



Derby City Council

**COST OF LIVING OVERVIEW AND SCRUTINY
BOARD**
24 November 2014

Report of the Interim Strategic Director of
Resources

ITEM 11

Work Programme and Topic Reviews

SUMMARY

- 1.1 This item gives members an opportunity to discuss potential work plans and topic reviews for the forthcoming municipal year, and develop the basis for a work programme. The reviews may cover anything within their remit and could include internal as well as external facing services.
- 1.2 Questions were raised by members at (and following) the last meeting of the Cost of Living Board held on Monday 22 September 2014, which relate to the agreed topic review on Affordable Housing. These questions were distributed to officers in relevant teams across the Council. A co-ordinated response to the questions has been developed by officers and can be found at Appendix 2 of this report.

RECOMMENDATION

- 2.1 To agree the current work programme, suggest future items for the work programme and identify any further topic reviews for the forthcoming year.
- 2.2 To receive responses from officers on questions raised on the Affordable Housing Topic Review, and to raise any further questions and queries.
- 2.3 To discuss the progress of the Affordable Housing Topic Review and agree any further actions.

REASONS FOR RECOMMENDATION

- 3.1 To ensure that the board has a clear and evolving work programme and ensure that the board is kept informed on progress with regards to items on the work programme.
- 3.2 To enable work to progress on any identified in-depth topic review as identified by the board.

SUPPORTING INFORMATION

- 4.1 The Overview and Scrutiny Board should agree a work programme at each meeting to enable board members, the supporting Scrutiny Officer and departmental officers to plan in advance for meetings throughout the year in a

strategic way and take account of any new items for inclusion in the programme.

- 4.2 The work programme is not restrictive, and board members can identify and introduce items for scrutiny throughout the year. Items for scrutiny will be discussed at pre-meetings with the Chair and Vice Chair, and will be added to the Scrutiny Board Agenda at the Chair's discretion.
- 4.3 The Council Constitution limits one topic review report to be submitted to the Council Cabinet every six months from Scrutiny Boards. It is possible for each Board to conduct two reviews in each municipal year. Topic reviews are not mandatory, but if the board wishes to conduct in-depth reviews in the current year, it is suggested that members should aim to agree a topic for review at the earliest opportunity.
- 4.4 If a working group is formed for the purpose of conducting topic reviews, they should only exist for the duration of the review and be dissolved upon completion of the review. Individuals outside of the scrutiny board can be invited to join the working group, as the group has no formal scrutiny powers. The purpose of the working group is to investigate, gather evidence and make recommendations to the scrutiny board in an advisory capacity.

OTHER OPTIONS CONSIDERED

- 5.1 None.

This report has been approved by the following officers:

Legal officer	Olu Idowu
Financial officer	
Human Resources officer	Liz Moore
Estates/Property officer	
Service Director(s)	
Other(s)	Phil O'Brien, Head of Democratic Services Ian Fullagar, Head of Strategic Housing Nick O'Reilly, Director of ICT Richard Boneham, Head of Governance & Assurance

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Responses from questions on the Affordable Housing Topic Review

IMPLICATIONS

Financial and Value for Money

- 1.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Legal

- 2.1 Section 21 (3) of the Local Government Act 2000 requires that the power of an overview and scrutiny committee to review or scrutinise a decision made but not implemented includes power to recommend that the decision be reconsidered by the person who made it.
- 2.2 Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Personnel

- 3.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

IT

- 4.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Equalities Impact

- 5.1 Effective scrutiny benefits all Derby people.
- 5.2 Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Health and Safety

- 6.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Environmental Sustainability

- 7.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Property and Asset Management

- 8.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Risk Management

- 9.1 None arising directly from this report. Implications may arise from future items identified for inclusion on the work programme as and when they are considered by the board and from the final recommendations resulting from topic reviews.

Corporate objectives and priorities for change

- 10.1 Our aim is to work together so that Derby and its people will enjoy a thriving sustainable economy, good health and well-being and an active cultural life. The work of this board contributes to the Council's ambitions to make Derby an inspiring place to live by improving by improving inner city areas. The work of the board also contributes to the Council's priority outcome of delivering improved value for money for our customers.

Affordable Housing – Questions

Before answering each of the specific questions below, it is considered important to highlight to the Board the considerable amount of work that is being done across the authority to deliver new housing. This is evidenced through the range of services that have contributed to this response – including; Housing Strategy, Development Management, Planning Policy and Implementation & Regeneration Projects.

Members will be aware of a number of reports relating to these issues that have been considered by Cabinet over the last few months, including the ‘Core Strategy’ and the ‘City Living Initiative’ and may also be aware of reports presented to other Scrutiny Boards on issues such as affordable housing and delivery. These are referred to where relevant below.

1. What tools are at the Council's disposal to encourage development?

One of the most important tools the Council has in encouraging development is in its role as local planning authority. Allocating land for development in the Local Plan – and including positive and proactive policies for the delivery of housing - provides a clear indication of the scale and distribution of growth required to meet the city's needs.

There is already clear evidence that the ‘process’ of preparing a new Local Plan (the Core Strategy) has encouraged land owners and developers to progress housing schemes that they would not have been able to under the current planning policy context. For example, the proposals coming forward on ‘green wedge’ sites in Mackworth, Chellaston and Chaddesden. Discussions are also taking place with other developers across the city on a range of sites.

The Local Plan also sets the policy context for the consideration of such things as the infrastructure requirement of new development. For example, the Local Plan sets the target for affordable housing, contributions to new education facilities, open space, transport and so on. The emerging plan has taken on board the requirements of the National Planning Policy Framework (NPPF), which suggests the development should not be ‘overburdened’ by planning obligations as these are often cited as a reason that development has not come forward.

The Local Plan is also the main mechanism by which planning and infrastructure issues are identified and solved. In other words, the Plan is about more than just allocating sites – it also helps delivery. A Local Plan will also help secure external funding such as money from the HCA and LEP.

Allied with a proactive and pragmatic approach to S106 negotiations, these policies are geared toward the delivery of new development – while still ensuring that the necessary infrastructure is still provided. Members will be aware that there is often a delicate balance to be struck between delivering development and

meeting expectations in terms of such things as affordable housing. This is often an issue that is raised at Planning Control Committee.

The Council now has a Major Projects Officer in post and that post acts as the conduit between the Planning Team (Development Management / Policy / Implementation components) and other internal and external partners. That post has provided greater emphasis on delivery in terms of the speed of the process and adding value to individual schemes.

On the larger sites where established developers are leading, some of the key issues stalling delivery are site viability, land owner expectation, infrastructure costs and requirements. The cost of infrastructure obviously has impacts on the viability of the scheme, but it's not the only impact on viability. Officers always take these issues into account when negotiating schemes to wherever possible to facilitate delivery.

So if the Council wants to facilitate development on larger sites, it has the following tools at its disposal to encourage development:

- 1) The Council can front fund infrastructure through its capital programme and take contributions as the development progresses to repay its investment. However this will have to be supported from borrowing until it is reimbursed from the development. Education provision is a key example of infrastructure that is stalling some development. If we go down this path the Council must make sure this is very clearly defined in S106 agreements and in Policy to ensure that we can recoup contributions in the future if we have already provided the infrastructure, otherwise developers could argue that there is no requirement for their development to pay.
- 2) The Council can use its Right to Buy receipts as grant to support the affordable housing element. This reduces or eliminates the cross subsidy required from the private sale units thereby improving overall viability.
- 3) Conversely the Council can consider accepting off-site provision or contribution in lieu of on-site affordable housing, as many developers will argue that affordable housing itself is an impediment to delivery. However this sets a precedent and would not be advised in all but exceptional circumstances. It is highly unlikely that Planning Control Committee would accept off site provision in most cases. There has recently been a higher profile given to on site affordable housing at PCC.
- 4) The Council can and does use many methods within the S106 agreement to help viability such as phased and delayed payments, as well as reduced contributions and overage clauses.
- 5) Theoretically the Council has CPO powers available to it to acquire land, but the burden of proof, legal hurdles, and risk of challenge and costs make this an unattractive option.

On the medium/ smaller sites that are stalled the reasons are often more complicated. Many sites are not led or owned by developers and some landowners are sitting on permissions that...

- 1) are simply not attractive in commercial terms
- 2) do not realise the value in the current market that the landowner aspires to, and may compete with the existing (eg) commercial use on the site
- 3) some landowners may not be fully aware of the options available to them
- 4) some existing or lapsed applications were submitted within a different market paradigm- eg apartment developments- and would need revised applications to chime with current market conditions.

In respect of small and medium sized sites, the Council...

- 1) can contact and is contacting landowners to offer a facilitating and supporting role if landowners are unsure of how to proceed with their sites
- 2) some small/ medium sites could be suitable for affordable housing provision and the Council could acquire through the HRA or facilitate contact between the landowner and a Registered Provider, which the Council can subsequently support with RtB receipts or S106 funds
- 3) the Council could provide some recoverable seed funding to encourage landowners to submit revised applications or contact site surveys to establish initial technical feasibility.
- 4) the Council can negotiate on Section 106 contributions as appropriate.

2. How many developments have been stalled or had to go through lengthy negotiations due to affordable housing requirements and S106 contributions?

During the recession many developments stalled or failed to start at all. However this was not simply due to Section 106 and affordable housing requirements. In fact, during the early recession some developers sought to bring forward affordable housing early in their programmes or develop whole sites as affordable housing because Housing Associations still had funding to build while market developers did not.

The main reason developments stall are because land owner expectations are unrealistic and much higher than current land prices. They may have historical option agreements that tie the developer into paying this unrealistic price. The cost of materials now developers have started to build again is also high. If the land prices and material prices are high, it therefore squeezes the amount the developer has to pay for Section 106 and affordable housing especially if house

prices have not returned to the level they were when the option agreement was signed. The developer and land owner has a right to make a reasonable return. This means that Section 106 and affordable housing requirements are not often the only reason a development stalls.

3. What are the barriers to changing the class use of upper levels of city centre premises to residential?

Please see the response to question 4 below.

4. What are the barriers to changing the use of existing empty properties to residential?

1) Layout and compliance with housing standards

The layout of commercial properties often does not lend itself well to residential use. For example...

- flats above shops where the only access to the living accommodation is through the commercial area of the building, or
- where dividing the available space would result in rooms with little or no natural light.

The cost of necessary extensive renovations and compliance with relevant housing standards can also be a barrier, especially where outdated services (particularly mains water) are in place and will need to be comprehensively renewed. A recent case where premises above a shop were converted into three flats illustrates this point. The pipes and pressure on site were found to be inadequate for domestic use and the cost of replacement was around £10,000.

2) Locality

An area that is predominantly commercial may not be an attractive place to live – lack of facilities such as schools and parking, plus late night noise associated with town centres, for example. Combined with layout and cost issues highlighted above, the uncertainty as to whether the property will actually be attractive to potential tenants may dissuade the owner of the property from conversion.

Premises such as restaurants, takeaways and bookmakers for example may operate at anti-social hours and generate unwelcome noise and smells, detracting potential tenants and therefore discouraging the initial investment in conversion.

3) Loss of Business Rates Income

There is currently a three month business rates exemption for empty commercial buildings, following this time full rates are charged. While it is possible to appeal to the Valuations Office to have the property removed from Business Rates, this cannot be done until the premises has been empty for three years and the practice does not appear to be utilised widely. Business rates levels are typically much higher than equivalent residential council tax bands, meaning that there may be a financial penalty to the local authority in approving change of use permission requests.

4) Change of use approval

Change of use approval is required in many cases, though this has been mitigated to some degree since April 2014. New class 'IA' allows change of use and some associated physical works under current small business uses to be converted to residential use. This involves a prior approval process and the local planning authority can consider the impacts of the proposed change. Up to 150 square metres of retail space can be changed to residential use.

In total we have considered 27 prior notification applications, across the city, to residential conversion from May 2013. This includes only 4 refusals (based on the policy tests laid down by central government) and this equates to only 1.4% of total application submissions from May 2013 to date.

However, while the *process* may be seen by some as a negative factor, the Council has a long standing planning policy designed to encourage the use of upper floors of retail buildings for residential use and to make more use of underused or vacant commercial floorspace in a wider sense. These policies have been in place since at least the 1998 Local Plan, are being carried forward into the Core Strategy. If the planning process is seen as a 'barrier' to changing the use of upper floors, then it is thought to be one of perception than reality. It is more likely that a lack of market for such uses has been the main 'barrier'.

5) Long Term Effects

There has been disquiet expressed by professional bodies such as the Royal Institute of Chartered Surveyors (RICS) regarding the possible long term consequences of converting commercial property to residential use. While making a contribution to the shortfall of homes, there are concerns that this could be creating a related problem for businesses looking to expand as economic confidence grows.

While this is currently a problem predominately associated with the South East, it does serve as a reminder that a balance needs to be achieved. Conversion to residential may increase demand for the goods and services offered through commercial outlets locally, but the availability of that commercial space from which such businesses can operate and expand, must also remain available.

In terms of the change of use of office and retail space to residential, another potential effect is that the Council is not able to consider whether a 'satisfactory living environment' can be created (for example, it cannot consider 'amenity' issues when considering prior notification applications). This may result in less than desirable outcomes in the longer term.

5. How do we encourage developers to commence work on approved development?

Please see the response to question 1.

6. How do we encourage developers to offer/deliver a higher proportion of the development as affordable housing?

Before considering whether a 'higher' proportion of affordable housing can be encouraged, it is important to set out the policy context for affordable housing. The current Local Plan sets out a target of 30% affordable housing, subject to viability. This policy has been broadly carried forward into the emerging Core Strategy.

Clearly, one option would be to increase this target. However, as mentioned elsewhere, the NPPF requires Local Plans to be realistic and deliverable. We did consider the potential to include a higher target within the emerging plan. All the evidence we have demonstrates that a target of over 30% would not be viable and would be unlikely to be found 'sound' by a Planning Inspector.

At this time, even the target of 30% is not achievable in most cases. It is hoped that within the plan period an improving market will mean that 30% becomes more achievable on some sites, but even if this happens it is still unlikely that a target of over 30% will be realistic.

In some cases, developers may choose to provide more than 30% (for example, housing associations). The Local Plan policy does not preclude this from happening, nor does it stop other mechanisms outside S106 being used to encourage additional affordable housing.

Affordable housing requires subsidy from developer/ landowner, so to encourage this the Council needs to fund the subsidy element required or lever in funding from bodies such as the Homes and Communities Agency.

We can reduce other Section 106 contributions to make 30% affordable housing more viable however this is likely to put unacceptable pressure on schools, highways and community facilities if there are no funds to provide facilities and education places for new residents.

7. Can the Council take an equity stake in housing developments?

Subject to State Aid and procurement compliance, theoretically the Council in some form or another can take an equity stake but this will require capital to be put into development that will not be immediately realised and will need to be supported through the capital programme.

8. If the City Council is a partner in the investments into the City Centre has it ensured that it could it use s106 gain to invest elsewhere in the City to build affordable housing?

Regardless of whether the City Council is a partner, it can decide to negotiate the S106 agreement so that if S106 contributions are viable a financial contribution is taken for off-site affordable housing rather than delivery on-site.

It should be noted that as most conversions from office to residential are now permitted development, no S106 contributions will be negotiable from them. Also, where the Council is a landowner or developer in a scheme it can make the S106 more difficult to negotiate as the Council cannot enter into an S106 agreement with itself.

9. Should the council pursue a policy of gentrification of the City Centre to create a housing market that would generate income to be reinvested in affordable housing?

As explained above, most city centre developments through the City Living Initiative are unlikely to generate S106 contributions. These schemes will mean an increase in the number of dwellings within the city centre that would generate additional Council Tax income for the Council. While this money is not ring-fenced for affordable housing, Council could decide to use a percentage of it for the provision of affordable housing elsewhere.

10. What control do we have over developers outside the city boundaries regarding the use of schools, doctors etc within the city boundaries?

It is inevitable that residents from developments on the edge of Derby will use facilities within the city, indeed many existing residents outside the city already use these as catchment areas for schools and doctors are not dictated by authority boundaries for example, Melbourne is within the school catchment area of Chellaston Academy.

Where new developments outside the boundary are planned, the Council negotiates with developer and the relevant Council to ensure that money for city facilities is provided through the Section 106 agreement.

11. What land is there to build on within the city boundaries, not already earmarked already by developers?

Land is generally identified for development through the preparation of the Development Plan. In our case, this currently means allocating 'strategic' sites in the Core Strategy. We expect to allocate smaller sites within what we are calling the 'Part 2' plan. We also have a 'Strategic Housing Land Availability Assessment' (SHLAA) which contains records of all sites that have been submitted to the Council for consideration for housing development (some of which are not considered suitable for development).

There is virtually no remaining suitable housing land available within the city boundary that is not either already allocated or likely to be allocated in the Part 2 Local Plan. Further development land would necessitate looking at green wedge land not already released (and probably abandoning that policy entirely), green belt, public open space, wildlife sites or, for example, brownfield sites that we do not think are suitable for housing or which need a considerable amount of work to determine their suitability. Celanese would be example of this latter type of site.

Members will be aware of the considerable amount of work that has gone into identifying a sustainable and deliverable Core Strategy. Officers are confident that all sensible options have been considered to maximise the amount of housing we can deliver. We feel that we have identified a range of deliverable sites that help to meet the City's needs without undermining other long held environmental, social or economic objectives. However, suitable and deliverable housing sites in the city are limited. In order to meet our requirements, we have already had to make difficult decisions to release land in green wedges and other greenfield sites that had previously been resisted.