



Northumberland

County Council

COMMUNITIES AND PLACE OVERVIEW AND SCRUTINY COMMITTEE

DATE: 31ST OCTOBER 2018

RETENTION OF AFFORDABLE HOUSING

Report of Paul Johnston, Interim Executive Director, Place

Cabinet Member: Councillor John Riddle, Portfolio Holder for Planning, Housing & Resilience

Purpose of report

The following report provides an update for members of the retention of Affordable Housing in Northumberland and how this is managed through enforcement of existing covenants and s106 agreements.

Recommendations

It is recommended that members note the content of the report.

Link to Corporate Plan

This report is relevant to the “We want you to feel Safe, Healthy and Cared for” [LIVING] ” priority included in the NCC Corporate Plan 2018-2021 which states

We acknowledge that this will mean increasing the supply of...affordable....housing, This remains a priority for us but any new building needs to be in the right place, at the right scale and for the right end-user

Key issues

1. Covenants are used to limit the use of land or a property however these may not always be adhered to by the owner and are difficult to monitor.
2. Covenant are often an historic arrangement put in place by the former district councils to protect smaller towns and villages in rural locations.
3. Planning policy on affordable housing currently reflects the pre-Local Government reorganisation requirements of the former District Council and is inconsistent across

the County. The Northumberland Local Plan being developed will set a minimum requirement across the whole county.

4. s106 requirements specify the level of affordable housing on a development and any conditions attached, including how these homes are allocated.
5. Monitoring of adherence to the terms of the s106 agreement in perpetuity can be delivered through effective monitoring and management of allocations.

Background

Northumberland County Council's Corporate Plan identifies the delivery of Affordable Housing as a key strategic priority. The Council adopts the Affordable Housing definition as set out in the glossary of the National Planning Policy Framework:

“Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.”

The availability of a good supply of affordable housing is a long-term aspiration of the Council. With more than 8,000 people on the housing register in Northumberland, there is a high demand for more affordable homes.

The mix and tenure of affordable homes on development sites should reflect the current housing needs evidence base. Sources are:

1. The current Strategic Housing Market Assessment
2. Homefinder statistics
3. Information from other registered affordable home providers
4. Information from Neighbourhood Plans
5. Information from Local Housing Need Assessments where applicable

A range of measures, underpinned by enforcement action by the Council where necessary, exists to encourage an increase in affordable housing, including:

Covenants - A covenant is a provision, or promise, contained in a deed to land. Land may be subject to a covenant which affects or limits its use. A covenant can be very important as it could affect the value of land or its intended use.

A **restrictive covenant** limits or prevents the use of land in a specified way to the benefit of other land. Restrictive covenants are said to run with the land. This means that the benefit and burden of the covenant relates to land itself and not to the land owner. If one of the original parties to the restrictive covenant sells their property, the covenant will remain enforceable.

Restrictive Covenants might be used in circumstances such as:-

- *Not allowing a house to be used for business purposes.*

- *Not allowing non domestic animals to be kept on the property e.g. Chickens, pigs etc.*
- *Not allowing building on land without consent of the party who has the benefit of the covenant.*

Many of the former district councils placed restrictive covenants on properties that are in smaller towns and villages to help protect them from use as second homes, holiday lets and business premises.

For a restrictive covenant to be enforceable a buyer must have notice of it. It must:

- *Be registered in the title to the property at HM Land Registry (or as a Land Charge if the title is unregistered.)*
- *The covenant must not be too uncertain or ambiguous, be prohibited by competition law or be contrary to public policy*

If a restrictive covenant has been breached (or there is a threat of a breach) the usual remedy sought is that of an injunction to stop the breach (or threat).

The Council does have the option to release a property from a covenant however on the occasions where this has been requested this has not been agreed and the covenant remains in place.

Where the Council becomes aware that a restrictive covenant has potentially been breached a land registry search will be completed to confirm that a covenant is in place. The owner will be contacted and asked to remedy the breach. Where this does not happen legal action will then be considered. Recent reports have highlighted properties that are being advertised through websites as holidays lets and in these instances both the letting agent and the owner was contacted and the properties were subsequently withdrawn from the sites. properties are often only identified by local residents contacting the council to inform them, then enabling action to be taken.

Planning Policy - The Local Development Plan, comprising the adopted Core Strategies, Local Plans and saved policies from the former District Councils, require the provision of an element of affordable housing from new development schemes. Where there are policies, these require between 30% and 50% of homes on developments to be affordable. Some of these policies have become time expired while others are aged and based on out of date evidence.

The draft Northumberland Local Plan, which was published for Regulation 18 consultation on July 4th 2018, indicates a requirement for a minimum of 20% of homes on new permissions to be affordable. The draft Local Plan indicates that the requirement may be higher, up to a cap of 30%, where there is documented evidence of a higher local housing need or where a higher requirement is established in a 'made' neighbourhood plan.

The Northumberland Strategic Housing Market Assessment (SHMA) Update (June 2018) provides detailed market analysis of housing needs at the County level, and across local Housing market sub-areas. This provides up-to-date evidence of affordable housing need

in Northumberland and identifies an annual net shortfall in affordable housing across the County of 151 dwellings per annum over the period 2017 to 2022. The SHMA concludes that an increase in Affordable Housing is needed, recommending that 50% of affordable homes are provided for rent, and 50% provided through affordable home ownership products.

Housing Strategy - The Council's Housing Strategy 2013 -2018 aims to provide an additional 1300 new affordable homes over the period of the strategy. In addition the Strategy also stipulates who can access affordable housing, and the assumption that the properties must remain affordable into the future:

“... (It is) provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision’.

Officers continue to review the situation regarding funding and identify and evaluate alternative proposals that deliver affordable homes in various locations. Such delivery vehicles may include:

- Traditional registered provider delivery
- Local Authority alternative model
- S106 Commuted sums pot to be used to subsidise affordable homes development by the Council and key partner registered providers
- Cross subsidisation developments
- Advance Northumberland partnership model
- Further Homes England funding

During the period covered by the Housing Strategy there have been 1,405 affordable housing completions.

A review of the Housing Strategy is underway and will be presented to Members for further consideration during 2018/19.

Section 106 Planning Obligations - Planning obligations based on section 106 of The Town & Country Planning Act 1990 are legally enforceable private agreements made between local authorities and developers, which attach to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms.

The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 Agreement, something any future owners will need to take into account.

S106 Agreements in Northumberland are developed and implemented as part of planning conditions. There is now a standard format developed by the Affordable Housing Officer, the s106 Officer and the Legal Team which provides a sound basis for the negotiation process with developers. As new guidance emerges e.g NPPF and Homes England revisions, further amendments to the format may be made.

The s106 details the overall amount of affordable housing, tenure types and split and hold periods for ownership tenures to give local people first opportunities for example. They generally currently require that affordable housing is provided at a rate of 15% for developments of 10 and over properties however this can vary from scheme to scheme depending upon the submitted proposal and its location. The s106 should reflect the requirement for affordable homes based on housing needs evidence at the time the planning consent is given and echo the direction of travel in the draft local plan.

Adherence to s106 agreements is managed and monitored by the S106 officer and Planning Enforcement team. Any breaches to the conditions are actively addressed with developers and property owners. There are also controls in place to ensure affordable housing is provided in perpetuity and to ensure that the homes are allocated to those who are eligible. Affordable rented homes are allocated via Homefinder, whilst discount market value applicants are assessed by the s106 team and shared ownership homes as an Registered Provider tenure are controlled by the guidance Homes England exerts on the landlord.

According to the 2018 SHMA Update, as at end of Dec.2017, we had 1,116 outstanding commitments for affordable housing anticipated for completion over the next 5yrs 2018-2023 against an aggregate need for 1,870 affordable homes overall (av. 374pa). This means that after taking into account those existing commitments there is a residual need for 755 additional affordable homes at an annual average 151pa over the next 5yrs. This level of demand has been translated into the proposed policy requirement for a minimum of 20% of homes on new permissions to be affordable.

Implications

Policy	Supports the delivery of the Corporate Plan and Local Plan
Finance and value for money	Ensures that Affordable Housing is available and used appropriately
Legal	none
Procurement	none
Human Resources	none
Property	Ensures the suitable management of available affordable housing owned by the Council.
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	Ensures fair access to housing
Risk Assessment	none

Crime & Disorder	none
Customer Consideration	Retention of affordable housing and management of covenants and s106 agreements ensures that the service delivered to the customer is fair and equitable
Carbon reduction	none
Wards	All

Background papers:

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

	initials
Monitoring Officer/Legal	N/A
Executive Director of Finance & S151 Officer	BS
Relevant Executive Director	PAJ
Chief Executive	DL
Portfolio Holder(s)	JR

Author and Contact Details

Julie Young
 Strategic Housing Manager
 01670 623076
julie.young03@northumberland.gov.uk