted.
- 2.4 The implication of the judgement for the JCS is that the sole reason for proposed modification MM15 no longer exists. The nationally prescribed 'policy' for affordable housing thresholds is quashed and this appears to give local planning authorities the flexibility to set their own, locally evidenced, thresholds once more.
- 2.5 In developing Core Policy 1, robust evidence particularly relating to local affordable housing need and development viability has been collected. The Council and National Park Authority have previously considered that this evidence provides robust justification to support the requirements of Core

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<sup>1</sup> Lewes District Local Plan Part 1: Joint Core Strategy – Submission Document Main Modifications Schedule 3 July 2015  
[http://www.lewes.gov.uk/Files/plan\\_Proposed\\_Main\\_Modifications\\_Schedule\\_3\\_-\\_July\\_2015.pdf](http://www.lewes.gov.uk/Files/plan_Proposed_Main_Modifications_Schedule_3_-_July_2015.pdf)

Policy 1, as described in paragraph 2.2 of this report. This local evidence does not support the Government's main driver for introducing the higher threshold for affordable housing provision, which was to make smaller residential development schemes more financially viable. Local evidence shows there to be sufficient viability in smaller housing schemes in Lewes district to deliver affordable housing provision in accordance with Core Policy 1 in most cases.

- 2.6 The evidence behind Core Policy 1, as it appeared in the Submission version of the JCS, is still considered to be up to date and robust. In light of this and the High Court judgement, it is considered that the Submission version of Core Policy 1 remains the most appropriate affordable housing policy position for this district.
- 2.7 On the 28th September 2015 the Government was granted permission to appeal the High Court judgement. The case will be heard by the Court of Appeal in due course and it is premature to speculate on the chances of the appeal being allowed and the ruling being quashed. Nevertheless, it has to be considered that this may be the outcome.
- 2.8 Even if the Court of Appeal dismisses the case, the Government has indicated its intent to reintroduce a nationally imposed minimum threshold, below which affordable housing contributions cannot be sought. However, there is currently no guarantee that this will happen or any date specified for when it might take effect.
- 2.9 To cover a scenario whereby the Court of Appeal finds in favour of the Government, or the Government reintroduces the intended policy (or alternative changes to affordable housing policy) at some point in the future, it is proposed that some additional future-proofing wording is included in Core Policy 1 and its supporting text. It is considered that Core Policy 1 should set out that in the event of a further national (mandatory) policy change that affects the threshold or level of affordable housing provision, Core Policy 1 would be superseded, as relevant and necessary, by any such changes in national policy. This is considered a minor modification to the policy, since it would simply provide clarification, given that the national position may be subject to change again in the short term, potentially not long after the anticipated adoption of the JCS. The additional text is identified in italics and underlined in Appendix 2 of this report.
- 2.10 The High Court judgement and deletion of the relevant parts of the NPPG occurred too late for MM15 to be removed from the schedule of proposed Main Modifications as published for consultation. However, a notice was published on the consultation website to update interested parties of the changed circumstances and our intention to write to the Planning Inspector to request that MM15 should not be pursued, subject to Council authorisation. A letter dated 5 October 2015, explaining the situation, has been submitted to the Inspector along with all material related to the Proposed Modifications consultation. The letter advises that this report will be considered by the Council and that its decision will be communicated to the Inspector following the Council meeting on 9 December 2015. Resumed examination hearings

are scheduled in mid-December 2015, which means the Inspector will be able to make his subsequent Final Report recommendations knowing the Council's position.

- 2.11 Please note that the letter to the Inspector also advises him that, following the agreement by Council on 16 July 2015 to publish the Proposed Modifications for consultation, additional work carried out by LDC and SDNPA found no requirement to propose further modifications to Core Policy 10 (Natural Environment and Landscape Character) in light of the 9 July 2015 Court of Appeal judgement relating to the Ashdown Forest.

### **3 Financial Appraisal**

- 3.1 No financial implications will arise for the Council if the recommendations of this report are implemented. The change in the affordable housing policy will have financial implications to those landowners/developers who wish to bring forward residential schemes for between 3 and 10 units. However, a robust viability appraisal has been undertaken as part of the evidence for the affordable housing policy. This demonstrates that the requirements of Core Policy 1 (as set out in Appendix 2) should not undermine the viability of such residential schemes.

### **4 Legal Implications**

- 4.1 As detailed within the report the proposed modifications take account of the High Court judgement *R (oao West Berkshire District Council and Reading Borough Council v. Secretary of State for Communities and Local Government)* [2015] EWHC 2222 (Admin).

### **5 Risk Management Implications**

- 5.1 Should the recommendation from this report be implemented then the main risk that may arise is that at some point in the near future the District Council may have an affordable housing policy that is non-compliant with national planning policy. This scenario could arise if the Court of Appeal finds in favour of the Government, regarding the Reading and West Berkshire case, or if new/amended policy is introduced concerning affordable housing. This risk has been mitigated by making it clear what the Council's position would be, if such a scenario arises, in the amendments to Core Policy 1 (see paragraph 2.9 of this report for further information on this).

### **6 Equality Screening**

- 6.1 An Equality Analysis Report (Appendix 4) has been undertaken. No specific negative or positive outcomes have been identified.

### **7 Background Papers**

- 7.1 The following documents provide background to this report.

- i) Lewes District Local Plan Part 1: Joint Core Strategy – Submission Document Main Modifications Schedule 3 July 2015

[http://www.lewes.gov.uk/Files/plan\\_Proposed\\_Main\\_Modifications\\_Schedule\\_3\\_-\\_July\\_2015.pdf](http://www.lewes.gov.uk/Files/plan_Proposed_Main_Modifications_Schedule_3_-_July_2015.pdf)

- ii) Lewes District Local Plan Part 1: Joint Core Strategy – Submission Document [http://www.lewes.gov.uk/Files/plan\\_CS\\_Submission.pdf](http://www.lewes.gov.uk/Files/plan_CS_Submission.pdf)
- iii) Lewes District Affordable housing Viability Assessment 2011 [http://www.lewes.gov.uk/Files/plan\\_AH\\_CIL\\_viability\\_study.pdf](http://www.lewes.gov.uk/Files/plan_AH_CIL_viability_study.pdf)

## **8 Appendices**

Appendix 1- Proposed Main Modification MM15

Appendix 2 – Revised Core Policy 1, including supporting text, as now proposed

Appendix 3 - Letter to the Planning Inspector October 2015

Appendix 4 – Equality Analysis Report

## Appendix 1

MM15 as published for consultation in the proposed Main Modifications to the Submission Joint Core Strategy (Schedule 3)  
[http://www.lewes.gov.uk/Files/plan\\_Proposed\\_Main\\_Modifications\\_Schedule\\_3\\_-\\_July\\_2015.pdf](http://www.lewes.gov.uk/Files/plan_Proposed_Main_Modifications_Schedule_3_-_July_2015.pdf)

<p>MM15</p> <p>Originally listed as MOD 38 in Schedule 2</p>	<p>Section 7 (Core Delivery Policies)</p> <p>Core Policy 1, p70</p>	<p>Amend Core Policy 1, paragraphs 1 and 2 as follows:</p> <p><b>1. A district wide target of 40% affordable housing, including affordable rented and intermediate (<del>shared ownership</del>) housing, will be sought for developments of <del>40</del> <u>11</u> or more dwelling units. For developments <del>of less than 40 units, in designated rural areas</del>, affordable housing, <u>or financial contributions towards</u>, will be sought <u>on developments of 6 or more</u> according to the stepped target and threshold below:</b></p> <table border="1" data-bbox="721 671 1357 928"> <thead> <tr> <th colspan="2">Affordable Housing Target/Threshold</th> </tr> <tr> <th>Scheme size (units)</th> <th>Affordable Housing (units)</th> </tr> </thead> <tbody> <tr> <td><u>6-8</u></td> <td><u>2*</u></td> </tr> <tr> <td><u>9-10</u></td> <td><u>3*</u></td> </tr> <tr> <td><u>11+</u></td> <td><u>40%</u></td> </tr> </tbody> </table> <p>*commuted sum financial payment</p> <p><b>2. The affordable housing requirement may exceptionally be determined on a site by site basis where justified by market and/or site conditions. The target levels will be expected to be provided by all developments of <del>3</del> <u>11</u> or more <u>and 6 or more in designated rural areas</u> (net) dwelling units (including conversions and subdivisions) unless the local planning authority is satisfied by robust financial viability evidence that development would not be financially viable at the relevant target level.</b></p> <p>(The remaining text in Core Policy 1 is unaltered)</p>	Affordable Housing Target/Threshold		Scheme size (units)	Affordable Housing (units)	<u>6-8</u>	<u>2*</u>	<u>9-10</u>	<u>3*</u>	<u>11+</u>	<u>40%</u>	<p>Statement 28 November 2014 which sets thresholds below which affordable housing contributions should not be sought.</p> <p>Reference to shared ownership is removed and replaced with a glossary definition for intermediate housing, which provides a fuller meaning as the intention was not to narrow the definition to just shared ownership</p>
Affordable Housing Target/Threshold													
Scheme size (units)	Affordable Housing (units)												
<u>6-8</u>	<u>2*</u>												
<u>9-10</u>	<u>3*</u>												
<u>11+</u>	<u>40%</u>												

## Appendix 2

The full wording of Core Policy 1, including supporting text, as the Council now intends to pursue to adoption, is set out below. This is the Submission JCS version of Core Policy 1 plus minor text modifications that are now proposed for clarity. These minor alterations essentially caveat the policy to make it clear that in the event of the national policy position changing again, the Council will defer to the national position, where relevant.

### **Core Policy 1 – Affordable Housing**

Key Strategic Objective:

- **To deliver the homes and accommodation for the needs of the district and ensure the housing growth requirements are accommodated in the most sustainable way.**

### **Key Strategic Issue/Challenge: Improving access to housing**

- 7.2 The core delivery policies that are considered integral to addressing this key issue/challenge are identified in this section.
- 7.3 A sufficient supply of housing of all tenures, including affordable housing, is essential to meet the objectives of the Core Strategy and to meet the wide range of housing needs that will be experienced in the district over the plan period as far as sustainably possible.
- 7.4 As identified in Section 6 (The Spatial Strategy), the objectively assessed need for housing over the plan period will not be fully met. Much of this housing need is generated from internal migration pressures and such pressures will not significantly subside as a result of not being accommodated. The reality is that older households who have built up equity in existing houses, potentially elsewhere in the country, will be in a position to out-compete other groups in the housing market. This may include younger households, or those with comparatively low levels of income. Pushing such groups out of the housing market in the district could have significant consequences, particularly in terms of sustaining an economically active population and supporting the local economy.
- 7.5 The Duty to Co-operate Housing Study identifies the provision of affordable housing as one way of avoiding the above scenario. The delivery of the highest feasible levels of affordable housing is a clear way of mitigating the potential negative impacts of not delivering the full objectively assessed housing needs. The provision of such housing will be integral in achieving the key objective relating to this policy, as it will assist in delivering homes and accommodation that meets the needs of those within the district. Such an approach is also consistent with the

District Council's corporate priority of increasing the provision of affordable housing throughout the district. This priority is also shared by the National Park Authority in its area.

- 7.6 Putting aside the argument that there is a need for affordable housing to mitigate against the wider housing needs not being met, there is still significant evidence of a considerable need for affordable housing in the district. The migration pressures, highlighted in Section 2 (Social Characteristics), are not new to the district. Such migration pressures have been a contributing factor to property prices in the district, which are significantly higher than national and regional averages. This is reflected in Lewes District having one of the highest house price to income ratios (the 'affordability gap') in the country, which is having a marked impact upon the availability and affordability of housing for those on low to modest incomes who wish to live locally. Both the Strategic Housing Market Assessment (2008) and the Assessment of the Local Need for Housing (2011) recognise this situation.
- 7.7 The Strategic Housing Market Assessment, produced in 2008, found that the district had an annual requirement for affordable housing, after allowance was made for re-lets, of 230 units per annum. More recently (Autumn 2013) an Affordable Housing Needs Assessment has been undertaken for Lewes District. This demonstrates that in order to meet the level of affordable housing need in the district over the next 5 years (both current backlog and newly arising need) an additional 389 affordable homes would need to be provided per annum, on top of those already expected to be delivered.
- 7.8 The Strategic Housing Market Assessment suggested initial percentage figures for the level of affordable housing that might be sought on new residential development. These percentage figures formed the basis for a preferred policy approach in the Emerging Core Strategy. However, the Emerging Core Strategy recognised that the draft policy approach was not based on any financial viability assessment, which would need to be undertaken before determining the appropriate policy requirements for the district. The recommendations in the Strategic Housing Market Assessment were also made in the light of the prevailing economic conditions and national planning policy requirements in 2008. This was the best available information at the time of the consultation on the Emerging Core Strategy and therefore that policy approach included a caveat regarding the need to undertake more up to date evidence, particularly in terms of viability testing.
- 7.9 The Affordable Housing Viability Assessment took the Strategic Housing Market Assessment's suggested requirements as the starting position for testing affordable housing viability in the district and then, finding them all to be comfortably viable, tested various other targets and thresholds across the district. The Viability Assessment also included viability based consideration of the relationship between affordable housing provision and the potential implications of a future Community Infrastructure Levy



Charging Schedule and meeting at least the full Level 4 requirements of the Code for Sustainable Homes.

- 7.10 The Affordable Housing Viability Assessment recommended a flexible approach to affordable housing delivery, with a district wide target (rather than requirement) of 40% and a graduated threshold for delivery as set out in the core policy below.
- 7.11 The graduated threshold for developments of less than 10 units is to reflect the increased build costs and generally somewhat reduced viability demonstrated for the smaller development sites.
- 7.12 The recommendation for a target percentage rather than a requirement is to allow appropriate flexibility in the policy to respond to variations in the housing market, land values and build costs which could result in reduced development viability on any given site. This is considered essential given the continuing economic uncertainty. The viability evidence tested a 10% fall in market values, which resulted in development remaining broadly viable. However, this would start to become marginal or unviable for some sites if the market fell much more than 10%. Monitoring of delivery rates and for significant changes in house prices and/or build costs would allow for a reassessment of the policy in the event of, for example, a 10% or more fall in the market, or persistent under-delivery.
- 7.13 No affordable housing requirement was recommended on developments of one or two units as the viability evidence shows that these smaller developments generally would not be able to bear both the cost of CIL and a commuted payment towards affordable housing. Housing proposals will be expected to make efficient use of land in accordance with Core Policy 2. Any proposal that appears to have an artificially low density as a possible measure to avoid the required thresholds for affordable housing will be scrutinised and may be refused planning permission where they fail to make efficient use of land and provide appropriate levels of affordable housing.
- 7.14 The actual affordable housing requirement may be determined on a site by site basis, taking into consideration market and site conditions. The target levels shown in the policy below will be expected to be provided by all developments of 3 (net) or more dwelling units (including conversions and subdivisions) unless the local planning authority is satisfied by robust financial viability evidence that development would not be financially viable at the relevant target level. Such evidence is required to be submitted by the applicant with the planning application to justify any reduced levels of affordable housing provision proposed and may be subject to independent assessment (e.g. by the Valuation Office Agency or other appropriately qualified independent assessor). An open-book approach will be taken and with the onus being on the applicant to clearly demonstrate the case for the reduced level of affordable housing proposed. Applicants intending to make a planning application with a reduced level of affordable housing provision below the relevant identified

target are strongly advised to raise this with planning officers in pre-application discussions.

- 7.15 There is a very strong presumption that affordable housing will be provided by the developer on the development site. In exceptional circumstances, where justified by robust evidence, the local planning authority will consider provision on an alternative suitable and serviced site provided by the developer in the first instance. Failing that, the local planning authority will exceptionally consider accepting a financial contribution in lieu, which will be used to enable further affordable housing provision in the district, and may be pooled as necessary.
- 7.16 The affordable housing tenure split will generally be expected to be 75% affordable rented and 25% intermediate tenure. However the tenure split may vary on a site by site basis depending upon the identified needs of the local area at the time. Applicants should discuss tenure requirements with the Council's Housing Services section before submitting a planning application.
- 7.17 For the purposes of this policy affordable housing is defined as in the National Planning Policy Framework Annex 2 (and in the glossary section of this document – see appendix 1).
- 7.18 In rural parts of the district, Local Plan Policy RES10 'Affordable Homes Exception Sites' has achieved relatively good success rates for the delivery of affordable homes for local needs on sites outside the planning boundary of the villages. The National Planning Policy Framework makes provision for the continuation of a rural exception sites policy and, as a result, it is proposed that Policy RES10 is carried forward.
- 7.19 For clarity, the affordable housing policy applies to sheltered, extra care and assisted living residential development in the same way as it does to general dwelling houses, where each residential unit has its own kitchen and bathroom facilities and therefore falls within the C3 Use Class. It also applies to conversions and subdivisions where there is a net residential gain of dwelling units in accordance with the target and thresholds set out in the policy below.
- 7.20 June 2011 average house prices are taken as the baseline position for this policy because this was the latest information at the time of the Affordable Housing Viability Assessment. This is the baseline from which a 10% market fall buffer was tested.
- 7.21 For the avoidance of doubt, in the event of any future change in Government policy that requires alternative thresholds, levels or types of affordable housing to be provided by development, the resulting national policy position will supersede the relevant part(s) of Core Policy 1 below, where necessary.

## Core Policy 1 - Affordable Housing

1. A district wide target of 40% affordable housing, including affordable rented and intermediate housing, will be sought for developments of 10 or more dwelling units. For developments of less than 10 units affordable housing will be sought according to the stepped target and threshold below:

Affordable Housing Target/Threshold	
Scheme size (Units)	Affordable housing (Units)
1 - 2	0
3 - 4	1
5 - 7	2
8 - 9	3
10+	40%

**Any future change in Government policy that requires alternative thresholds, levels or types of affordable housing will supersede this part of the policy, as relevant.**

2. The affordable housing requirement may exceptionally be determined on a site by site basis where justified by market and/or site conditions. The target levels will be expected to be provided by all developments of 3 or more (net) dwelling units (including conversions and subdivisions) unless the local planning authority is satisfied by robust financial viability evidence that development would not be financially viable at the relevant target level. Such evidence will be required to be submitted with the planning application to justify any reduced levels of affordable housing provision proposed for assessment using an open-book approach and may be subject to independent assessment (e.g. by the Valuation Office Agency or equivalent).
3. The guideline affordable housing tenure split will be 75% affordable rented and 25% intermediate. The local planning authority will negotiate the appropriate tenure split on a site by site basis based upon the latest evidence of needs in the site locality.
4. Affordable housing units will be integrated throughout the development site, be indistinguishable in design and materials from the market housing on the site and remain affordable in perpetuity.

The strong presumption is that affordable housing will be provided on the development site. In exceptional circumstances, the local planning authority may, at its discretion, consider accepting in lieu an off-site contribution on another suitable serviced site provided by the developer in

**the first instance or a financial contribution of broadly equivalent value. In such circumstances the local planning authority will have particular regard to the need to develop mixed and balanced communities and will need to be persuaded that the affordable housing cannot satisfactorily be provided on the development site itself. In the National Park the focus will be on the provision of affordable housing to ensure that the needs of local communities in the National Park are met.**

**Where sites are allocated in a Development Plan Document a different affordable housing requirement may be specified (either higher or lower), taking into consideration any site specific factors that may affect financial viability and/or the wider planning benefits of the development of that site.**

**The local planning authority will monitor the delivery of affordable housing through the Authority Monitoring Report. In the event of persistent under delivery against this policy target and the Housing Strategy annual target the Council will review the targets and thresholds of this policy. In the event of a fall of 10% or more in East Sussex average house prices (Land Registry House Price Index June 2011 baseline) the local planning authority will review the thresholds and targets of this policy.**

**Due to the largely rural nature of the district, Rural Exception Sites for local needs affordable housing outside the planning boundary of rural settlements will continue to be considered according to the requirements of Policy RES10 carried forward from the Lewes District Local Plan 2003.**