

**BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK**

**CABINET SCRUTINY COMMITTEE**

**Minutes of a Meeting of the Cabinet Scrutiny Committee  
held on Wednesday 18 November 2009 at 6.00pm  
in Meeting Rooms 1, 2 and 3, King's Court, Chapel Street, King's Lynn.**

**PRESENT:**

Councillors I Gourlay (Chairman),  
P Burall, C Crofts, I Mack (Vice-Chairman),  
R Payn, D Pope, C Sampson, J M Tilbury, A Tyler

Other Members Present:

Councillor B Long, Deputy Leader (arrived at 6.55pm)  
Councillor R Johnston, Portfolio Holder for Performance  
Councillor Mrs V Spikings, Portfolio Holder for Development

Under Standing Order 34, Councillor D Collis (Item CSC28(b)(i)) attended

Apologies for absence were received from Councillors N Daubney and Mrs K Mellish

**CSC21: MINUTES**

The minutes of the meeting held on 22 July 2009 were agreed as a correct record and signed by the Chairman.

**CSC22: URGENT BUSINESS UNDER STANDING ORDER 7**

There was none.

**CSC23: DECLARATIONS OF INTEREST**

There was none.

**CSC24: MEMBERS PRESENT PURSUANT TO STANDING ORDER 34**

Councillor Collis attended the meeting under Standing Order 34 for CSC28(b)(i).

**CSC25: CHAIRMAN'S CORRESPONDENCE**

There was none.

**CSC26: RESPONSE TO PREVIOUS COMMITTEE RECOMMENDATIONS**

There was none.

CSC27: **MATTERS CALLED-IN PURSUANT TO STANDING ORDER 12**

There was none.

CSC28: **SCRUTINY OF CABINET/PORTFOLIO HOLDERS' DECISIONS**

**(a) Cabinet Decisions 19 October 2009**

The decisions/recommendations from the Cabinet meeting held on Tuesday 19 October 2009 were received.

(i) Exclusion of Press and Public

That under Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act.

(ii) Property Service Review – Recommendations of the Cabinet Service Review Team

At the invitation of the Chairman, the Property Services Manager outlined the work which had been undertaken to date to review Property Services as part of the Council's Service Review Programme. He highlighted the areas which were the subject of the proposed further investigations.

A detailed discussion took place during which the Portfolio Holder for Performance and Deputy Chief Executive, Executive Director, Finance and Resources responded to questions and concerns raised by Members.

The Vice-Chairman stated that he was satisfied that the Committee had challenged the Portfolio Holder for Resources about the proposals and had received assurances that other avenues were not closed to investigation in the future.

**RETURN TO OPEN SESSION**

**(b) Cabinet Decisions 16 November 2009**

This item was discussed immediately before CSC28(a)(ii): Property Service Review – Recommendations of the Cabinet Service Review Team.

The decisions/recommendations from the Cabinet meeting held on Monday 16 November 2009 were received.

(i) Local Development Framework – Core Strategy – Publication: Pre Submission Consultation

Councillor Tyler expressed concern about the proportion of affordable housing provision to be sought, which had been included in the proposed submission document. He indicated that he was aware that other Members shared his concern and sought clarification on the basis for the decision by Cabinet on these levels.

At the invitation of the Chairman, the LDF Manager explained that the Core Strategy set out the broad policy on a number of issues, of which affordable housing was one element. Currently 30% affordable housing was sought on all developments, with a threshold of 10 units in rural areas and 15 in urban areas. When preparing its Core Strategy, the Council was required to ensure that its proposals were clearly evidenced. It also had to have regard to viability of schemes to ensure that future development was not stifled. A previous viability study undertaken by consultants had been reviewed and it had been established that the 30% requirement for affordable housing was, in the current economic climate, no longer viable. The LDF Task Group had discussed the findings of the review in depth and made recommendations on the percentage and threshold levels, which had been agreed by Cabinet and included in the proposed submission document.

The Strategic Housing and Community Safety Manager highlighted that PPS3 required local authorities to understand its housing market, through housing need and Government guidance as well as the local housing markets by undertaking a Strategic Housing Market Assessment of the area. It was also a requirement of PPS3 to look at viability, which the consultants, Fordham Research, had done as part of the review. The review also took into account factors including house prices, land values and the impacts of the recession. It was noted that one key assumption had been made relating to significant changes in building regulations in 2010. The review had indicated that 20% was likely to be the most which could be sought for affordable housing. However, as many of the sites reviewed as part of the research in King's Lynn performed poorly, it was considered that a level of 15% would be appropriate in that area.

The Strategic Housing and Community Safety Manager advised that it was considered that it would be wrong for the levels to remain the same for the 20 year life of the Strategy. It was, therefore, proposed that a framework be established in line with recommendations from the consultants to look at a number of factors, including changes in house prices, building costs, land values etc, on an annual basis, and when there was an improvement in the economic situation, it would be possible to seek a greater proportion of affordable housing. He emphasised that it was important to get the balance

right so as not to stifle development while maximising affordable housing provision, but it was also necessary to be able to change and adapt the policy to suit changing market conditions.

The comment was made that those developers who obtained planning permission when house prices were depressed could benefit from the lower requirement by delaying development until market conditions improved. A query was raised as to whether it would be possible to add a condition that properties should be built and sold in the first year or whether the timescale of the permission could be shortened.

In response, the LDF Manager advised that planning permission was granted for a three year period. The Government were proposing to allow local authorities the potential to extend this period, perhaps up to another 2 years. The percentage of affordable housing was secured through a S106 Agreement and he was unsure whether it would be legally possible to include a variation as suggested. The S106 Agreement was a voluntary arrangement and there had to be a question as to whether developers would be willing to sign up to any potential variation which introduced uncertainty, or would clearly not be in their interest.

The Senior Solicitor advised that there had to be a degree of certainty when entering into a S106 Agreement and she did not think it would be legally possible to include a variation as suggested, without further investigation.

Reference was made to the requirement to commence construction within three years of obtaining planning permission and whether this period could be shortened. The Portfolio Holder advised that the period of a planning permission was three years, but stated she did not know whether the possibility of including a sliding scale for the affordable housing requirement eg 15% in the first year, increasing in subsequent years, to encourage early development, might be investigated. She commented that S106 Agreements were often subject to variation for a variety of reasons.

The Vice-Chairman enquired about the split between intermediate and social housing, whether the proportion varied between the type of properties and whether there was a case for a greater provision of social housing rather than shared ownership during the current economic climate. He also enquired whether an annual review was too infrequent, particularly in times of massive change, and whether a six monthly review could be considered.

The LDF Manager advised that there was a 70:30 split of rented to shared ownership tenure, which could be adjusted where necessary in order to make schemes viable. Negotiations on individual sites

would consider how this would be applied to different types of properties. The aim of the policy was to provide certainty, while allowing flexibility.

The Strategic Housing and Community Safety Manager advised that with regard to shared ownership, the initial share was 25%. It was highlighted that the proportion of shared ownership properties were important to the economics of a development, as the Registered Social Landlord would be prepared to pay more for such a property. He advised that there was no particular advice with regard to the timescale for carrying out a review of affordable housing levels. He acknowledged that where changes happened in a shorter period there could be a case for a more frequent review, however in order to provide clarity and avoid difficulties in communicating the Council's intentions with other parties an annual review was proposed.

Councillor Crofts referred to discussions which had taken place at LDF Task Group in respect of the Community Infrastructure Levy (CIL) and asked why there was no reference to this in the Core Strategy document.

The LDF Manager explained that CIL was a scheme which the Government was planning to introduce from April 2010 as a way of seeking monetary contributions for developers for the provision of infrastructure eg roads, flood defences etc, which was likely to bring in a greater amount than through S106 Agreements. A consultation document had been published earlier in the year, but guidance was awaited on how this was to be implemented by the Government.

The Portfolio Holder for Development added that CIL was not obligatory at the present time and it had been considered that insufficient detail was known about the scheme for it to be included in the document. A decision would be made once the details of the scheme were known. She stated that the aim was to produce a sound Proposed Submission document for consultation and subsequent submission to the Secretary of State for approval.

Councillor Crofts expressed concern about the level of contributions received from S106 Agreements, giving the example of planning applications in his own ward where a number of applications had come forward with no additional contributions being made. In response the Portfolio Holder for Development advised that applications had to be considered on a case by case basis.

Councillor Collis addressed the Committee under Standing Order 34. He welcomed the Portfolio Holder's suggestion of a three year sliding scale in respect of affordable housing applied to S106 Agreements, as these were contracts agreed by both parties. He considered that the idea had a lot of merit, if it would be permitted,

legally. He requested clarification of how S106 monies received in respect of affordable housing was recorded and allocated and whether the money could be ring-fenced. He made reference to his submission at the recent Cabinet meeting with regard to the inclusion of some specific wording on this issue in the Strategy document which had not been supported and indicated that he considered that S106 monies received in respect of affordable housing should be allocated for that purpose at the earliest opportunity.

In response, the LDF Manager explained that the Core Strategy was intended to set out the broad strategy and inclusion of specific detail would enlarge the document. He indicated that it would be more appropriate for such detail to be included in the Housing Strategy, however some reference to the Housing Strategy could be included in the text.

The Strategic Housing and Community Safety Manager advised that the Affordable Housing Policy was currently under review. He advised that he would prefer to see affordable housing delivered within developments rather than through a commuted sum. However, where this was not possible, he would not want potential provision to be constrained by the inclusion of anything which restricted where the money could be allocated. He confirmed that monies received for affordable housing through S106 Agreements could only be used for that purpose and, in principle, would be spent in the area from which it had been generated, although this was not always possible.

Councillor Mack stated that he accepted that the Core Strategy was not the best place for specific detail on this issue to be included. He considered that there would be an opportunity for a further debate when the Affordable Housing Policy was presented for consideration.

A query was raised about the interest generated by the affordable housing monies and an assurance sought that the money would not be temporarily borrowed in order to keep Council Tax levels down. The Deputy Chief Executive confirmed that while the monies received for affordable housing through S106 Agreements were ring-fenced for that purpose, no interest was applied to that money. Any interest earned from the sums which were invested was paid into the General Fund and helped to keep the levels of Council Tax down. He confirmed that records were kept of all the amounts received through S106 Agreements and where money had been allocated for affordable housing. He added that contributions were received through S106 Agreements for a range of purposes, not just affordable housing, and with a variety of conditions attached.

Councillor Collis commented that when a payment was made under a S106 Agreement it represented a certain capacity in respect of affordable housing and he considered that when this sum was spent it should deliver the same capacity.

The Chairman requested clarification of how the annual review of affordable housing percentages and thresholds would be undertaken.

The Strategic Housing and Community Safety Manager advised that advice had been sought from the Consultants on the proposed approach, which other local authorities were also following. It was emphasised that the annual review would be a more scientific approach and less subjective. A matrix would be developed, informed by a number of relevant factors, and levels would be agreed at which a change in the percentage could be triggered. The LDF Manager added that the reviews would be undertaken in a semi-independent way in consultation with a stakeholder group, the outcome of which would need to be endorsed by Cabinet.

The Chairman requested that Members be given the opportunity to receive some training on the matrix in the future.

Further discussion took place with regard to the possible inclusion in S106 Agreements of a sliding scale for the affordable housing requirement, as previously discussed. It was suggested that the annual review using the matrix might be used to support the Council's position. It was noted that the legalities of this approach would need to be explored.

The Chairman thanked the Portfolio Holders for their very clear explanations and responses to questions.

**RESOLVED:** That Cabinet be requested to explore the legal possibilities of variation, in association with the matrix, of affordable housing levels to be provided under S106 Agreements.

**(c) Portfolio Holders' Decisions made under Delegated Powers.**

The list of Portfolio Holders' Decisions made under Delegated Powers was noted.

**CSC29: DATE OF NEXT MEETING**

The Committee noted the date of the next meeting was scheduled for **Wednesday 16 December 2009** at 6.00 pm.

**Meeting closed at 7.46 pm**