

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF PLANNING POLICY SUB COMMITTEE ON 15 OCTOBER 2019

PART A : REPORT

SUBJECT: PROVISION OF ACCOMMODATION SUITABLE FOR OLDER PEOPLE AND PEOPLE WITH DISABILITIES

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DATE:	16 September 2019
EXTN:	37853
PORTFOLIO AREA:	Planning

EXECUTIVE SUMMARY:

Following a four-week consultation (23 May- 20 June 2019) on draft guidance for the provision of 'Accommodation for Older People and People with Disability', this report considers the representation made and proposes the following recommendations in order to adopt the guidance as a material consideration for Development Management purposes.

RECOMMENDATIONS:

That the Planning Policy Sub Committee agrees the following:

- i. That the proposed guidance for the provision of accommodation suitable for older persons and people with disabilities is treated as a guide (i.e. not as an SPD) to provide a material consideration in respect of the determination of all relevant planning applications.
- ii. That the proposed guidance is clearly set out as a starting point to inform development management negotiations, does not impose ridged requirements and is subject to viability.

1. BACKGROUND:

- 1.1 Planning Policy Sub-Committee (PPSC) approved draft proposals for public consultation on design guidance for the provision for accommodation for older people and people with disabilities on 27 February 2019. Consequently, a four-week public consultation (23 May- 20 June 2019) was undertaken. The report to PPSC on 27 February is included as a background document 1. – which sets out the need and methodology for such guidance.
- 1.2 The proposed guidance which is being used as a material consideration and subject to the public consultation are set out in Appendix 1 to this report.

- 1.3 The consultation was sent to developers and agents and other key stakeholders and was advertised on the Councils web site and on the consultation portal and documents deposited in the libraries and office receptions at the Civic Centre and at Bognor Regis.
- 1.4 Representations were received from 4 consultees: -
- The Home Builders Federation (HBF) - objection
 - Barton Wilmore – on behalf of developer/landowners – objection/comment
 - Littlehampton Town Council - commenting
 - Aldwick Parish council – commenting/reserving position
- 1.5 The detailed representations can be accessed in Appendix 3 to this report.
- 1.6 The main issues raised are summarised in Appendix 2 to this report. The representations from Barton Wilmore and the HBF mainly relate to the status of the guidance. In particular, that the Council intends the guidance as a Supplementary Planning Document (SPD) and that the content and expected contribution towards levels of accessible housing provision within the SPD creates requirements that will have the result of regulating development at application stage and will have viability implications impacting on development.
- 1.7 It is stated that such an SPD is contrary to national guidance and legislation. Introduction of standards that regulate development must be considered and scrutinised through a Development Plan Document (DPD) process which includes an examination. In terms of viability, the representations are explicit that viability is an issue that should be considered at policy and plan making stage - as well application stage. Further, there is a lack of robust evidence to support the specific needs and consequent standards, that the SPD is aiming to meet.
- 1.8 Littlehampton Town Council's response can be summarised as concern at the omission from guidance on the need to protect existing accessible housing (e.g. bungalows) from redevelopment into less accessible forms of housing.
- 1.9 The Council's proposed response is set out in Appendix 2 against the matters raised.
- 1.10 The key issue raised by the development industry and HBF represents a confusion on the intended status of the guidance once adopted by the Council.
- 1.11 The Council's intent is to consult on this document to provide guidance on the appropriate levels of contribution to be negotiated at planning application stage, for provision towards accessible forms of housing. Following consultation and adoption, the guidance would be given more weight as a material consideration. This guidance is supported by the evidence on the likely need for provision towards special housing needs which forms a significant component of the Objectively Assessed Housing Need (OAN) for the Local Plan housing target.
- 1.12 The policy approach to D DM1 'Aspects of form and design quality' (part 5) and D DM2: 'Internal Space Standards' clearly signal that the Council will have regard to such considerations as internal space, flexibility and adaptability towards meeting

changing future needs including of aging users. Policy H DM1 Housing Mix similarly, signals that the tenure and mix of housing shall be negotiated on a case by case basis taking viability into account and that a proportion of the housing to be provided should meet the needs of the elderly population as identified in the Strategic Housing Market Assessment (SHMA).

1.13 These policies were examined and found to be sound with Main Modifications in the adopted Arun Local Plan 2018. The starting point for determining applications is the statutory development plan and then any material circumstances that apply. The ALP 2018 was prepared under the NPPF 2012 and earlier PPG. The NPPF 2019 is now national policy and also a material consideration on the weight to be given to development plan policies alongside updated PPG (e.g. paragraph 64 b) of the NPPF 2019 and Annex 2 Glossary provides definitions of older people and people with disabilities for planning purposes, which recognise the diverse range of needs that exist; PPG Paragraph: 003 Reference ID: 63-003-20190626 considers the range of needs and Paragraph: 009 Reference ID: 63-009-20190626 indicates that plan policies should use optional technical standards on accessible housing).

1.14 The Council is therefore, proposing the guidance not as an SPD or DPD but as a guide based on the local plan evidence on need and taking into account the Government's recent emphasis on meeting special needs of the growing elderly population. To insist on the proposed levels of contrition towards the types of accessible housing would require these to be formulated and tested via a DPD and examination. The Council should therefore, clarify for DM purposes and for viability reasons that the proposed guidance is negotiable and is a starting point for agreeing the types of housing and accessibility that should be considered to meet the needs of the elderly population (in accordance with the D DM1, D DM2 and H DM1 policies – just as the mix and tenure of housing will be negotiated on a case by case basis, taking into account viability.

2. PROPOSAL(S):

The guidance below is recommended to be a starting point for negotiations at Development Management stage when applications are being determined.

3. OPTIONS:

At this time the proposal is to adopt the guidance as material considerations to provide a basis for negotiated provision or not to adopt the guidance.

4. CONSULTATION:

This will follow if the recommendations as set out above are agreed.

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		x
Relevant District Ward Councillors		x
Other groups/persons (please specify)		x
5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO

Financial		x
Legal		x
Human Rights/Equality Impact Assessment	x	
Community Safety including Section 17 of Crime & Disorder Act		x
Sustainability		x
Asset Management/Property/Land		x
Technology		x
Other (please explain)		x

6. IMPLICATIONS:

The 'protected characteristics' defined in the Equality Act 2010 include both Age and Disability. The intended outcomes of this report are considered to have a positive impact upon these protected characteristics and are not considered to have a negative impact upon the remaining 'protected characteristics. There are no proposed significant changes to the guidance following consultation and therefore, the Equality Impact Assessment considered at the meeting on 27 February (Background paper 1.) remains extant.

7. REASON FOR THE DECISION:

The recommendations are intended to ensure that a reasonable proportion of new dwellings constructed in Arun, based on the needs of the area, are accessible to older people and those with disabilities and that an additional proportion are also accessible by those that need to use a wheelchair. This accords with the aims and intentions of the Local Plan and recent government advice.

8. BACKGROUND PAPERS:

1. Item 13: Provision of Accommodation Suitable for Older People and People with Disabilities - Planning Policy Sub-committee 27 February 2019:

<https://democracy.arun.gov.uk/Data/Planning%20Policy%20Sub-Committee/20190227/Agenda/Agenda.pdf>

Appendix 1: Proposed Guidance

Proposed Guidance

1. For schemes of less than 10 units – no requirement
2. For schemes of between 11 and 50 units inclusive – a minimum of 30% of units to be designed to m4(2) standard - Access and adaptable dwellings , plus two additional units to be designed to m4(3) wheelchair accessible, where the number of units proposed is greater than 21.
3. For Schemes greater than 51 units inclusive – 50% of units to be designed to m4(2) standard- Access and adaptable dwellings, plus two additional units to be designed to m4(3) wheelchair accessible, for every 50 units proposed thereafter.
4. The provision of these units should both be in the open market and affordable sectors
5. Schemes larger than 100 units should make some provision for bungalows.

NB. To illustrate the above the table below indicates the application of the standard to a range of developments

Size of Development	M4(2) Accessible Homes	M4 (3) Wheelchair Accessible Homes
10	None	None
20	7	none
30	10	2
40	13	2
50	15	2
60	30	4
70	35	4
80	40	4
90	45	4
100	50	4
110	55	6

Appendix 2: Summary Table of Representation responses

Representor	Representation Summary	Proposed Response
Littlehampton Town Council	<p>The document fails to cover the protection of existing properties that have already been adapted for this purpose for the needs of older people and people with a disability e.g. bungalows secured for wheelchaired and single floor access – nothing protects these dwellings from being made inaccessible in future.</p> <p>The Policy would be enhanced if it made provision for the prevention of the loss of such accessible dwellings as a consideration given weight in determining planning applications (e.g. the conversion of a bungalow into a two-storey chalet)</p>	<p>There are a range of policies within the Local Plan that require good quality design for a range of needs. Development Management decisions may be able to take such issues into account in terms of the material considerations that apply in each case.</p> <p>There may also be good reasons for redevelopments and loss of such accommodation including the changing needs of occupiers and owners. Any policy provision on this basis would require evidence on the issues and for the policy to be tested via the plan making process.</p>
Aldwick Parish Council	The Parish Council signalled that individuals may submit comments and that an item would be considered at their next planning agenda outside of the consultation period.	Noted. No comments have been received subsequent to the closure of the consultation period.
Barton Wilmore on behalf of Redrow Homes Southern Counties; and Wates Developments	Client developers and landowner interests are progressing the Strategy Allocation at Ford (H2 SP2c (SD8)) in the Adopted Arun Local Plan 2018. This site is also within the made Ford Neighbourhood Plan (policy SA1). Technical work has progressed including consultation with all stakeholders in order to prepare a	The guidance is not a DPD or SPD. It is intended as a material consideration to reflect a) the emerging national recognition on the need for standards

<p>Limited</p>	<p>Planning Application.</p> <p>Significant reservations as to the appropriateness and legality of the document - do not consider it is in accordance with the Town & County Planning (Local Planning) (England) Regulations 2012 [2012 Regulations]</p> <p>The policy document includes the word 'guidance' and has been consulted on for four weeks but its status is unclear i.e. whether it is a Supplementary Planning Document or a Development Plan Document. It is therefore, contrary to the 2012 Regulations because it sets out a single policy which sets out standards for the proportion of accessible homes M4(3) and M4(2) relative to the size of a development that would be used to determine an application (i.e. regulating development). The provisions of Reg 5(1) (a)(i)(iv), Regulation 6 of the 2012 Regulations would require such policy to be appropriately contained within a DPD and not within an SPD. Even if falling within Reg 5 (1) (a) (iii) case law (e.g. Skipton Properties Ltd v Craven District Council [2017] EWHC 534) would not negate Reg 5(1)(i) or(iv). This policy should therefore be contained within a local plan subject to an appropriate level of scrutiny and debate. It would be an error in law to adopt the policy as an SPD.</p> <p>The policy documents quoted references to the Second Report of Session 2017-2019 of the HCLG Select committee and the National Planning Policy Framework 2019 (i.e. para 61 NPPF 2019) which also support this position that planning policies are the appropriate location for standards relating to size, types and tenures of house for different need groups.</p>	<p>to address the needs of an increasingly elderly population with associated special needs including work published on the viability implications of accessible homes standards and b) local evidence supported by the Arun Local Plan OAN evidence base).</p> <p>However, because the policy contributions are not set out and viability tested specifically through the adopted Arun Local Plan policies (although the need for appropriate forms of provision for elderly households is set out in DM1 'Aspects of form and design quality' (part 5) and D DM2: 'Internal Space Standards' and Policy H DM1 Housing Mix), the guidance is intended to be used in order for the decision maker and the developer to have an appropriate starting point under the material circumstances of each case which will include need, scale of development and viability alongside tenure and mix.</p>
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	<p>The wording of the policy is unclear on implementing the requirement e.g., the 110 dwellings requiring 6 M4(3) dwellings – wording suggests this would not be required until 121 units threshold.</p> <p>The policy would introduce onerous impact on viability of development (e.g. for a development of 1,500 homes at Ford circa £1.93m) which has not been considered or scrutinised at examination. This should not be left to application stage – case law (Gilbart J [2017] EWHC 3006 but is important at policy formation stage and application stage.</p> <p>The required standards are too high e.g. developments over 51 dwelling require 50% of units to achieve Part M4(2) of Building regulations. And similarly, 30 of 1,200 dwellings at Part M4(3). The latter would require a 10-15% increase in dwelling footprint there is limited demand for this segment and no understanding of need, and such development would not be attractive to the wider private sale market. It would be more appropriate to provide a proportion of dwellings that can be adapted should need arise in future.</p> <p>The Council has not properly assessed viability or the accessibility, adaptability of existing stock and different needs across each tenure and Part M4 (3) should expressly not be applied to market homes (PPG para ID:56-007-20150327 and ID:56-009-20150327)</p> <p>Fundamental objection the policy seeks to regulate development and guide the determine applications and would be a DPD not an SPD. The policy should be reconsidered and progressed through a DPD.</p>	<p>The negotiating point is for developments of over 51 units</p> <p>The guidance is intended as a material consideration and is negotiable taking into account viability.</p> <p>The guidance is intended as a material consideration and is negotiable.</p> <p>The guidance is intended as a material consideration and is negotiable</p>
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Homes Building Federation	<p>The decision to adopt optional technical standards (i.e. Part M4(2) and M4(3)) though an SPD is not consistent with or complaint with national policy or legislation – if adopted it would be open to legal challenge.</p> <p>To avoid this (and associated legal costs to the industry and the Council) it should not be adopted but introduced via a focussed review of the local plan.</p> <p>The authority's approach to optional technical standards must consider the need to gather evidence on need for additional standards in their area and justify setting appropriate standards within their local plan including stating clearly what proportion of new dwellings should comply: -</p> <p>PPG para 65-002-20160519 and para ID: 56-008-2016519</p> <p>SPDs are not part of the development plan (Ref NPPF Glossary). Optional technical standards for accessibility cannot be introduced by SPD. Neither Policies DM1 or DM2 provide necessary hooks or suggest the intention to introduce these standards.</p> <p>A focussed review of the local plan is the only compliant and sound approach open to the council.</p> <p>Legal compliance ref 2012 Regulations that application of Section 2 and 5</p>	<p>The guidance is not a DPD or SPD. It is intended as a material consideration to reflect a) the emerging national recognition on the need for standards to address the needs of an increasingly elderly population with associated special needs including work published on the viability implications of accessible homes standards and b) local evidence supported by the Arun Local Plan OAN evidence base).</p> <p>The guidance is intended as a material consideration and is negotiable and consistent with recently adopted local plan policies which have been found to be sound.</p>

	<p>paragraphs determines that SPD are not local plans and that in particular optional technical standards fall under Part 5(1)(a)(iv) and are development management policies and not appropriate for adoption as SPD. Ref case law (J Gilbert - William Davis Ltd, Bloor Homes Ltd. Jelson homes Ltd, Davidson Homes Ltd & Barwood Homes Ltd and Charnwood Borough Council)</p> <p>Disagree with the Councils assertion in para 34 of the draft guidance that now is the right time to set out the council's expectations as a starting point for negotiation. The correct time was at local plan examination. The government has placed greater emphasis on considering viability at the plan making stage (para 34 and 57 NPPF 2019 and para ID:10-002 of the PPG) and not site by site negotiations and conflicts by placing an additional cost on development outside of plan making and also creating a need for site by site negotiation.</p> <p>Should the Government have intended for optional technical standards to have been adopted via SPD without examination - it would have said so. This approach is contrary to national planning policy and legislation the council should reconsider and not adopt this SPD.</p>	<p>The guidance is intended as a material consideration and is negotiable and consistent with recently adopted local plan policies which have been found to be sound.</p> <p>As above.</p>

