Affordable Housing – Application of the National Indicative Minimum

Note for Examination

September 2011.

One of the issues that has given rise to concern is the proposed application in the core of the national indicative minimum threshold of 15 dwellings before the requirement for affordable housing applies. In support of the approach taken by Hyndburn it is necessary to consider several factors:

1. **PPS 3 – The National Indicative Minimum of 15 dwellings.**

   PPS 3 clearly states that the “National Indicative minimum site size threshold is 15 dwellings”. The next sentence stating that “A lower minimum threshold can be set where viable and practicable”.

   This does three things:
   1. It clearly establishes that a local planning authority can adopt the National Indicative threshold if it chooses. PPS 3 does not include any requirement to justify a decision to apply the national indicative minimum and if local authority chooses to adopt the national threshold it should not have to defend its decision to simply apply the nationally accepted standard.
   2. The second sentence indicates that a local authority can prescribe a lower minimum threshold if it chooses. Blackburn with Darwen has chosen to apply a lower standard than that advocated by PPS 3, Hyndburn has chosen not to.
   3. The approach taken by Hyndburn is, as a matter of fact, wholly consistent with the approach advocated by PPS 3 insofar that it has chosen to adopt the National Indicative Threshold.

2. **Affordable Housing Viability Assessment**

   As part of its evidence base the council commissioned Tribal to undertake an Affordable Housing Viability Assessment (AHVA). This raises several issues:
   - The first, most striking part of the report is that it finds that virtually no sites are viable to the extent that they are able to provide any affordable housing. Viability is a fundamental issue and out of the 14 sites considered only four were found to have positive residual land value with 0% affordable housing (key findings, para 3.2.1.).
   - In Blackburn with Darwen the Affordable Housing Viability Assessment was undertaken by the same consultants and in the comparable table 16 out of 18 sites were viable with 0% housing. Although Hyndburn and BwDBC share the same housing market area, the viability assessments painted two very different
pictures. The first recommendation in BwDBC’s report\(^1\) states “"Without any affordable housing, almost all the schemes are viable and indeed several of them generate values which are similar to the historic EUVs produced by the VOA".

- Whilst the study considered two sizes of site – large and small – none of the sites considered in Hyndburn had a capacity of less than 16 dwellings.
- Whilst one of the recommendations of the Hyndburn study is that there is no justification to apply a threshold, this is within a report that:
  - Finds no evidence of viability for affordable housing and recognises viability to be an issue generally.
  - Did not consider any sites of a size below the national indicative minimum threshold (15 or below)
- Whilst the Council agree that policies of the Core Strategy should normally be based on the evidence that has been prepared, it should not dogmatically follow recommendations if these cannot be justified or would run contrary to what the Council is seeking to achieve. It is sometimes necessary to question the assumptions that consultants arrive with.
- When we are being advised that affordable housing is clearly not viable, why would an authority adopt a position that requires developers to either go to the cost and trouble of demonstrating that it is not viable? The approach being advocated by BwDBC would place an unreasonable and unjustifiable burden on developers.

3. **PPS 3 A lower minimum threshold can be set where viable and practicable.**

The second relevant sentence of PPS 3 states that a “lower minimum threshold can be set where **viable** and where **practicable**.

**Viability**

PPS 3 clearly recognises that viability is an issue for developments of less than 15 units from the text used. Viability is becoming a major issue for developers in the current economic climate.

The Government is becoming increasingly concerned about the planning system placing unnecessary or unjustifiable burdens on developers through planning obligations or other costs.

The letter from CLG concerned with Planning for Growth, dated 31\(^{st}\) March 2011, contained two annexes. Annex A was the ministerial statement Planning for Growth that stresses that there is a “pressing need to ensure that the planning system does

\(^{1}\) Economic Viability of Affordable Housing, Blackburn with Darwen Borough Council, tribal, June 2009.
everything it can to secure a swift return to growth” and later advises that local planning authorities should “take full account of relevant economic signals such as land prices”. Later it stresses the importance of local authorities not imposing unnecessary burdens on development.

We are therefore in a position were we are considering two options:

• Application of the National Indicative Minimum – 15 dwellings
• No threshold - 1 dwelling and above

Of the two options one is clearly more onerous than the other and Hyndburn are choosing to take the less onerous.

The second Annexe attached to the letter concerns planning obligations and the need to ensure that local authorities do not burden developers with unnecessary or unjustifiable costs or burdens.

Practicable

PPS 3 also indicates that a lower threshold could be applied where practicable. Contributions towards affordable housing are normally secured through the use of a legal agreement under s.106 of the act. This would be through a financial contribution or through provision on site, either way a legal agreement is needed.

If no threshold is adopted a financial contribution would be required in connection with a planning application for a single dwelling. This would require a s.106 agreement to be prepared and agreed prior to planning permission being granted. This would normally require the applicant to engage a lawyer and the mortgagee to be a signatory, usually the bank or building society. At a time when the council is working to simplify the process this would add significant complexity and cost for the developer.

The other consequence of the having a threshold of 1 is that if a lower level of affordable housing is proposed it would be necessary for the developer to undertake a viability assessment of the development and for the local authority to assess the assessment, further adding to the cost.

From a practicable point of view it is also necessary to consider the advice provided in the second annex of the letter from the Steven Quartermain. It is unclear at the moment whether affordable housing can be included in CIL, however, local authorities will no longer be able to pool more than 5 planning obligations to a single project that could be provided by CIL. If contributions are made in relation to sites of less than 15 dwellings it would (depending upon the size of the tariff) probably take more than 5 obligations to fund a single affordable dwelling.
4. **Consistency with Blackburn with Darwen**

Hyndburn is considerably smaller than Blackburn with Darwen and the annual housing requirement is significantly lower, Blackburn with Darwen having an allocation of 489 in RSS, more than 2.5 x the number that Hyndburn are required to provide. Blackburn are claiming that by adopting the national indicative threshold it will place Blackburn’s housing market at a competitive disadvantage. To create a level playing field, Blackburn with Darwen are advocating that Hyndburn impose the same burdens as they have chosen to.

There is no evidence to suggest that taking a more relaxed approach will result in any disparities in provision that may be to the detriment of Blackburn with Darwen. Given the relative sizes of the two authorities and the number of houses each is required to provide a small increase in the number of new dwellings arising from a more relaxed approach is unlikely to have a harmful impact on the housing market in Blackburn. Given that the AHVA undertaken by Blackburn with Darwen Borough Council indicated that there was a larger proportion of sites that were viable than in Hyndburn it seems unlikely that developers will all move to Hyndburn.

**Conclusion**

- The Government is seeking to ensure that planning does not impose unnecessary burdens on developers as a means of stimulating the development sector.
- Two options are being advocated – National Indicative Minimum of 15 or a threshold of 1.
- The Council has chosen to apply the National Indicative Minimum as it is entitled to by PPS 3. The Affordable Housing Viability Assessments for Hyndburn and Blackburn with Darwen are not comparable and the difference in viability levels supports a different approach being taken in Hyndburn.
- The Council do not believe that the adoption of a threshold of 1 is either viable or practicable.
- No evidence has been produced to demonstrate that the adoption of the National Indicative Minimum would harm the housing market in Blackburn with Darwen.