

PLANNING COMMITTEE

28th April 2016

JOINT REPORT OF THE HEAD OF PLANNING, ENGINEERING & TRANSPORT AND THE HEAD OF REGENERATION AND DEVELOPMENT

Technical Consultation on Starter Homes Regulations

1. PURPOSE OF REPORT

To advise Committee of the consultation and to agree a Committee response to be sent to the Department for Communities and Local Government (DCLG) and shared with relevant interested parties.

Responses to the consultation need to be submitted to the DCLG by 18 May 2016

2. RECOMMENDATIONS

i) That Planning Committee instructs officers to submit the detailed responses to the consultation questions, as set out in the Appendices, to the DCLG as the Council's response to the consultation document.

ii) That officers are authorised to make minor changes as necessary prior to submission to address factual corrections, with any more significant changes to be agreed by the Committee Chair.

iii) That Planning Committee agrees that the Head of Regeneration and Development and the Head of Planning, Environment and Transportation to share this report and consultation response with the borough's MPs, the Black Country Local Enterprise Partnership (LEP), other West Midlands Metropolitan Councils, the Local Government the Local Government Association, the Association of Directors of Environment, Economy, Planning & Transport and others concerned with the regeneration of the borough, to help advocate that potentially damaging proposals should be avoided and/or mitigated.

3. FINANCIAL IMPLICATIONS

Planning Committee has been advised previously that the requirement to provide for starter homes could lead to increased administrative burdens on the authority. The current consultation appears to confirm this. In particular, it is proposed that smaller sites (between 10 and 15 homes) that are exempt under the Council's current policy from the need to contribute to affordable

housing, will be required to incorporate starter homes. It is also proposed that very detailed monitoring of starter homes will be required, in excess of that currently undertaken for general housing.

Affordable housing as currently defined is exempt from the requirement to contribute to Community Infrastructure Levy (CIL). If this exemption is extended to starter homes (there is no reference in the consultation document), it will result in a loss of funding from CIL.

The provision of starter homes in place of affordable housing that actually meets the needs of local residents could also lead to increased costs in supporting those who are unable to acquire such housing.

4. POLICY IMPLICATIONS

The proposals appear likely to undermine the Council's ability to identify and plan for the housing needs of residents through its development plans, including the Black Country Core Strategy (BCCS), by imposing a top-down requirement for a particular type of housing that may not meet these needs.

5. LEGAL IMPLICATIONS

The proposed regulations are intended to implement the emerging provisions of the Housing and Planning Bill. However, this is currently still being considered by Parliament, so it is not certain that the regulations will reflect the Bill in its final form.

6. EQUALITY

The proposals are intended to provide for starter homes for first time buyers who are aged under 40. This would appear to be in direct conflict with existing equalities legislation that seeks to address age discrimination.

7. ENVIRONMENTAL IMPACT

None directly arising from the proposals in the consultation. However, previous reports to Committee about the Housing and Planning Bill have advised that the proposal to allow starter homes on "exception sites" could result in housing being built in industrial areas or other locations where environmental conflicts might arise between residential occupiers and adjoining land uses. Proposals to exempt starter homes from section 106 contributions could also remove the possibility of mitigating the impact on protected habitats as required by the Habitats Regulations.

8. WARD(S) AFFECTED

All.

9. **CONSULTEES**

Officers from Planning Policy, Development Management and Housing have provided input into the proposed response.

10. **CONTACT OFFICERS**

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11. **BACKGROUND PAPERS**

Technical consultation on Starter Homes Regulations (March 2016)
<https://www.gov.uk/government/consultations/starter-homes-regulations-technical-consultation>

Steve Pretty

Head of Planning, Environment and Transport

Simon Tranter

Head of Regeneration and Development

REPORT DETAIL

1. Planning Committee has recently received and responded to several reports about proposed changes to national policy and legislation relating to housing and planning. These include:

3 December 2015 Housing and Planning Bill

This included proposals to require local planning authorities to promote the supply of “starter homes” through local plans and the determination of planning applications. “Starter Homes” are defined in the Bill as new dwellings that are available for purchase by those who are first-time buyers and under the age of 40, and which are to be sold at a discount of at least 20% of the market value.

7 January 2016 Changes to National Planning Policy

This included a proposal to amend the definition of “affordable housing” to include “starter homes” as defined in the Bill.

31 March 2016 Technical Consultation on Changes to National Planning Policy

This related to other matters and did not make proposals in respect of starter homes (although some of the proposals reflected the Government’s intentions to promote starter homes on brownfield land).

2. **Council on 11 January 2016** noted that the starter homes proposals will be unaffordable, and resolved to analyse and report on the impact of the starter homes requirement on the local availability of affordable homes.
3. The Housing and Planning Bill provides for the detailed implementation of key aspects for starter homes to be set out in regulations made by the Secretary of State. These include:
 - elements of the definition of a starter home;
 - the starter homes requirement (regulations specifying the number of starter homes to be delivered and the types of site on which the requirement should be imposed, such as those of a “reasonable size” ; and
 - the reporting arrangements for starter homes delivery.

This technical consultation sets out the Government’s proposed approach for these regulations, including defining the minimum site sizes that will be expected to include starter homes. It is important to note however that, at the time of writing, the Bill is still being considered by the House of Lords. The Lords have already voted for several amendments to different elements of the Bill. It may therefore be considered premature for the Government to consult about detailed regulations given that the Bill itself could change.

4. Appendix 1 below explains and comments on the proposals in the consultation document whilst Appendix 2 sets out the recommended response to each of the questions asked in the document. Appendix 1 uses the headings in the document. Both Planning Committee and Council have

previously raised concerns about the principle of starter homes as proposed by the Government. Starter homes are unlikely to be genuinely affordable by many first time buyers in areas such as Walsall, where many residents have low, insecure incomes that mean they are unable to afford the deposit required to buy a home even at a discounted rate. The current detailed proposals appear to confirm that the Government proposes to impose a target for the minimum site size that will be expected to include starter homes, and the proportion of new homes on such sites that are to be starter homes. This is directly contrary to current national planning policy that local planning authorities should identify and plan for their own objectively assessed housing need. In Walsall's case it could also lead to fewer new homes overall being provided, since starter homes are unlikely to be attractive to the market.

Appendix 1: Consultation Proposals

(a) WHAT IS A STARTER HOME?

Restrictions on the sale and lettings of a starter home

The Government is seeking views on a tapered approach which would enable the starter home to be sold at an increasing proportion of market value, stepping up to 100% over time. It has stated that it does not support extending the restricted period beyond the first 8 years of occupation, believing this would unreasonably limit people's ability to move on, and has proposed limiting the restriction on the sale and sub-letting of starter homes to a period of only 5 years following initial sale. However, the House of Lord on 11 April voted to extend the discount period to 20 years, meaning that any discount on re-sale would increase by 1/20th for each year that a property is owned.

It is also the Government's intention that starter homes should not be used as "buy to let" properties and they should not be rented out during the restricted period.

OBSERVATIONS

Although we do not believe that starter homes would meet the needs of most people in Walsall who are unable to afford to buy or rent market housing, if they are to be introduced it is important that they remain as starter homes for as long as possible, ideally in perpetuity.

Because starter homes are a new product, their likely value compared with open market housing has not yet been established. However, if it is made possible to sell a starter home at the open market value after just 5 years, as currently proposed, it is likely that their value when first built will be similar to, and possibly higher than, market housing, since vendors and lenders will be aware that the full market value will be realised in a short period even if the initial purchasers default on repayments. This could encourage lenders to provide loans at an unsustainable level, leading to future debt problems.

Age 40 eligibility

The Government wants to ensure that in circumstances where joint purchasers are both qualifying first time buyers but one is over the age of 40 and one is under 40, they should be able jointly to buy a starter home. It also proposes that an exemption from the age 40 restriction should be given for injured military services personnel and those whose partner has died in service.

OBSERVATIONS

Given that we consider limiting the availability of starter homes to those aged under 40 to be discriminatory on the grounds of age, it follows that we would support starter homes being available to all first time buyers regardless of age. This would include all military personnel and their partners, even those who have not been injured, since it is recognised that the nature of military service means that it is often not possible for personnel to acquire their own homes at least in the early stages of their careers.

(b) THE STARTER HOMES REQUIREMENT

Minimum threshold for residential developments subject to the starter home requirement

The Government intends that starter homes will be secured through section 106 agreements on all sites of 10 units or more, and a single national minimum requirement of 20% of all homes delivered should be starter homes.

OBSERVATIONS

Starter homes would not meet the need for affordable housing in an area characterised by low average incomes such as Walsall. Imposing a target as a national requirement would be completely contrary to the established principle that local authorities identify their objectively assessed housing need based on local evidence as part of the preparation of their local plan. It could make it impossible to produce a local plan and is likely to result in a reduction in the overall amount of housing delivered.

In any case, it is unclear how such a requirement could be enforced where neither the local planning authority nor the developer wished to provide starter homes.

It should be noted that the House of Lords on 11th April voted to amend the Housing and Planning Bill to state that the planning authority may only grant planning permission for a residential development having had regard to the provision of starter homes based on its own assessment of local housing need and viability.

Exemptions to the requirement

The Government proposes a general exemption to the starter homes requirement where it can be clearly demonstrated that developments would be unviable if they had to deliver any affordable housing including starter homes, as well as for dedicated supported housing which provides specialist accommodation for a particular group. It also asks if developments such as estate regeneration schemes and other affordable housing led developments, where a very high proportion of shared ownership and affordable rent units are delivered by housing associations, local authorities and other providers, purpose built student housing, and custom built developments, should be exempt.

OBSERVATIONS

Viability is a major issue for many sites in Walsall because of the need to address inherent site conditions such as contamination and instability. For this reason, in recent years very little affordable housing has been achieved via section 106 agreements (however, a large amount of affordable housing has still been provided as a result of grant funding through the Homes and Communities Agency).

It is essential that this ability to take account of viability is allowed to continue. As with the provision of starter homes in general, local authorities should be allowed to continue to take account of local circumstances and needs in assessing whether it is appropriate to require affordable housing on particular sites.

Because starter homes are a new product, it is difficult to be certain about how they will be valued relative to other types of housing, and hence their possible impact on

the viability of sites. However, there is logic in applying a similar approach to that for other types of “affordable” housing. At present, the impact of requiring affordable housing is assessed through a mixture of local plan evidence (which is used when determining what requirement should be set in local plan policies such as the Black Country Core Strategy) and assessment on a site by site basis for individual planning applications.

We would welcome the exemption of housing association led schemes from any requirement to provide affordable housing. Such an exemption should also apply to schemes that are private sector led but where some or all of the units are sold to a housing association. There have been several such development in Walsall, mainly using surplus former local authority land.

Off-site commuted sums

The Government states that, in most cases, the starter homes requirement should be an on-site provision of starter homes. However, the Government recognises that some flexibility on the requirement may be needed, particularly in high value areas or where development does not easily lend itself to an on-site provision. It also proposes that purpose built private rented developments should not be bound by an on-site starter homes requirement for a combination of design, property management and investment reasons.

OBSERVATIONS

Affordable housing in general should be identical in specification to general housing so should normally be provided on site. ‘Conventional’ affordable housing that is rented by a social landlord can be difficult to manage where it comprises a small number of units that are isolated from other properties in the same ownership. For this reason, it can be more appropriate for the developer to pay a commuted sum to contribute to the provision of affordable housing elsewhere as part of another development by the same landlord.

There is some logic in applying a similar argument to other forms of rented housing, especially flatted developments, where an isolated privately owned apartment (built as a starter home) could create management difficulties for future maintenance if the rest of the block is rented.

Given that starter homes are intended for sale, this issue would not be relevant where the rest of the development (excluding other affordable housing) comprises homes for sale.

Monitoring and Reporting

The Government proposes that a range of data relating to starter homes is recorded and included in the Authority Monitoring Report (AMR). The AMR is a statutory document that local authorities currently have to produce at least annually. At present the only requirement is that it must state the number of new homes completed in the area over the monitoring period, although authorities also use it to record progress against a range of other indicators to show the effectiveness of policies in the local plan.

OBSERVATIONS

Monitoring is an essential component of evidence-based decision making. Several of the proposed indicators (for example the number of planning applications received containing starter homes, and the number of homes completed) are similar to data that is already collected for general housing. However, some of them are too detailed and would not provide accurate or meaningful information about starter homes in any case.

An example is the proposed measure of applications received. At present when applications are received, it is not always apparent whether or not the proposal will include affordable housing, especially since such housing may not be physically distinct from other housing on the site. Affordable housing may only be achieved by negotiation during consideration of the application by the local planning authority.

The proposals also raise other technical issues that are set out in Appendix 2 below.

Appendix 2: Responses to Questions

Q1: Do you support restrictions on the sale and sub-letting of starter homes for 5 years following initial sale? Do you support allowing individuals to sell at a higher proportion of market value as the number of years they have lived in the home increases? If not, what other approaches can we adopt to meet our objectives?

Walsall has high levels of multiple deprivation. Average house prices are generally low compared to other areas but average incomes are also low. Low incomes and job insecurity mean that many residents would be unable to obtain mortgages and buy homes even at a discount. We do not therefore believe that starter homes would meet the needs of most people in Walsall who are unable to afford to buy or rent market housing. However, if they are to be introduced it is important that they remain as starter homes for as long as possible, ideally in perpetuity.

Because starter homes are a new product, their likely value compared with open market housing has not yet been established. However, if it is made possible to sell a starter home at the open market value after just 5 years, as currently proposed, it is likely that their value when first built will be similar to, and possibly higher than, market housing, since vendors and lenders will be aware that the full market value will be realised in a short period even if the initial purchasers default on repayments. This could encourage lenders to provide loans at an unsustainable level, leading to future debt problems. The shorter any time period that restricts re-sales is, the more likely it is that such lending will occur.

Q2: Do you agree that flexibility over the age 40 restriction should be given when joint purchasers are looking to buy a starter home, one purchaser being under 40 years old but the other older than 40?

Q3: Do you agree that there should be an exemption from the age 40 restriction for injured military services personnel and those whose partner has died in service

We consider limiting the availability of starter homes to those aged under 40 to be discriminatory in principle on the grounds of age. However, it follows from this that we would support starter homes being available to all first time buyers regardless of age. This would include all military personnel and their partners, even those who have not been injured, since it is recognised that the nature of military service means that it is often not possible for personnel to acquire their own homes at least in the early stages of their careers.

It is noted that there is a discrepancy between the proposed age limit of 40 for starter homes and the age limit for Local Housing Allowance which currently caps the amount paid to single people under 35

Q4: Would a site size of 10 units or more (or 0.5 ha) be an appropriate minimum threshold for the starter home requirement? If not, what threshold would be appropriate and why?

Q5: Should the minimum percentage requirement be applied uniformly on all sites over 10 units to provide a single requirement across the country?

Q6: If so, do you agree that 20% represents a reasonable requirement for most areas?

We commented in response to question 1 that starter homes would not meet the need for affordable housing in an area characterised by low average incomes such as Walsall. Imposing a target in the form of a minimum site size as a national requirement would be completely contrary to the established principle that local authorities identify their objectively assessed housing need based on local evidence as part of the preparation of their local plan. It could make it impossible to produce a local plan to meet housing needs, and it is likely to result in a reduction in the overall amount of housing delivered.

Such a target would also seem likely to make existing local plans that include a different requirement out of date.

In any case, it is unclear how such a requirement could be enforced where neither the local planning authority nor the developer wished to provide starter homes.

Q7: Do you support an exemption from the Starter Homes requirement for those developments which would be unviable if they had to deliver any affordable housing including Starter Homes? If so, how prescriptive should the viability test be in the regulations?

Viability is a major issue for many sites in Walsall because of the need to address inherent site conditions such as contamination and instability. For this reason, in recent years very little affordable housing has been achieved via section 106 agreements (however, a large amount of affordable housing has still been provided as a result of grant funding through the Homes and Communities Agency).

It is essential that this ability to take account of viability is allowed to continue. As with the provision of starter homes in general, local authorities should be allowed to continue to take account of local circumstances and needs in assessing whether it is appropriate to require affordable housing on particular sites. This assessment should take place initially as part of the preparation of the local plan.

There is no agreed definition of “viability” so it is unclear how this could be defined in regulations in any case.

Q8: Do you support the proposed exemptions from the starter home requirement? If not, why not?

Yes, we would strongly support exemptions for specialist housing such as that for the elderly or disabled, and student housing.

It is unclear why specific reference is made in the consultation document to residential care homes. Such homes are normally communal establishments so it would be unsuitable for individual residents to have different tenures.

Q9: Should group custom build developments and developments with a very high level of affordable housing such as estate regeneration schemes be exempt? If not, why not?

As noted in response to earlier questions, we do not consider that starter homes would address the housing needs of most residents in Walsall. However, if they are to become a mandatory requirement in open market housing developments, and are to fall within the definition of affordable housing, it would appear to be reasonable to expect them to be provided as part of estate regeneration schemes. Given that starter homes are likely to have a higher value than other affordable housing, because of the potential for them to be available for sale as open market housing in a few years, their inclusion ought to increase the viability of developments.

Custom build housing, where a purchaser chooses details of the house design for the work to be completed by a builder, ought to be suitable for development as starter homes in the same way as “ready built” housing. It is recognised that this is different to self build, which is unlikely to be suitable as starter homes because the builders will need to already have accommodation elsewhere whilst their new home is under construction.

Q10: Are any further exemptions from the starter home requirement warranted, and why?

None identified.

Q11: Do you support the use of commuted sums to deliver starter homes where the local planning authority agrees?

Q12: Do you support the proposal that private rented sector housing (for institutional investment) and specialist older people’s housing should meet the requirement through off-site contributions?

Affordable housing in general should be identical in specification to general housing so should normally be provided on site. ‘Conventional’ affordable housing that is rented by a social landlord can be difficult to manage where it comprises a small number of units that are isolated from other properties in the same ownership. For this reason, it can be more appropriate for the developer to pay a commuted sum to contribute to the provision of affordable housing elsewhere as part of another development by the same landlord.

There is some logic in applying a similar argument to other forms of rented housing, especially flatted developments, where an isolated privately owned apartment (built as a starter home) could create management difficulties for future maintenance if the rest of the block is rented.

Given that starter homes are intended for sale, this issue would not be relevant where the rest of the development (excluding other affordable housing) comprises homes for sale.

Q13: Do you agree that Starter Homes monitoring reports should be an annex to the Authority Monitoring Report?

Q14: Do you agree that these reports establish the key actions taken to support starter home delivery and the outcomes in terms of permissions granted and completions?

Monitoring is an essential component of evidence-based decision making. Several of the proposed indicators (for example the number of planning applications received containing starter homes, and the number of homes completed) are similar to data that is already collected for general housing. However, some of them are too detailed and would not provide accurate or meaningful information about starter homes in any case. The key requirement should be to measure the number of starter homes that are actually completed rather than the number that are applied for or granted planning permission.

At present the only information that is required to be contained in the Authority Monitoring Report is the number of dwellings completed. Other data, such as the number of planning applications received and the number granted, is provided through the PS1/PS2 return. Data for dwelling starts and completions is provided on a quarterly basis through the P2 return.

We would comment on the specific proposed indicators as follows:

- number of planning applications received containing starter homes

The tenure mix proposed when planning applications for dwellings are first received is often unspecified and does not become clear until negotiations take place in relation to the section 106 agreement that is usually required. This indicator may therefore be of little value.

- number of planning applications containing starter homes approved
- number of starter homes granted planning permission
- number of starter homes completed

The need to distinguish between homes that are granted permission and homes completed is supported. This will help to identify sites that are undelivered because of viability or other reasons. However, it may be more useful to identify the total number of planning applications or number of dwellings that remain unimplemented at the end of the monitoring period, including applications or dwellings approved in previous years, rather than just the number approved during the year itself. This will provide a guide to the total stock of permissions.

It is common for planning applications to be submitted to alter previously approved layouts or house types. Any monitoring should avoid double counting where more than one planning application is submitted or approved for the same site.

- number of brownfield exception sites (as defined in national policy) identified
- number of brownfield exception sites granted planning permission

- starter homes granted permission as a result of the % requirement on housing sites over 10 units
- actions taken to identify opportunity for starter homes, including engagement with development sector
- number of exemptions granted from the starter home requirement

We do not agree in principle with allowing starter homes on brownfield exception sites. However, if such developments come forward, we agree that it is important to record them.

Q15: Do you agree that April 2017 is a reasonable date for the first report to be published? If not, do you have alternative suggestions and why?

No. This would be too early given that any monitoring mechanism would need to be in place at least 12 months prior to the end of the period to be the subject of the report.

Q16: Do you support a transitional provision for the starter home regulations?

The introduction of a starter home requirement is likely to result in a need to amend existing and emerging local plans and/or supplementary planning documents. Sufficient time would be needed to comply with statutory requirements, including potentially the examination of plans by the Planning Inspectorate.

Q17 Is there further evidence we should be considering in our assessment of equalities implications?

We have commented earlier that we consider the restriction of starter homes to a particular age group to be discriminatory against older people who would not qualify for such homes.

Q 18 (i): How do you anticipate the open market value of Starter Homes would compare to other affordable housing products such as social rent, affordable rent and affordable home ownership?

Given that starter homes are a new product, it is difficult to be certain. However, as noted earlier, starter homes that have the potential to be sold as open market housing within a short time period are likely to have a higher value than other affordable housing products where there is a longer-term restriction. This is because of the potential for purchasers to “cash in” when they sell.

(ii): How do you envisage the market value of Starter Homes when compared to the market value of full priced new build homes bought by first time buyers?

Similar to point (i), limiting starter homes to first time buyers aged under 40 will by definition reduce the number of potential purchasers so ought to make the market value lower (although very few first time buyers are aged over 40 so this effect might be limited). However, given that they will be sold initially at a discount, the value of starter homes when new could in fact be greater than that of full priced housing,

given that purchasers will have a guaranteed windfall within a few years and assuming that house prices in general are likely to rise over that period.

(iii): What is your view on the proportion of sites that would be able to deliver 20% Starter Homes without viability being affected? How would this affect other developer contributions?

Evidence we have procured for Walsall's local plans indicates that less than 50% of potential housing sites are deliverable by the market in the current environment, and many sites require some form of public funding, for example through support from the Homes and Communities Agency for housing association developments. The 20% discount that is expected to be applied to dwellings sold as starter homes is likely to further reduce the viability of many sites.

(iv): Do you agree that in most instances s106 negotiations occur on residential sites of 10 or more units, regardless of whether a s106 agreement is ultimately put in place? And do you agree that before the April 2015 pooling restrictions on Section 106, infrastructure contributions (as a proportion of development activity) tended to be higher in authorities that secured relatively low s106 affordable housing contributions?

No, current policy in Walsall's adopted local plan (the Black Country Core Strategy) is for affordable housing to be secured (via section 106 agreements) on sites of 15 or more dwellings where this is financially viable. No affordable housing is required for sites of fewer than 15 dwellings, however contributions to other matters, in particular open space, are sought for all housing sites. Viability assessments are provided by the developers in most cases to assist in negotiations, and these are independently assessed by the District Valuer. They frequently provide justification for contribution to affordable housing and other matters to be reduced.

Other than for affordable housing, section 106 contributions are used for infrastructure that is essential to allow the development to proceed, such as for highway works. They can also be required to address the impact on European Protected Sites.

It is noted that there is no reference in the consultation to the Community Infrastructure Levy. Affordable housing, as currently defined, is exempt from CIL, but it is unclear whether this exemption would extend to starter homes.

We have no comparative evidence for other authorities.

(v) To what extent do you think the starter home requirement and associated exemptions will affect site viability, if at all?

We think there would be an adverse impact. See our response at point (iii) above.

(vi) We would welcome (a) any estimates of the costs incurred by developers in negotiating s106 agreements on sites of different sizes, for example time costs, consultants or legal fees, and (b) views on the extent these costs might change as a result of the 20% starter homes requirement.

As a local authority we have no direct evidence about this issue.