

## **NOTICE OF INDIVIDUAL EXECUTIVE MEMBER DECISION**

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| <b>ITEM NO.</b>                  | IMD 2015 - 09   |
| <b>TITLE</b>                     | Considering response of Wokingham Borough Council to the Department of Communities and Local Government Consultation on Proposals to Encourage Building More Homes on Brownfield Land |
| <b>DECISION TO BE MADE BY</b>    | John Kaiser – Executive Member for Strategic Planning and Highways  |
| <b>DATE AND TIME OF DECISION</b> | Monday 9 March 2015 at 1:00pm   |
| <b>VENUE</b>                     | SF2 Meeting Rom, Council Offices, Shute End, Wokingham  |
| <b>REPORT TO BE PUBLISHED ON</b> | Friday 27 February 2015   |

**INDIVIDUAL EXECUTIVE MEMBER DECISION  
REFERENCE IMD: 2015 - 09**

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| <b>TITLE</b>                | Considering response of Wokingham Borough Council to the Department of Communities and Local Government Consultation on Proposals to Encourage Building More Homes on Brownfield Land |
| <b>FOR CONSIDERATION BY</b> | John Kaiser – Executive Member for Strategic Planning and Highways  |
| <b>ON</b>                   | Monday 9 March 2015   |
| <b>TIME</b>                 | 1:00pm  |
| <b>WARD</b>                 | None specific   |
| <b>DIRECTOR</b>             | Heather Thwaites, Director of Environment   |

**OUTCOME / BENEFITS TO THE COMMUNITY**

That the final proposals chosen by the Department for Communities and Local Government on measures to underpin the delivery of housing on brownfield land has minimal negative impacts upon Wokingham Borough and that any positive benefits are maximised.

**RECOMMENDATION**

The Executive Member for Strategic Planning and Highways

- a) approves the comments outlined in this report and the attached appendix; and
- b) that they be submitted as a formal response to the consultation from the Department for Communities and Local Government regarding 'Building more homes on brownfield land'.

**SUMMARY OF REPORT**

The Department for Communities and Local Government has published the 'Building more homes on brownfield land' consultation which seeks views on a range of proposals to support local planning authorities in identifying and recording brownfield land suitable for housing, and to put permissions in place for new housing on the identified suitable land through Local Development Orders.

There are four main concerns for the Council:

- 1) The proposals could result in resource implications;
- 2) The consultation refers to allowing challenges to the LPA regarding inclusion or exclusion of particular sites, yet does not provide details regarding the mechanism for such a challenge;
- 3) The report does not clearly define many of the terms used; and
- 4) The impacts on other land uses have not been considered.

It is important to respond so that any issues for Wokingham Borough Council can be considered and addressed by the Government.

## Background

The Department of Communities and Local Government (DCLG) is consulting until 11 March 2015 on proposals to encourage building more homes on brownfield land (land that has previously been developed). The proposals are part of the Government's drive to make the planning system work more efficiently and effectively, and to increase the number of available homes.

The DCLG consultation includes proposals aimed at increasing the number of homes built on brownfield land by requiring local planning authorities to:

- Create a list of brownfield sites that are suitable for new housing;
- Publish the list and keep it up-to-date; and
- Put in place Local Development Orders (LDOs) on 90% of suitable sites by 2020.

The consultation document proposes using the definition of 'brownfield' (previously developed) land as defined in Annex 2 of the National Planning Policy Framework with the additional criteria of being deliverable, free of constraint, capable of development, and capable of supporting five or more dwellings.

Definition of 'brownfield' land, Annex 2 NPPF:

*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes:*

- *land that is or has been occupied by agricultural or forestry buildings;*
- *land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures;*
- *land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and*
- *land that was previously-developed, but where the remains of the permanent structure have blended into the landscape in the process of time.*

Local development orders are made by local planning authorities (LPA) to grant planning permission for specific types of development within a defined area, and by doing so remove the need for a planning application to be made. LDOs can:

- Apply to a specific site or sites, or to a wider geographical area;
- Grant permission for a certain type or types of development; and
- Grant planning permission outright or subject to conditions.

According to the National Planning Practice Guidance (Paragraph 076, 13-076-20140306), LDOs provide certainty and can save time and money for those involved in the planning process. Predominantly, LDOs are used by different authorities, mainly for employment uses. As of December 2013, nationally there were no LDOs which allowed new build residential development. Development that occurs under an LDO would be liable for the same Community Infrastructure Levy (CIL) fee that it would be liable for if it

were given planning permission in the normal way.

The consultation proposes two measures DCLG is considering to encourage progress in getting LDOs in place on brownfield land identified as suitable for new housing:

1. Designate the local planning authority as under-performing if they do not meet the 90% target; and/or
2. Failure to meet the 90% target would result in the inability to claim a five year housing land supply.

### **Analysis of Issues**

The Council recognises the Government's goal of using suitable previously developed land for new housing but seeks further clarification about how the proposals would be implemented in order to better assess the impact this would have on our services. The key issues are outlined below and the Council's proposed response to DCLG can be found in Appendix A.

### Potential Impact on Council Spatial Vision

The Government's proposals could potentially have a negative impact on the Council's spatial vision for the Borough, which locates most of the Borough's new housing in four Strategic Development Locations (SDL) which are mostly on greenfield sites (Core Strategy policies CP18 - 21). The proposed measures to increase suitable brownfield land for new housing could pose a risk to the future planned income streams from forthcoming developments on the SDLs.

### Resource Implications

In order to create a list of suitable brownfield sites, the Council considers that a number of steps, which have resourcing issues, would need to be taken. Although an accurate estimate of the number of brownfield sites in the Borough cannot be given until there is further clarification regarding the criteria and some initial research undertaken, a rough estimate would be that it would take a minimum of one full-time Senior Planning Officer Grade 8 – 9 (£37,600 - £48,800) at least one year to undertake this work. Additional resources, such as from a technical officer and a legal advisor, would also be required. Following creation of the list, work would need to commence on putting LDOs in place for 90% of the suitable sites, which it is estimated would take at least two years. It would then be likely that there would be an on-going resource need of somewhat less than 1.0 FTE.

Other costs that could be incurred could involve technical reports. Depending on the level of detail desired in a particular LDO, it may be necessary to commission technical studies such as environmental contamination, flooding and/or viability studies, to name a few. While these studies are generally paid for by the developer, with an LDO the Council would be responsible.

### Incentives

DCLG is proposing two measures if LPAs do not reach the target of having LDOs in place for 90% of the identified suitable brownfield land. It is not clear in the consultation whether DCLG is proposing to select one of the two measures, or whether both measures would be used.

1. The LPA would be designated as under-performing. This means that applicants could choose to apply to the Secretary of State directly for planning permission rather than applying to the LPA.
2. The LPA would not be able to claim an up-to-date five year housing land supply when considering applications for brownfield development, which would mean that the relevant policies for the supply of housing would be out of date.

Both of these measures would result in the Council having less control over development in the Borough and potentially may mean that less suitable sites are developed for housing, which could undermine the Council's planning strategy.

While the 90% target relates to 2020, there is an interim target of 50% of LDOs on identified suitable brownfield land by 2017. This tight timetable may result in rushed and poorly constructed LDOs being put in place just to meet the target, which could result in less suitable sites being used for new housing.

### LDO Process

- a) Preparation – identify LDO scope, including uses and site boundary; undertake technical assessments, in particular environmental screening and assessment; prepare statement of reasons; informal consultation with main stakeholders.
- b) Consultation –consultation for not less than 28 days.
- c) Adoption – Council approval required.
- d) Implementation –the developer is required to notify the LPA when undertaking development permitted by the LDO.
- e) Monitoring – reporting through monitoring report

### **FINANCIAL IMPLICATIONS OF THE RECOMMENDATION**

***The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.***

|                                   | How much will it Cost/ (Save) | Is there sufficient funding – if not quantify the Shortfall | Revenue or Capital? |
|-----------------------------------|-------------------------------|---|---------------------|
| Current Financial Year (Year 1)   | Nil*                          | Nil   | Nil                 |
| Next Financial Year (Year 2)      | Nil                           | Nil   | Nil                 |
| Following Financial Year (Year 3) | Nil                           | Nil   | Nil                 |

\*Note: This report is requesting permission to respond to a Government consultation, which has no cost. However, if the proposals are approved, there will be financial implications. See next section for more information.

**Other financial information relevant to the Recommendation/Decision**

If the proposals being consulted on go ahead, it is likely that a minimum of one full-time Senior Planning Officer Grade 8 – 9 (£37,600 - £48,800) would be required to undertake this work for at least three years. Additional resources, such as from a technical officer and a legal advisor, would also be required. It would then be likely that there would be an on-going resource need of somewhat less than 1.0 FTE.

The Council would be responsible for the cost of any technical reports/studies necessary to create the LDOs. Although not all sites would require such reports, the cost could be as much as £10,000 or more per site for complicated large sites with environmental contamination.

**Cross-Council Implications** (how does this decision impact on other Council services and priorities?)

No significant implications from responding to the consultation, but there may be implications should the proposals go ahead.

**SUMMARY OF CONSULTATION RESPONSES**

|                              |   |
|------------------------------|---|
| <b>Director - Resources</b>  | Awaiting response   |
| <b>Monitoring Officer</b>    | No specific comments <b>Error! Bookmark not defined.</b>  |
| <b>Leader of the Council</b> | “This is an important consultation and it is vital that all issues associated with Wokingham are fully documented.” |

**Reasons for considering the report in Part 2**

n/a

**List of Background Papers**

Consultation document from Department for Communities and Local Government Research, Planning Advisory Service - <http://www.pas.gov.uk/45-local-development-orders>.

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|-----------------------------------|--|
| <b>Contact</b> Rebecca Bird       | <b>Service</b> Land Use & Transport, Environment |
| <b>Telephone No</b> 0118 974 6456 | <b>Email</b> Rebecca.Bird@wokingham.gov.uk       |
| <b>Date</b> 26 February 2015      | <b>Version No.</b> 6                             |

## **Appendix A. Wokingham Borough Council Proposed Response to DCLG Consultation re 'Building more homes on brownfield land'**

*Council responses below the questions in italics*

### **Identifying brownfield land suitable for new housing**

**Question 1:** Do you agree with our proposed definition of brownfield land suitable for new housing and the criteria that are applied to define land suitable for new housing?

*We would question whether the 90% should also cover 1) sites with planning permission (to include outline, reserve, and full permissions) and 2) sites that are allocated in the development plan, as both of these show that the LPA is working effectively to deliver housing on brownfield land.*

*We would request that there be further clarification on the criteria, as detailed below.*

*Regarding the criteria for 'Deliverable', what evidence would be required to prove that a landowner is willing to make land available? Would evidence be necessary to prove that a site is deliverable having regard to the CIL rate? Who would pay for a viability study? How would 'under-utilised' be defined and what evidence would be required to show that a site is under-utilised?*

*Regarding 'Free of constraint', how would 'severe physical, environmental or policy constraints' be defined? Who would determine whether the constraints can 'realistically be mitigated while retaining the viability of redevelopment'? If the local authority is expected to do this work, there would be resource implications. Who would determine whether the cost of remediation to contaminated land would make the site unviable? Land within floodzones 2, 3a and 3b ought to be explicitly excluded in addition to other excluding constraints such as countryside. What other constraints would result in exclusion? What would be the impact on ensuring adequate measures are available to ensure adverse impacts upon European Sites, i.e. Thames Basin Heaths Special Protection Area? Are major developed sites in Green Belt acceptable for inclusion on the suitable list?*

*Regarding 'Capable of development', how will it be determined if a site is a 'genuine option'? How must it 'be clear' to the LPA? Is the interest only from 'developers' or does this apply to landowners and others? Could this be done through the SHLAA process, with evidence submitted alongside site promotion?*

*Regarding 'Capable of supporting five or more dwellings', in order to ensure best use of resources and economies of scale, a higher dwelling number threshold would be more appropriate. We would propose that sites capable of supporting 100 or more dwellings would be a more effective threshold. If sites of at least 5 dwellings should be included, will the related evidence proving land is available for residential with both a willing landowner and developer mean that the site can count in the LPA's five year housing land supply? What impact would this have on the recent changes that exempt sites of less than ten dwellings from planning contributions, specifically the cumulative impact of this loss of infrastructure funding?*

*Will this apply to brownfield land suitable for C3 housing only or would it be applicable to C2 as well?*

*Regarding paragraph 15, through what process will the brownfield land that is suitable for new housing be identified? Will it be through the SHLAA? If so, what about the sites that are not promoted through the SHLAA? How would the LPA measure whether there is 'little realistic prospect of [a site] being used for new housing'? This could potentially allow sites that are not suitable for new housing being put forward.*

**Question 2:** Do you agree that local planning authorities should be transparent and publish the small subset of data at source and update it at least once a year, to a common standard and specification?

*We have concerns about the resource implications of being required to publish this data.*

*In paragraph 16, the term 'house-builders' is used. The document uses different terms throughout—developers, landowners, house-builders, etc. It would be useful if the terms used were consistent.*

*In paragraph 18, it would be useful to have some clarification on how the data will be able to be challenged—using what mechanism and what is the status of the data?*

*In paragraph 19, the Duty to Cooperate is mentioned. Would the process of gathering, analysing, and publishing this data be subject to the Duty to Cooperate?*

**Question 3:** Do you have views on how this common standard and specification should be developed?

*We would like LPAs to be able to participate in what form the common standard and specification will take. This seems very similar to the approach used in the National Land Use Database (NLUD which was developed by CLG). Will it be an adaptation of NLUD?*

**Question 4:** Do you agree that local planning authorities should review their baseline and progress regularly, at least annually, to ensure that information about permissions on suitable brownfield land is current, reflecting changes in the availability of suitable housing sites?

*Again, we have concerns about the resource implications of this requirement. In addition, we think it may be useful if the baseline were to take account of permissions and allocations in addition to LDO as this information will show whether LPAs are making full use of available land.*

### **Measures to encourage progress**

**Question 5:** Do you think that the designation of under-performing planning authorities in the way suggested would provide an effective incentive to bringing forward planning permissions on brownfield land?

*We would like to see a financial incentive rather than a measure that could be perceived as a penalty used as a measure to encourage progress. Please see response to Q12 for further information.*

*If designation is to be used as an incentive, we would like to see the 90% include both brownfield sites with planning permission and brownfield sites that are allocated for housing since this demonstrates how authorities are proactively delivering housing on suitable and appropriate sites.*

**Question 6:** Do you agree that:

- a) Authorities should be designated from 2020 if they have not met the 90% objective?
- b) Performance against the 90% objective should be calculated on the extent to which the brownfield land suitable for housing identified a year earlier is covered by local development orders?

*If designation is to be used as an incentive, we think it appropriate that authorities be designated from 2020 if they have not met the 90% objective, but think sites with planning permission and sites already allocated for housing should be included in that total. We think it appropriate that the 90% objective should be applied to the sites identified the year before the reporting year, but again we would like to see sites with permission and sites already allocated for housing included in the total since this enables authorities flexibility to consider the range of tools to achieve the Government's objectives which take account of local circumstances and priorities.*

**Question 7:** Do you agree that:

- a) Authorities should be assessed against an intermediate objective in 2017?
- b) Having local development orders in place on 50% of brownfield land identified as suitable for housing (and which does not already benefit from planning permission) in the preceding year is an appropriate intermediate objective?

*Considering research by the Planning Advisory Service indicates that it takes approximately 8 months to put a local development order in place (taking account full appropriate consultation on draft orders), being assessed against an intermediate objective in 2017 seems onerous and it is suggested that 2018 is used instead.*

**Question 8:** Do you agree that authorities should be designated from 2017 if they have failed to make sufficient progress against the intermediate objective?

*We feel it would be more appropriate for the first designations for authorities not meeting the targets to be in 2020 (taking account the recommendation that sites allocated in local plans or with permission should count towards the target) since this also provides flexibility to local authorities regarding tools to deliver brownfield homes.*

**Question 9:** Do you agree:

- a) With our proposed approach to identifying and confirming designations, including the consideration of whether exceptional circumstances apply?
- b) With our suggested approach to de-designating authorities from 2020?
- c) That the provisions for handling applications made to the Secretary of State should be the same as where an authority is designated under the existing performance measures?

*If designation is to be used as an incentive, it seems reasonable to apply similar tests for brownfield performance as for under-performing authorities regarding designation, exceptional circumstances, de-designation, and applications to the Secretary of State. However, we query whether the approach to applications only applies to sites which are*

*on the LPA's list of brownfield sites deemed suitable for new housing or whether it would apply to any brownfield site (including those that had been rejected because of constraints). Another issue might be where a landowner had not given the LPA the opportunity to consider a LDO for a site.*

**Question 10:** Do you:

- a) Think the policy-based approach would provide an effective incentive for authorities to put local development orders in place on suitable brownfield land?
- b) Agree with the proposed thresholds and dates at which this measure would take effect?

*As with the designation incentive, we would like to see a financial incentive rather than a penalty used as a measure to encourage progress. Please see response to Q12 for further information.*

*As with the designation approach, we feel it would be more appropriate for 2020 to be the year when an authority would first not be able to claim a five year housing land supply due to the resources required to get LDOs in place for the required sites. In addition, we think all options should be based upon a percentage of sites either with planning permission, allocated for housing in the development plan, or with a local development order, as all show the effective working of the LPA to get more housing on brownfield land.*

**Question 11:** Do you agree that the measures proposed for failing to publish information on progress are proportionate and effective? If not, what alternative would you propose and why?

*We have the same concerns regarding the measures proposed for failing to publish information on progress as they are fraught with the same problems as the measures to encourage progress.*

**Question 12:** Do you have any other suggestions for measures that could help to deliver local development orders on brownfield land suitable for new housing?

*Wokingham Borough Council shares the Government's ambition to maximise housing delivery on brownfield land. However, the Council does not support the proposals contained in this consultation for the following reasons. The proposals would take significant resources away from working on the local plan, which could result in a delay to delivering housing on suitable brownfield land. In addition, the Council has an adopted spatial vision for the Borough which may be at risk if new housing on brownfield sites is given priority over those identified in the adopted local plan. Creating an incentive that would allow local authorities to recoup the costs of the technical studies that would be necessary to creating an LDO would be an effective incentive.*

## **Other Comments**

**6-Week Consultation Schedule:** Wokingham Borough Council objects to the consultation timetable. The Government's [Consultation Principles](#) sets out the principles that Government departments should follow for engaging stakeholders when developing policy and legislation. These principles state that 'Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response' and that the 'amount of time required will depend on the nature and impact of

*the proposal (for example, the diversity of interested parties or the complexity of the issue...)*. The guidance then states that *'For a new and contentious policy, 12 weeks or more may still be appropriate.'* The proposals in this consultation could have a serious impact on local planning authorities, are of interest to a diversity of parties and are complex. Therefore, the Council contends that the consultation should have been for a longer period of time, ideally twelve weeks, to give local authorities and those who would be affected by the implementation of Local Development Orders allowing housing development on previously developed land more time to consider the impact and formulate a response than a six week consultation allows.

**Cost of LDOs:** Wokingham Borough Council is concerned that the cost of preparing an LDO, in particular the technical reports which will be necessary for large complicated sites, will fall to the Council. These are costs that should be borne by the site developer / promoter not the local planning authority as these demonstrate the suitability of the site for redevelopment.

**Loss of Local Powers & Potential Impact on Adopted Spatial Vision:** If implemented, the proposals contained in the consultation would result in a loss of local powers to determine which sites are the most appropriate to build new homes. Every local authority is different yet these proposals take a 'one size fits all' approach. Wokingham Borough Council has an adopted up to date spatial vision that locates the vast majority of our new housing in four strategic development locations (SDLs) and Wokingham town centre. If brownfield sites are given priority over these SDLs, the viability and timely deliverability of the Borough's spatial vision could be at risk. The SDL approach Wokingham Borough Council has taken locates the Borough's new homes in infrastructure rich new communities and urban extensions. Brownfield sites in areas with little to no appropriate infrastructure should not be given priority over the Council's adopted spatial vision.

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