

# Statement on the Seeking of Affordable Housing Developer Contributions

October 2019

This Statement was endorsed by Planning Committee on 2 October 2019

## Introduction

The opening sentence to Policy HOU3 of the East Cambridgeshire Local Plan 2015 states as follows (emphasis added):

*"All new open market housing developments which incorporate **more than 10 dwellings** will be required to make appropriate provision for an element of affordable housing..."*

Such a policy wording was consistent with national policy at the point of that Plan being prepared.

However, national policy has shifted slightly since that Local Plan was prepared. The National Planning Policy Framework (NPPF – Feb 2019) sets the following government position:

*"Provision of affordable housing should not be sought for residential developments that are not **major developments**..."* (para 63)

And

*"Where **major development** involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership<sup>29</sup>",* with footnote 29 explaining: *"As part of the overall affordable housing contribution from the site"*

Consequently, there is a slight conflict between the adopted Local Plan policy and the NPPF policy, with the former referring to '**more than 10**' dwellings, and the latter referring to '**major development**'.

## Definition of 'Major Development'

The NPPF defines 'major development' as follows:

*"Major development: For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m<sup>2</sup> or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015."*

The first part of this definition has led to a degree of confusion, as, taken literally, it could be interpreted to mean, for example, that a proposal for 1-9 dwellings on a site greater than 0.5 hectares would trigger NPPF para 63 and 64 requirements.

However, the legal definition of Major Development (as can be found in the aforementioned Order) provides greater detail than the NPPF definition. It states at s2(1):

*"major development" means development involving any one or more of the following—*

- (a) *the winning and working of minerals or the use of land for mineral-working deposits;*
- (b) *waste development;*
- (c) *the provision of dwellinghouses where—*
  - (i) *the number of dwellinghouses to be provided is 10 or more; or*

- (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more;”

## **Application of Policy HOU2 and NPPF**

Whilst nothing in this Statement should be read to have the intent of superseding policy in the duly made ‘development plan’ for the area (which comprises both the Local Plan 2015 and any made Neighbourhood Plans), the intention of this Statement is to provide guidance and clarity as to how decision makers on planning applications are likely to apply both development plan policy and take account of the material consideration which is national policy formed by the NPPF.

It is anticipated that, in respect of the matters raised in this Statement, a decision maker is likely to apply greater weight to the provisions set out in the NPPF rather than the policy position set out in the Local Plan, with such a position being consistent with the advice in the ‘Implementation’ section of Annex 1 to the NPPF.

It is also anticipated that a decision maker is likely to apply greater weight to the legal definition of ‘major development’ as set out in s2(1) of the *Town and Country Planning (Development Management Procedure) (England) Order 2015*, rather than the definition set out in the NPPF.

Accordingly, for the purpose of whether or not, in principle, the Council will seek affordable housing on a site, a decision maker is expected, in most instances, to seek an affordable housing contribution under the following example circumstances:

- where a proposal is for 10 or more dwellings; or
- where the proposal is an outline application on a site over 0.5 hectares, and it is not known how many homes will be provided on the site; or
- where the proposal will create a total internal floorspace of 1,000 sq m or more (and for the purpose of calculating this area, the Council will use the same floor area as determined to be liable for CIL purposes); or
- where the site is 1 hectare or more, irrespective of the number of dwellings to be provided.

In the vast majority of cases it will be clear whether or not, in principle, a development proposal should make a contribution to affordable housing, in accordance with the development plan policy, national policy and the guidance provided by this Statement. However, for a limited number of applications, such as those close to the 1,000 sq m or 1 hectare threshold, it would be extremely beneficial to both the Council and the applicant if the planning application made it expressly clear (with appropriate evidence as necessary) whether or not such a proposal, the applicant believes, was (or will lead to) reserve matters which will be above or below such thresholds.

For example, for outline proposals of less than 10 dwellings, we would welcome the applicant stating whether the total floorspace will exceed a combined 1,000 sqm. If it will, affordable housing will be sought. If the applicant is not yet in a position to state the total floorspace being sought, then the Council would be happy to condition any approval limiting the total floorspace to a maximum of 1,000 sqm. If, subsequently, greater than 1000 sq m are to be proposed, the applicant could then simply apply for this condition to be removed and any subsequent approval of such condition removal is likely to be subject to the signing of a s106 for an affordable housing contribution.

## **Formalising the contents of this Statement**

Subject to due consultation, the Council intends to replicate the advice in this Statement (or provide something similar) in a forthcoming update to its Developer Contributions SPD. If it does so, at the point such an SPD is adopted, this Statement will cease to have effect.