

# **Committee: Borough Plan Advisory Committee**

**Date: 24 September 2015**

Wards: all

## **Subject:**

Lead officer: Director of Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Environmental Sustainability and Regeneration, Councillor Andrew Judge and Cabinet Member for Community and Housing, Councillor Nick Draper

Contact officer: Future Merton Programme Manager, Tara Butler

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## **Recommendations:**

A. That councillors not the contents of this report

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. This report was requested to update the Borough Plan Advisory Committee on affordable housing from a planning perspective.
- 1.2. The Sustainable Communities Overview & Scrutiny Panel set up a Scrutiny Review of Housing Supply (with a focus on affordable housing) which met over the course of 2015 and investigated housing supply and affordable housing. The task group undertook research, met with Registered Providers, met with senior officers in housing and planning.
- 1.3. The body of this report updates councillors on affordable housing from a planning perspective. The Sustainable Communities Overview and Scrutiny Panel Task Group's final report is comprehensive in addressing wider matters relating to affordable housing. It is attached as Appendix 1 to this report.

## **2 DETAILS**

- 2.1. Over the past few years the need for new homes is a government priority and there have been several significant planning and fiscal policy changes by government to accelerate the development of new homes.
- 2.2. The Sustainable Communities Overview & Scrutiny Panel set up a Scrutiny Review of Housing Supply in recognition of the challenge of delivering affordable homes in a London context.
- 2.3. The report has 17 recommendations based around:
  - Build stronger relationships with Housing Associations and the Private Rented Sector, acknowledging the key role they play in meeting housing need;
  - Strengthen the Council's position as an enabler of housing development, in its engagement with private developers and seeking to deliver the maximum amount of affordable housing possible;
  - Encourage the role of the Council as a provider of housing; and

- Support those in priority need and on the Council's Housing Register to access affordable housing.
- 2.4. The report was endorsed by the Sustainable Communities Scrutiny Panel on 02 September 2015. It is due to be presented to Merton's Cabinet in October 2015 for consideration.
  - 2.5. Rather than duplicate issues already covered by the Task Group, the Task Group's report is contained as Appendix 1 to this report. The remainder of the report will cover key issues relating to affordable housing and planning matters in Merton.

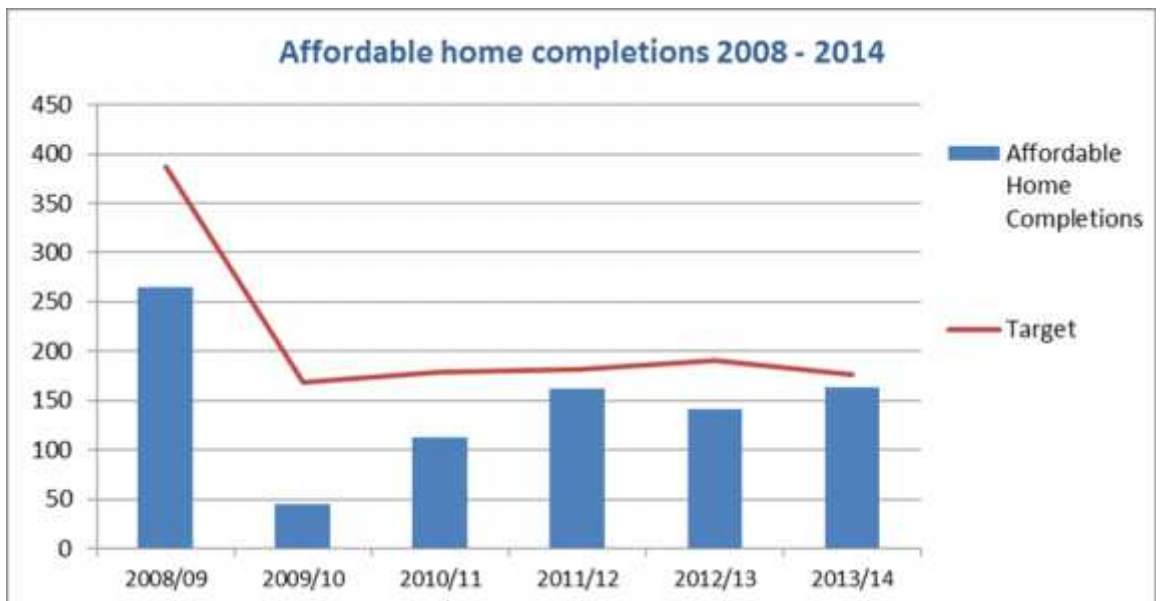
### **Merton's planning policy on affordable homes**

- 2.6. Merton's Core Planning Strategy affordable housing policy and target for sites of 10 or more homes is the same as the London Plan 2015 and most other London boroughs, seeking 40% for sites with 10 or more homes subject to development viability and site circumstances.
- 2.7. However Merton is characterised by small development sites: more than 90% of the planning applications the council received for new homes between 2000 and 2010 were for less than 10 homes. Therefore the council adopted a policy seeking 20% affordable housing contributions from sites of less than 10 homes.
- 2.8. While the 1-9 policy was in place between 2011 and 2014, the council negotiated £5.5million towards affordable housing (£1.7million has been received by the council as affordable housing contributions are only paid if the site is developed)
- 2.9. On 28 November 2014, a ministerial statement directed all councils in England not to apply affordable housing contributions or any other tariff style contributions for sites of 10 homes or less. The reason given was to support small-scale housebuilders.
- 2.10. Merton, and other councils, were required to stop applying the affordable housing policy to sites of 10 homes or less with immediate effect. Some councils, including Reading and West Berkshire, challenged government through the courts on a number of grounds, including changing policy via Ministerial Statement and how the change of approach was justified.
- 2.11. On 31 July 2015 a High Court judgement quashed the policy changes, meaning that councils can once again apply justified, adopted Local Plan policies seeking contributions from sites of less than 10 homes (more details in Section 7 of this report). Like other councils with this policy such as Enfield, Islington and Shropshire, Merton has started applying this policy again.

### **Housing and affordable housing completions in Merton for the last five years**

- 2.12. The graphs below illustrates the number of homes and affordable homes built in Merton in the past six years Results for 2014-15 will be available at the next Committee meeting.

2.12.1



2.13.

**Overview of how affordable housing contributions are negotiated on planning applications**

2.14.

The National Planning Policy Framework 2012 and National Planning Practice Guidance are clear on the fundamental importance of considering development viability as part of planning decisions and promoting growth.

2.15.

The NPPG section on viability states reference10-001-20140306 states “*The National Planning Policy Framework says that plans should be deliverable and that the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.... The National Planning Policy Framework policy on viability applies also to decision-taking. Decision-taking on individual schemes does not normally require an assessment of viability.*

*However viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.”*

- 2.16. In line with the NPPF, London and local planning policy, if applicants state that providing 40% or 20% contribution to affordable housing is not viable, they must prove this by producing a report into their development viability. Merton’s Core Planning Strategy policy CS.8 Housing Choice, paragraph 18.20 clarifies that the council may ask for the appraisal to be independently assessed.
- 2.17. The viability reports submitted as part of planning applications contain confidential information about completely separate privately owned sites (e.g. business units, shops, offices, residential), such as rents that businesses have negotiated or prices that other sites have paid for leases or freehold properties. Merton keeps viability reports commercially confidential, as in nearly all other councils.
- 2.18. In February 2015, the First Tier Tribunal ruled against Greenwich Council’s decisions to redact a viability report relating to a scheme of more than 10,000 homes on Greenwich Peninsula that had been in the planning system since 2004.
- 2.19. Following this ruling, in summer 2015 Greenwich Council have consulted on a proposal to require all viability assessments to be published.
- 2.20. Section 106b of the Town and Country Planning (England) Regulations (as amended) allows applicants to renegotiate previously signed Section 106 agreements if they believe that their site is no longer viable under the terms of the signed Section 106.
- 2.21. However increasingly councils, including Merton, are asking developers of significant or complex schemes to agree to a re-appraisal of viability nearer completion or occupation to see if the original assumptions made on development viability at planning application stage still hold. In some cases, changes to values can make the development more viable and allow the council to seek additional Section 106 contributions.
- 2.22. There is considerable debate amongst the planning, surveying and property industry on the matter of viability appraisals and re-appraisals. While government guidance strongly encourages growth and asks local authorities not to add requirements that make development unviable or uncertain, it is currently silent on the specific issue of development re-appraisals.
- 2.23. London Boroughs including Merton have responded to the consultation on the Mayor of London’s Housing Supplementary Planning Guidance asking that the London Plan clearly state that re-appraisals are acceptable.

### **3 ALTERNATIVE OPTIONS**

- 3.1. None for the purposes of this report

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

4.1. None for the purposes of this report

## **5 TIMETABLE**

5.1. None for the purposes of this report

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

6.1. None for the purposes of this report

## **7 LEGAL AND STATUTORY IMPLICATIONS**

7.1. High Court judgement: West Berks and Reading Councils vs Department for Communities and Local Government (31 July 2015)

<http://www.bailii.org/ew/cases/EWHC/Admin/2015/2222.html>

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1. None for the purposes of this report

## **9 CRIME AND DISORDER IMPLICATIONS**

9.1. None for the purposes of this report

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1. None for the purposes of this report

## **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Merton's Sustainable Communities Overview & Scrutiny Panel Scrutiny Review of Housing Supply = final report (September 2015)

## **12 BACKGROUND PAPERS**

12.1. National Planning Practice Guidance - planning obligations

<http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>

12.2. Link to First Tier Tribunal report (February 2015) the Royal Borough of Greenwich vs S Brownie

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1478/Royal%20Borough%20of%20Greenwich%20EA.2014.0122%20\(30.01.15\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1478/Royal%20Borough%20of%20Greenwich%20EA.2014.0122%20(30.01.15).pdf)