

WINCHESTER DISTRICT LOCAL PLAN COMMITTEE

9 DECEMBER 2005

CABINET

14 DECEMBER 2005

POLICY H.5 AND 'IN PERPETUITY'

REPORT OF THE CHIEF EXECUTIVE

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RECENT REFERENCES:

WDLP52: WDLPR Inspectors' Report – Local Plan Chapter 6 and other outstanding matters  
– 15 November 2005

EXECUTIVE SUMMARY:

This report gives further consideration to the issue of “in perpetuity” and whether there is a need for further change to the revised wording of Policy H.5 in this respect (as set out in MOD 6.39, in Appendix 1 of Report WDLP52). It concludes that a further change to the wording would be appropriate, and therefore the Committee is asked to approve the revised wording and endorse its incorporation in proposed MOD 6.39.

RECOMMENDATION:

That the proposed wording change to MOD 6.39, as set out in paragraph 3.1 of this report, be approved and incorporated in the schedule for Chapter 6: Housing (attached as Appendix 1 to report WDLP52).

WINCHESTER DISTRICT LOCAL PLAN COMMITTEE9 DECEMBER 2005CABINET14 DECEMBER 2005POLICY H.5 AND 'IN PERPETUITY'REPORT OF THE CHIEF EXECUTIVEDETAIL:1 Introduction

- 1.1 Proposed Modifications to the Housing Chapter of the Plan were considered at the previous meeting of this Committee on 15 November, 2005, but it was agreed that the proposed revised wording of Policy H.5 (which allows a proportion of affordable housing to be sought on suitable sites), should be deferred for consideration at this meeting. Members will recall that the Inquiry Inspector recommended the deletion of the phrase 'in perpetuity' from the Policy, and this report gives further consideration to this issue.
- 1.2 Paragraph 3.11 of report WDLP52 referred to the discussions held between officers of various divisions on the issue and their conclusion that the Inspector had not fully appreciated the statutory provisions that cover this aspect. The Inspector referred to the Right to Buy, although this only applies to local authority properties, and would not therefore apply to affordable housing properties provided under the planning process.
- 1.3 Paragraph 3.12 of that report therefore concluded that it would be appropriate to retain the words 'in perpetuity' in the Policy, but, in recognition of the Inspector's concerns, and the need to deal with any future legislative requirements, the addition of a qualifying phrase "(subject to any relevant statutory provisions)" was suggested.
- 1.4 However, as the proposed revised wording on this aspect of the Policy (see proposed MOD 6.39 in Appendix 1 of WDLP52) would amount to a rejection of part of the Inspector's recommendation, it was agreed that should be considered at this meeting of the Committee, to allow time to obtain further legal advice and re-examine the issue.

2 Conclusions following further consideration of the issue

- 2.1 The issue has therefore been re-examined in the light of further legal advice. It would appear that the Inspector has only directly comments on one aspect of the issue (i.e. the implications of the Right to Buy (sic)) and not arguments raised such as to the likely period over which the need for affordable housing might continue. This report therefore considers all the issues raised against the use of the words "in perpetuity".
- 2.2 Officers from various Divisions considered the issue raised by the Inspector and concluded that he had not fully appreciated the statutory provisions that cover this

aspect. In certain circumstances, tenants of certain landlords (generally registered social landlords (RSL)) may be able to exercise a statutory “right to acquire” the freehold (or a long lease) of an affordable housing unit which they occupy. Section 106 agreements which are used to secure the provision of affordable housing may limit the occupation of such affordable housing, in which case a tenant may not be prevented from acquiring their house, but the agreement may restrict who could occupy the house. In other cases, the Section 106 agreement may require the provision of affordable housing by a RSL without restricting occupation, in which case the unit could (following the exercise of the right to acquire) be sold on the open market in the future, and occupied without restriction.

- 2.3 The use of the Right to Acquire by RSL tenants has been extremely low. In the case of one local RSL, no Right to Acquire transactions took place in 2003/04, in a stock of over 5,000 properties. In any event, where a RSL is involved, the capital receipt generated can be used to provide affordable housing elsewhere (subject to suitable development sites being available and provided the receipt is sufficient to fund a new dwelling), and therefore the level of overall affordable housing provision is not reduced. If a tenant does not seek to acquire their property, the provisions of the agreement, and the involvement of the RSL (and, where appropriate, public funding), will ensure that the property is available for those in need. Housing Corporation consent must be sought by a RSL if it wishes to dispose of a property as non-affordable housing and receipts must be recycled to provide affordable housing if consent is granted.
- 2.4 Where the affordable housing is provided by a landlord that is not a RSL, the agreement would be more restrictive in terms of occupation, and there would be no statutory rights to acquire such units from a non-RSL landlord. In these cases, the “right to buy” referred to by the Inspector would not arise at all.
- 2.5 It has therefore been concluded that there is no conflict between the provisions of the Right to Buy legislation and the aim of restricting the occupancy of affordable housing to those in housing need, provided that the existence of the statutory provisions is recognised.
- 2.6 The Inspector does not appear to have directly addressed the other main issue raised by the objectors, that the need for affordable housing may not remain in the longer term. At the Inquiry, one objector argued that it was illogical to require affordable housing provision in perpetuity, as it was primarily a problem of meeting backlog need and therefore, once resolved, the requirement would be satisfied. (evidence to the inquiry suggested that approximately two-thirds of the requirement was due to “backlog need”, one-third due to emerging households). It was also argued that the perpetuity restriction was not justified as the Housing Needs Survey only covered a 3 year period and the Local Plan itself only extended to 2011.
- 2.7 Although he has not commented directly on this issue, the Inspector has recognised the considerable need for affordable housing throughout the District, and that it is incapable of being met in full (paragraph 6.14.1 of his Report). It therefore follows that a need for affordable housing is likely to remain at least for the foreseeable future. This view is also supported in other published documents, most recently the South East Plan, which addresses the need for and provision of affordable housing at least until 2026. It refers to “delivering more affordable housing” (Section 1.6) and, in Policy H4, “Local Development Documents will contain policies to deliver a substantial increase in the amount of affordable housing..”. The Barker Report,

published in 2004, also recognised the rising housing need, and the need for a substantial increase in housing supply, if house price inflation is to be reduced in the long term. Even if inflation were to be reduced, the affordability gap is now so wide that it is unlikely that the need for affordable housing will disappear in the foreseeable future. There is certainly no evidence to suggest that a future housing needs survey would show that there was no need for affordable housing, nor is there any evidence to suggest that after the Review Local Plan period (up to 2011), the need would no longer exist. Further surveys will be undertaken at appropriate intervals, in accordance with government guidance.

- 2.8 It was also suggested to the Inspector that developers could only be required to make a contribution to meeting affordable housing need, and not meet all needs in entirety. The Council will continue to work with RSLs to secure affordable housing wherever this is possible. This would include working on suitable sites developed by the RSLs themselves, as well as providing affordable housing under the local plan provisions. Given the size of the need, and the work of the Council, it is not considered that developers are being required to meet all needs in entirety, as was suggested.
- 2.9 Without measures to prevent the loss of affordable housing, by seeking to retain affordable housing for as long as a need exists, any increases in the supply of affordable housing are likely to be offset by losses in the available affordable housing stock. It is therefore concluded that Policy H.5 should still seek to ensure that affordable housing remains available for as long as it is needed for those in housing need.
- 2.10 Circular 6/98 (Planning and Affordable Housing) at paragraph 16 makes it clear that conditions and planning obligations may be used to ensure that affordable housing is occupied, either initially or in perpetuity, by people falling within particular categories of need for affordable housing. The Secretary of State therefore accepts that it is legitimate for local planning authorities to seek to secure occupation of affordable housing in perpetuity, although it is accepted that the Circular does not refer to the statutory provisions which permit tenants in some cases to acquire their home. The Circular then goes on to say that Section 106 agreements should not normally impose additional occupancy conditions where a registered social landlord is involved (on the basis that such bodies will let their properties to those in need, and there is therefore no need for any additional planning constraints).
- 2.11 It has therefore been concluded that, in view of the need to ensure that affordable housing remains so for as long as it is needed, it would be appropriate to delete the phrase "in perpetuity", as recommended by the Inspector, but to replace it with the phrase "as long as the need exists". Officers believe that this addresses the objectors' concerns discussed above, and clarifies the intended policy objective. This was in fact the approach taken by the Inspector who considered objections to the Basingstoke and Deane Borough Local Plan Review. He considered the issue of 'in perpetuity' in his recently published Report, recognising in his paragraph 4.3.17 that affordable housing needs are not going to be resolved in the near future. He concluded that the wording should be changed to "so long as there is a need for it" as it would overcome other concerns and at the same time clarify the policy requirement.

- 2.12 In order to deal with the Winchester Inspector's point, it is proposed that the phrase "as long as the need exists" should still be qualified by the phrase "subject to any relevant statutory provisions", as already set out in MOD 6.39.
- 2.13 The incorporation of these wording changes would therefore require a change to MOD 6.39 (as previously set out in Appendix 1 of report WDLP52). The recommended replacement for the final paragraph of MOD 6.39 is set out under paragraph 3.1 of this report. This would, however, still amount to a rejection of part of the Inspector's recommendation in paragraph 6.14.20(g).

### 3 Proposed Modifications

- 3.1 For the reasons set out in Section 2 of this report, it is concluded that the last paragraph of MOD 6.39 (as set out in Appendix 1 of report WDLP52) should be modified to read:

*"The Local Planning Authority will need to be satisfied that appropriate arrangements are in place to ensure that the affordable housing remains genuinely available to those in housing need ~~in perpetuity~~ **as long as the need exists** (subject to any statutory provisions)."*

- 3.2 Although this would still amount to a rejection of part of the Inspector's recommendation on Policy H.5, the revised wording takes account of his concern, but clarifies the policy objective.

#### OTHER CONSIDERATIONS:

##### CORPORATE STRATEGY (RELEVANCE TO):

The Local Plan Review contains policies on a range of issues which are relevant to many of the Council's key priorities, including Homes & Environment.

##### RESOURCE IMPLICATIONS:

Provision has been made for the District Plan Reserve to meet the costs of producing the Local Plan. Cabinet has recently agreed to transfer some approved budget growth for 2006/07 to the current financial year in order to cover the costs of the Local Plan Inquiry (see report CAB1128).

##### BACKGROUND DOCUMENTS:

None.

##### APPENDICES:

None.