Response to the draft Affordable Housing SPD consultation

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From: Simeon Jackson

Executive Summary

The introduction to the draft Affordable Housing SPD reveals a shocking decline in the amount of affordable housing delivered in Norwich since the publication of the NPPF in 2012. Whilst the City Council should be applauded for its direct delivery of affordable housing, the obligation of developers to contribute is being eroded by insufficiently robust policy at both a national and local level.

At present, the draft document includes some welcome changes from the 2015 version (such as the requirement for purpose-built student accommodation to provide an affordable housing contribution), but also includes content that is contrary to national planning practice guidance (NPPG) and other content that is simply not detailed enough to have any meaning when it comes to its application.

Whilst the ability of this document to defend council's affordable housing policy is limited, due to the limitations in the underlying national policy, there are several opportunities to strengthen it which are not included within this draft, and which are summarised below, and in which I go into in more detail below.

- The definition of affordable housing (Table 2) does not state how some of the intermediate housing options would remain affordable in perpetuity. This should be within the definition to ensure that it is robust on this point.
- The document does not provide a process to ensure a mix of affordable tenures (paragraph 2.23), or a method of making sure that the development is as attractive as possible to Registered Providers (paragraph 2.26), especially when there is an absence of an RP currently willing to take on the site.
- The document states that the weight given to a Viability Assessment is a matter for the decision maker (paragraph 3.1) but fails to specify under what circumstances a Viability Assessment may or may not be given weight.
- There are a number of references to "land-owners" profit (paragraphs 3.3 and 3.5), which are contrary to the NPPG, as these should instead be referring to the developer's profit. The NPPG states that the land-owner's incentive to make the land available for development should be factored in within the value of the land.
- There is no guidance on who is responsible for developing the plan-making stage viability assessment (paragraph 3.6).
- There is no real acknowledgement that the acceptable level of profit for both land-owner and developer should be based on risk, not arbitrary percentages (paragraphs 3.14, 3.16 and 3.18). This document should set out a framework to assess whether the level of profit is reasonable, based on the risks inherent within the site.
- The document also does not state whether or not the viability assessment should take into account the risk of planning refusal. This is particularly relevant to reserved matters stage (3.29), where the risks to the developer will be substantially lower due to already having permission in principle.

About the author

Simeon Jackson is a former Norwich City Councillor, where he represented Mancroft Ward, and was the Green Party group spokesperson for planning and development issues. He currently campaigns on a variety of local and national issues as an individual and with community organisations, including the Norwich Society, the Cathedral Magdalen and St Augustines Forum, and the St Augustines Community Together Residents Association.

Detailed response

Introduction

In the introduction, we see from Table 1 that there has been a steady reduction in the percentage of affordable housing completed since 2012. This coincides with the publication of the National Planning Policy Framework (NPPF). Up until 2012, a healthy proportion of affordable housing was being delivered.

However, the officer's analysis of this in paragraph 1.4 rather glosses over this issue, taking the arbitrary period of 2011/12 to 2016/17 to give an average over. I feel as though the start this range as 2011, prior to the publication of the NPPF, was so that it could include the 61% year to bump up the figures. If you take out just that year, the affordable housing percentage drops to 18%, or 17% taking student housing into account. This is abysmal, and should be highlighted as such in the introduction. The paragraph also doesn't take student housing into consideration in the figure quoted (it's 21% if that is taken into account).

In paragraph 1.8, a reference is made to delivery of affordable housing at Anglia Square, but the number of affordable houses proposed to be delivered there are small, and are also towards the end of the phasing, which means that they won't contribute for ten years or so, by which time this SPD would probably be out of date. Therefore I feel this reference is misleading, and should be omitted.

It seems that direct delivery of housing and delivery through planning obligations are conflated somewhat in paragraph 1.8. It would be better if there was indication that they are different, and to what extent this document is offering a policy on both, or just on the planning obligations aspect. I think it would be helpful for the introduction to state more positively to what extent the council hopes affordable housing to be delivered by it directly, and to what extent it expects the affordable housing to be delivered through planning obligations.

Definition and scope

With reference to paragraph 2.2, it is unfortunate that the definition of affordable housing in the 2018 NPPF seems to focus on affordable home ownership, rather than affordable rent. I think the attempt to get round this by the council (paragraph 1.13) is brave, and should be praised. However, this needs to be robustly justified, and I fear that their justification might be weak. I would like the council to question whether there is actually anywhere that "affordable home ownership" is defined by government, since, if I were the council, I would be seeking to include within this definition social housing and other affordable renting types. Whilst houses for affordable rent aren't owner-occupied, they are owned for the purposes of affordable housing, and therefore it could be argued that the definition "affordable home ownership" should include them.

In the affordable housing definition, the intermediate housing (particularly shared ownership and discounted market housing) don't state how those systems will be maintained as affordable in perpetuity. This is very important to include within the definition itself.

Reference to GNLP

A reference is made in paragraph 2.18 to the timescale of the GNLP. This is a really weird place to put this. It would be better for this to go in background information in the introduction, if it is included in this document at all.

Seeking affordable housing on residential allocations

I think this section is a really positive addition to this document, in particular the move to require an equivalent affordable housing contribution on student housing blocks on residential allocations (paragraph 2.19), although I fear that for several sites it too late, now that so much student housing has been approved.

Meeting the needs of Registered Providers

I acknowledge that the following opinion might be considered controversial by some, but I feel that it is counter-productive to require no distinction between affordable units and market units (paragraph 2.24). Whilst I believe that all people deserve a certain standard of living, and a well-balanced community to live in, there are practical reasons why affordable housing may need to be designed differently to market housing. This may be because of the management requirements of Registered Providers, the relative probability of requiring disabled adaptations, the management expectations of rental tenants vs owner-occupiers or other factors. When it comes to design and build

quality, a high standard is largely achieved through the building regulations and national policy (e.g. space standards), and therefore doesn't need spelling out in this SPD. Indeed this will tend to restrict the amount of affordable housing that would be viable, and therefore works against the delivery of more affordable housing.

I fear that there is not really a way of enforcing the ambition stated in paragraph 2.23 to expect alternative designs to be considered to accommodate affordable housing. I feel there needs to be some sort of process set out as to how this process of negotiation with the developer will take place to determine whether alternative designs need to be drawn up. Without such a process, it would be very easy for developers to go back to their default mode of "here's what we're proposing, take it or leave it".

Paragraph 2.26 talks about meeting the requirements of registered providers, but doesn't say what to do if there is currently no registered provider lined up (which would probably be *because* these kind of requirements have not been considered). Ideally there would be a minimum standard required on any affordable housing for rent that ensures that it is attractive to RPs, and doesn't just becomes "affordable ownership" by default just because it doesn't meet the management standard RPs require.

Application Requirements

Paragraph 2.28 is very vague, and is open to various interpretations, since it includes an internal contradiction - that VAs will be afforded little weight at outline stage, and then that outline submissions should comply with the requirements of a full application. Given this, developers will always be able to use this to their advantage. What this really needs is something saying "if a viability assessment is submitted with an outline application, this will only be used as to guidance as to what the council can expect the developer to bring forward at reserved matters stage. The planning approval (if given) will not prejudice any future decision regarding planning obligations requirements at full application stage." This in effect would mean that any outline stage viability assessment would be provisional only, and would not be a material planning consideration. I cannot stress how important it is to get this paragraph right, since several recent applications have taken advantage of this very loophole to secure relaxation of planning obligations at outline stage which would be very hard to challenge further down the line (most notably at St Mary's Works).

The weight given to Viability Assessments

There is a statement (paragraph 3.1) that the weight to be given to a VA is a matter for the decision maker, but then the document fails to specify under what circumstances a VA will or won't be given weight. In my opinion, this should give reference to strategic level planning at the Local Planning Authority. E.g. the document could say that VAs will be given weight only where the development satisfies completely requirements of the local plan with respect to that site. For example, the developer would not be able to use a VA on a site that had been allocated for general purpose housing if they were seeking to build a block of student flats.

Assessing the existing value of the land

The author of this document does not seem to be familiar with the guidance set out within the NPPG regarding the existing value of the land.

Paragraph 2.29 should be irrelevant. The NPPG is very clear that the assessment of land value within a VA should be the existing use value, plus a premium (EUV+), and not the amount paid for the land. This paragraph should be substantially rewritten, since it currently muddies the water on this issue. What is relevant when *assessing* VAs is whether an EUV based on the market value of the land includes an assumption that a viability assessment will be used to reduce planning obligations. If this is found to be the case, the LPA should be given the power to reject the VA and insist that the land value is reassessed in such a manner as not to include such an assumption.

Paragraphs 3.3 and 3.5 (and to some extent Figure 1), include the same mistake. The NPPG makes it clear that the profit line within a VA is the *developer*'s profit, not the *land-owner*'s. The land-owner's incentive to sell the land for this purpose should be taken into account under the EUV+ of the land, which the NPPG says should include a premium to provide an incentive to sell the land for development. This is an incredibly important distinction. Whilst there is a debate to be had nationally as to whether the planning obligations should be the responsibility of the land-

owner or the developer, the NPPG at least is clear on the above point, and 3.3 and 3.5 are not consistent with that guidance.

Another contradiction

Paragraph 3.12 both says that VAs "must" follow the approach of the PPG and use an alternative approach! You can't have both. Perhaps, if this paragraph is required at all, it should say that the following clarifies how the LPA will assess land uplift and reasonable profit with relation to applications in Norwich.

Profit and risk

In paragraph 3.14 and 3.16, there's no real acknowledgement that the profit figures for both land-owner and developer are really about risks, and should be variable depending on the level of risk, rather than a set percentage of the gross development value.

Land-owner profit (site value incentive)

For the land-owner, the biggest risk when owning development land is the amount of time it might spend being unproductive before getting a return. The percentage for their profit (or incentive to sell) may well be much more variable than the developers profit. Land which currently has a productive lawful use (such as a shopping centre or car park) may require a higher premium than one which is not in use (e.g. a derelict warehouse building which requires urgent maintenance), since there will be less incentive for the land-owner to develop. The level of acceptable profit will also differ depending on how the existing value has been assessed. If there is no current use, and the development can only be assessed on its market value, then it stands to reason that the incentive is already included within that figure, and therefore no further premium is required.

In paragraphs 3.7 and 3.8, it should also be acknowledged that land values are not an isolated figure unrelated to planning policy. Where a land-value is based on its value as potential development land, its value is going to change depending on what policy requirements have been imposed for that site. Therefore, the reference "prevailing market conditions" is nonsensical, because the market conditions are not prevailing if policy requirements actually change those conditions. It needs to be clarified whether the market conditions which are used for assessment are those where the policy requirements have been assumed to have impacted on the value (which may mean that the site value should be adjusted from its market value at time of purchase due to the prevailing policy requirements that are relevant to the site), or those where the value is consistent with historic market conditions, even when market conditions have since changed. The most logical of these options to me is the former, but this is not that outlined by paragraph 3.8 and 3.9, which seems to suggest that market conditions are the prevailing factor. Paragraph 3.9 in particular needs to clarify the types of change in situation that may be relevant since the plan was issued, otherwise this can just be used as a catch-all loophole by developers, since there is bound to be some sort of change in situation which they can argue means that they can no longer meet the policy requirements.

Developer's profit

With respect to the developer's profit, this again should be reflective of risk. If the only way to develop a particular site would require several years before it could be occupied, the developer would have to invest a lot more money before they could get a return than, say, if they could phase the development and get a return piecemeal. Therefore, the developers profit level should be higher on the former, and lower on the latter. In the viability assessments I have looked at, I have seen little evidence provided by developers as to the risk profile of the development to justify their level of profit.

Since contingency (paragraph 3.18) is also about risks associated with the development, this should either be combined with the general profit, or within construction costs. Any general construction risks (i.e. those present on all projects) should already be included within construction costs. However, a further contingency could be justified where there are particular construction risks inherent within the site. Therefore I think contingency should be 0% by default, and only increased if there are particular high construction risks that are more likely than not to require use of that contingency. Particular care should be taken when assessing Viability Assessments to ensure that developers do not double-count these contingencies, by both inflating the construction costs due to uncertainties, and then also adding another contingency on top of this.

Note: The developer's risk profile may be inherently tied in the with developer's own situation, and therefore it may be difficult to assess the acceptable level of profit for a given development when planning permission is meant to be developer-blind. I don't think this is something that can be resolved by this SPD, and needs discussion at a national level.

Compounding of profit figures

Care should be taken when assessing viability assessments that profit is not effectively double-counted by compounding profit figures on top of each other.

Review of viability at reserved matters stage

In paragraph 3.29, there is reference to reviews at reserved matters stage. This SPD should state that the levels of developer profit expected at reserved matters stage may be reduced to reflect the reduction in developer risk due to having planning permission.

Responsibility for plan-making stage viability

Paragraph 3.6 begs the question "who is responsible for developing the plan-making stage viability assessment, and what method should be used?". Without clear guidance on this, developers will argue that it should be them, and therefore manipulate the figures to suit their needs, and LPA's will argue (probably quite rightly), that they do not have the experience or budget to draw up VAs for all possible developments of all sites in their local plan. Whilst this is a discussion that needs to be had at national level, provisional guidance within this SPD would at least provide some certainty, even if it is the former.

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