

Date: 12th February 2019

Our ref: 1245

Norwich City Council Planning Service
City Hall
St Peters Street
Norwich
NR2 1NH

By post and email: LDF@norwich.gov.uk

Dear Sir/Madam,

Re: Norwich City Council Draft Affordable Housing SPD for consultation.

I write on behalf of my client SYC Student Accommodation Ltd to make the following representations in relation to the above consultation document. My client is involved in a number of development projects within the Norwich City area and this SPG would have significant implications for the projects.

We **object strongly** as to the lawfulness of the Council adopting the SPD in its current form. The strength of my clients objection has led them to instruct Reuben Taylor QC, who is a leading planning counsel, to review the draft SPD and he has provided an opinion which is appended to this representation. This opinion concludes that adopting this SPD is contrary to Regulation 8(3) of the Town and Country Planning (Local Planning) (England) Regulations 2012 and would leave the Council open to challenge through a Judicial Review.

Definition of Affordable Housing Types in Norwich

Paragraph 2.3 explains that the Council proposes to adopt its own definition of affordable housing with the intention of meeting local needs in Norwich as defined in the SHMA. The NPPF requirement in paragraph 64 requiring at least 10% of housing on major development sites for affordable home ownership is considered incompatible with the identified housing need in the SHMA.

We do not consider that there is any justification for rewriting the NPPF requirement. Paragraph 1.13 of the draft SPD rightly states that the statutory development plan has primacy and this argument is used in order to justify the variation against the NPPF. However, this can only be the case where the adopted development plan is up to date, and the Joint Core Strategy, which contains the key policy in relation to affordable housing provision is now out of date as of 11th January 2018. Therefore, the NPPF requirement should now have primacy until a new Development Plan policy has been properly tested and adopted.

Furthermore, the SHMA which is used as the basis for seeking a different mix of affordable housing types has not been tested through the Development Plan process and limited weight should, therefore, be placed upon it. Recent appeal decisions including Norwich Road, Stoke Holy Cross and Blofield Heath have confirmed that limited weight can be applied to the SHMA. The Stoke Holy Cross decision stated the SHMA *"has not been examined or had any rigorous external assessment that has been brought to my attention..."* With regard to the Blofield Heath appeal the Inspector stated at paragraph 23: *"the SHMA evidence has not been the subject of independent examination and is not based on the standard method of assessing local housing need as currently expected by the Framework and set out in the Planning*

Practice Guidance. Consequently, I consider that, for the purposes of this appeal, the relevant policies remain to be considered as not up-to-date."

Therefore, we do not consider that there is any justification at this time for the Council to depart from the NPPF requirement at paragraph 64 and to devise its own definition of affordable housing and **object** to this element of the draft SPD.

Seeking Affordable Housing on Residential Allocations

Paragraph 2.18 notes that there is no policy basis for seeking affordable housing on all proposals for purpose-built student accommodation. However, paragraph 2.20 states that "Seeking affordable housing for care homes and purpose-built student accommodation on sites allocated for either housing or housing led development is justified on the basis that these are forms of housing, albeit not in the same use class as general market housing and their delivery will reduce pressure on the private rented sector;"

We **object strongly** to the new requirement set out within the SPD for student accommodation and care home schemes on sites allocated for residential development or residential led development to make affordable housing provision. As the SPD itself states, there is no policy basis to justify this requirement and the JCS is in any case out of date. The NPPF does not set out any requirement for these uses to provide affordable housing and it is unreasonable for the Council to require it. If such a requirement is to be considered, it should be properly examined through the forthcoming Local Plan process and not put into place following the limited opportunity to influence requirements through this SPD.

The provision of purpose-built student accommodation and care home accommodation has the benefit of reducing pressure on private rented dwellings within the city and frees up general market housing within the local area. The NPPG recognises "The need to provide housing for older people is critical as people are living longer lives and the proportion of older people in the population is increasing." It also states that "encouraging more dedicated student accommodation may provide low cost housing that takes pressure off the private rented sector and increases the overall housing stock." (Paragraph: 020 Reference ID: 2a-020-20180913). These benefits should be recognised in their own right without adding requirements through an SPD for affordable housing provision. This requirement would place an onerous burden upon developers, particularly in circumstances where planning applications are already under consideration on such sites.

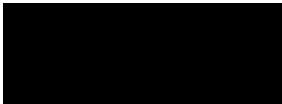
We also **object** to the proposed formula for calculating affordable housing requirements for individual sites, which in general seems to result in a requirement for more affordable housing to be provided than the site allocations assumed would be delivered. For example, the Land at Queens Road and Surrey Street (policy CC29) is allocated to deliver a mixed-use scheme which is office led with an element of residential development of potentially 40 dwellings. If 40 dwellings were proposed, then this would deliver 13 affordable units. The current purpose-built student accommodations scheme which is proposed on this site would need to deliver a 33 dwelling equivalent off-site contribution under the formula set out within the SPD. This is in addition to the significant benefits it is providing through the through the delivery of purpose-built student accommodation which fulfils an identified need, the family housing that it will free up by students not being reliant on this type of housing and a pedestrian link which is a long-held aspiration of the City Council



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We trust that you will take on board these comments and provide a thorough response to the issues raised prior to considering adoption of the SPD. It is our view that the SPD should not be adopted in its current form and that it would be appropriate for these substantial matters to be considered through the review of the Development Plan.

Yours sincerely,



Jane Crichton
Associate Planner

Enc Reuben Taylor QC Opinion dated 11th February 2019

RE: Norwich City Council – Draft Affordable Housing Supplementary Planning Document

O P I N I O N

1. I have been asked to advise in relation to a draft Affordable Housing Supplementary Planning Document (“the draft SPD”) produced by Norwich City Council that is currently the subject of public consultation.
2. In my view, the adoption of the draft SPD in its current form so as to require sites for student accommodation to make a contribution towards affordable housing would be unlawful.
3. Regulation 2 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations”) defines a “supplementary planning document” as follows:

“supplementary planning document” means any document of a description referred to in regulation 5 (except an adopted policies map or a statement of community involvement) which is not a local plan...”

4. Regulation 5 of the 2012 Regulations states:

(1) For the purposes of section 17(7)(za) of the Act the documents which are to be prepared as local development documents are—

(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—

(i) the development and use of land which the local planning authority wish to encourage during any specified period;

(ii) the allocation of sites for a particular type of development or use;

(iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;

5. The draft SPD plainly falls within the definition of a document which is to be prepared as a local development document, since it contains statements regard development management intended to guide the determination of applications for planning permission. This is apparent from paragraphs 1.9-10 of the draft SPD itself:

“This draft SPD provides detailed guidance on how policy 4 of the Greater Norwich Joint Core Strategy (JCS) and policy DM33 of Norwich’s Development Management Policies Plan should be interpreted and implemented in order to support proposed development and help deliver sustainable communities.

The draft SPD will be subject to consultation, review of feedback and then formal adoption by the council. **Once adopted it will be a material consideration in the determination of planning applications....**” (emphasis added)

6. Regulation 8(3) of the 2012 Regulations provides:

“(3) Any policies contained in a supplementary planning document must not conflict with the adopted development plan.”

7. It follows that, if the draft SPD contains policies which conflict with policies in the adopted development plan, the adoption of the draft SPD will be contrary to Regulation 8(3) of the 2012 Regulations and unlawful.

8. As I have noted above, the draft SPD purports to provide “detailed guidance” on the interpretation and implementation of policy 4 of the Joint Core Strategy and policy DM33 of the Development Management Policies Plan

9. Policy DM33 is simply a generalised policy relating to the use of planning obligations to secure affordable housing contributions. It does not contain any relevant criteria relating to the sites from which such contributions will be sought.

10. Policy 4 of the adopted Joint Core Strategy does provide such criteria. It states:

“A proportion of affordable housing, including an appropriate tenure mix, **will be sought on all sites for 5 or more dwellings** (or 0.2 hectares or more). The proportion of affordable housing, and mix of tenure sought will be based on the most up to date needs assessment for the plan area. At the adoption of this strategy the target proportion to meet the demonstrated housing need is:

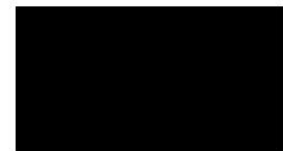
- on sites for 5-9 dwellings (or 0.2 – 0.4 ha), 20% with tenure to be agreed on a site by site basis (numbers rounded, upwards from 0.5)
- on sites for 10-15 dwellings (or 0.4 – 0.6 ha), 30% with tenure to be agreed on a site by site basis (numbers rounded, upwards from 0.5)
- on sites for 16 dwellings or more (or over 0.6 ha) 33% with approximate 85% social rented and 15% intermediate tenures (numbers rounded, upwards from 0.5)

The proportion of affordable housing sought may be reduced and the balance of tenures amended where it can be demonstrated that site characteristics, including infrastructure provision, together with the requirement for affordable housing would render the site unviable in prevailing market conditions, taking account of the availability of public subsidy to support affordable housing.” (emphasis added)

11. I note that Policy 4 only applies to “sites for 5 or more dwellings”. There is no definition of “dwelling” in the JCS. However, in my view it is plain that Policy 4 does not apply to sites where student accommodation is proposed since that is accommodation within a different use class than the C3 dwellinghouse use class. Rather, the approach enshrined in Policy 4 of the adopted Development Plan is that no affordable housing is to be sought from student accommodation schemes.
12. My conclusion is support by consideration of the evidence base used to justify Policy at the time of its adoption. That evidence base included a Drivers Jonas Deloitte Affordable Housing Study dated July 2010. That study examined the viability of adopting the policy approach set out in what is now Policy 4. That study contained no examination whatsoever of the viability implications of requiring student schemes to make a contribution towards affordable housing. Its methodology was solely confined to examining the viability of requiring affordable housing from conventional market housing sites.
13. In any event, the draft SPD itself recognises that existing Development Plan policy (i.e. Policy 4) does not require any contribution towards affordable housing from student accommodation developments. At paragraph 2.18 the draft DPD states in terms:

“There is currently no policy basis for seeking affordable housing on all proposals for purpose built student accommodation, although this may change with the development of the Greater Norwich Local Plan; it is anticipated that the Regulation 18 draft plan will be consulted upon in late 2019 and the final version of the plan adopted in late 2021.” (emphasis added)

14. It follows, that the draft SPD seeks to adopt a policy of requiring sites for student accommodation to make a contribution towards affordable housing when Policy 4 and the adopted Development Plan does not.
15. It is then necessarily the case that the draft SPD conflicts with Policy 4 of the JCS. SPD cannot be used to broaden the application of Policy 4 to sites that its wording does not currently embrace. The SPD process cannot lawfully be used to create a policy basis for requiring the payment of an affordable housing contribution where currently there is none.
16. As a result, the draft SPD cannot be adopted as proposed since to do so would be contrary to Regulation 8(3) of the 2012 Regulations.
17. The only means by which the Council can lawfully seek to require sites proposed for student accommodation to make a contribution towards affordable housing is to promote a policy which requires this through the Local Plan process. The Local Plan process, of course, allows for scrutiny of the justification for the adoption of a such a policy at examination by an independent inspector; the SPD process does not.
18. In my view, should the Council adopt the draft SPD in a form which seeks to require a contribution towards affordable housing from proposed student accommodation, consideration should be given to commencing proceedings in Judicial Review to have the adoption of the SPD quashed in whole or in part.
19. If I can assist further, please contact me in Chambers.



REUBEN TAYLOR Q.C.

11 February 2019
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