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Local Plan Consultation
Forward Planning
Crawley Borough Council
Town Hall
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Via email: strategic.planning@ Crawley.gov.uk

25th March 2024

Dear Sir / Madam

McCARTHY STONE RESPONSE TO THE MAIN MODIFICATIONS CONSULTATION OF THE CRAWLEY BOROUGH LOCAL PLAN 2024

MM30, MM31, MM41

Thank you for the opportunity to comment on the Crawley Local Plan main modifications consultation. McCarthy Stone is the leading provider of specialist housing for older people.

We object to Main Modifications MM31, MM31 and MM41 with respect to specialist housing for older people whether this sits within the C2 or C3 use class together with the use of the 'calculator' to calculate affordable housing sums. The Main modifications will not make the plan effective. As evidenced by the Council's own viability assessment, any affordable housing requirement for older people's housing including on brownfield sites, where older person's housing is predominantly delivered, creates an unrealistic, over aspirational policy requirement that will undermine deliverability. The plan as written either with or without the main modifications, will not deliver much needed older peoples housing in line with need without further viability assessment and is therefore not justified or effective. In addition, the policy is not flexible as the flexibility implied at para 13.40 of the submission plan has not been incorporated in a similar vain to Build to Rent and Rent to Buy and instead the policy strictly implies that 'affordable care' should meet the same policy requirements as mainstream housing and is not an exceptional circumstance. The justification that you can simply replace the CIL amount, in the Viability Assessment with that of the Affordable housing requirement as advocated in the Council's hearing statement (CBC/MIQ/006 section 6.12 and 6.17) is flawed as the latter figure is substantially more than the CIL requirement. This is also on the basis that it could be likely that specialist housing for older people is deemed to be C2 use and CIL exempt despite no clarification.

We were unable to attend the relevant hearing session with regard to policy H5 but have engaged with the plan making process throughout the plan production process highlighting that specialist housing for older people cannot (sheltered and extra care) deliver affordable housing and remain viable as evidenced by the Council's own submitted Crawley Local Plan and Community infrastructure Levy Viability Assessment, March 2021, Dixon Searle (exam ref: D/VA/02a and b) (LPVS). It is also relevant to note that since the original Viability Assessment and it's update was undertaken build costs have also increased and sales values have been more challenging, both of which will affect viability further.

The Council have disregarded both their own and our evidence and made no proposed modifications to the plan exempting older persons from affordable housing despite submission of a number of representations. Indeed their response to the 2023 consultation states '*CBC considers that Policy H5: Affordable Housing, as now drafted, is consistent with and supported by the Crawley Local Plan & Community Infrastructure Levy Viability*

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Assessment, March 2021' (See Consultation Statement – Officer Responses to Formal Public Consultation Representation Summaries 2019 – 2023), September 2023 page 95, Exam reference CBC/KD/CS/01k).'

We note that the main modifications MM30, MM31, and MM41 are put forward with regard to policy H5 and its supporting text, reasoning for modifications is summarised as being necessary in order to provide clarification to C2 developments and use of commuted sums calculator and that this is to make the plan more effective (inspectors letter ID-026 Post Hearings letter 31 January 2024). However, the Council's proposed amendments that were proposed within the Councils hearing statement to Matter 6 (CBC/MIQ/006 section 6.12 and 6.17), appear to be accepted without consideration that **the policy with respect to specialist housing for older people and the level of affordable housing being requested is not justified by the Council's LPVS (exam ref: D/VA/02a and b) in the first place. This is irrespective as to whether it falls into class C2 or C3 of the use class order.**

We note that the Council in their statement to Matter 6 at para 6.12.2 (ref CBC/MIQ/006) quote the judgement of 'Rectory Homes Limited v Secretary of State for Housing Communities and Local Government in 2020 (Post-Submission Document Reference: PS/H/HH/10) which indicated that self-contained accommodation within a C2 development could be capable of being counted as 'dwellings' for the purposes of Local Plan policies on affordable housing'.

We do not dispute this position for the purpose of this exercise, however it is often the case that there is a grey area between extra care and sheltered housing and whilst extra care often falls into the C2 use class order it is also common for sheltered housing to fall into the standard C3 use class. However, the use class does not take away from the need of specialist housing for older people whether that be sheltered or extra care, the abnormal and additional costs such schemes incur nor the evidence and the typologies tested within the LPVS (exam ref: D/VA/02a and b).

We would remind the Examiner that the PPG on Viability confirms the following:

'Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure).

These policy requirements should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability that takes into account all relevant policies, and local and national standards, including the cost implications of the Community Infrastructure Levy (CIL) and section 106. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land. To provide this certainty, affordable housing requirements should be expressed as a single figure rather than a range. Different requirements may be set for different types or location of site or types of development'. Paragraph: 001 Reference ID: 10-001-20190509'

Para 34 of the NPP confirms with respect to development contributions that: ***"34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.***

The PPG on Viability then confirms at paragraph: 002 Reference ID: 10-002-20190509 that *'The role for viability assessment is **primarily at the plan making stage.** Viability assessment should not compromise sustainable development but should be used to ensure that **policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan.....**Policy requirements, particularly for affordable housing, should be set at a level that takes account of affordable housing and infrastructure needs and allows for the **planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage.**'*

And that Paragraph 004 Reference ID: 10-004-20190509 of PPG on Viability confirms what is meant by a typology:

'A typology approach is a process plan makers can follow to ensure that they are creating realistic, deliverable policies based on the type of sites that are likely to come forward for development over the plan period.

In following this process plan makers can first group sites by shared characteristics such as location, whether brownfield or greenfield, size of site and current and proposed use or type of development. The characteristics used to group sites should reflect the nature of typical sites that may be developed within the plan area and the type of development proposed for allocation in the plan.

*Average costs and values can then be used to make assumptions about how the viability of each type of site would be affected by all relevant policies. **Plan makers may wish to consider different potential policy requirements and assess the viability impacts of these. Plan makers can then come to a view on what might be an appropriate benchmark land value and policy requirement for each typology.***

*Plan makers will then engage with landowners, site promoters and developers and compare data from existing **case study sites to help ensure assumptions of costs and values are realistic and broadly accurate**.....Plan makers may then revise their proposed policy requirements to ensure that they are **creating realistic, deliverable policies.**'*

Paragraph 007 Reference ID: 10-007-20190509 of PPG on viability confirms the circumstances where Viability Assessment at the **decision making stage** could be appropriate and includes **'for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan;** where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); or where a recession or similar significant economic changes have occurred since the plan was brought into force.'

The Council have correctly tested the sheltered / retirement housing, extra care and care home typology at this plan making stage in line with para 004 Reference ID: 10-004-20190509 of PPG on Viability, but despite the viability of retirement /sheltered housing /extra care housing with affordable housing being found to be challenging or substantially not viable within their own LPVS (exam ref: D/VA/02a and b) and evidence put to them that the typologies are not viable, through the various rounds of consultation, the Council have maintained their policy approach that specialist housing to meet the needs of older people, whether that falls into C2 or C3 use class, can deliver affordable housing to the same level of other developments. Indeed, the main modifications in effect go further and attempt to strengthen this approach. This is surprising given that the Council's hearing statement at para 6.12.5 appears to acknowledge the constrained viability by quoting their LPVS (exam ref: D/VA/02a and b):

'The Viability Assessment notes in paragraph 3.7.21 on page 76 in respect of the 'sheltered' and 'extra care' typologies:

'In our experience (in other Council areas to date) these schemes produce mixed viability outcomes and are frequently the subject of viability review and negotiation resulting in a commuted sum payment route towards affordable housing enabling off-site. Retirement and extra care developments do however typically support premium sales values levels, which tend to go some way to counteracting the often higher than standard development costs'.

The Council then justify through their hearing statement (CBC/MIQ/006 section 6.12 and 6.17) including the requirement for all older persons housing, whether C2 or C3, to have to provide affordable housing on the basis that the LPVS (exam ref: D/VA/02a and b) tested older persons housing schemes and that the LPVS (exam ref: D/VA/02a and b) included an allowance for Community Infrastructure Levy. However, the Council at Para 6.12.6 states that **'there is a strong likelihood that schemes containing self-contained dwellings for older people would still be characterised as C2 on the basis of communal facilities and on-site care provided, and as such would fall outside CIL as charged** via the Council's adopted CIL Charging Schedule 2016 (Post-Submission Document Reference: CBC/KD/CIL/01)' and this view is disputed.

Likelihood that a scheme is C2

Paragraph: 014 Reference ID: 63-014-20190626 of the PPG on housing for older people specifically says that *'It is for a local planning authority to consider into which use class a particular development may fall. When determining whether a development for specialist housing for older people falls within C2 (Residential Institutions) or C3 (Dwellinghouse) of the Use Classes Order, consideration could, for example, be given to the level of care and scale of communal facilities provided'*. It is therefore for the Local Planning Authority (LPA) to decide which use class such housing falls into and if this is not clarified within the Local Plan it will be up to the LPA at the decision-making stage. Neither the Local Plan nor the CIL charging schedule clarify which use class older persons housing fall into and therefore there will be no clarity or certainty as to which use class a development management officer will place an older persons scheme into. In addition the CIL charging schedule does not specifically exempt C2 uses.

Therefore, justifying a policy approach and modifications to a policy that in effects strengthens a flawed policy approach based in the hearsay of 'likelihood' that a DM officer will class a proposal as a C2 use is not a sound planning reason.

Justifying the approach by switching the CIL requirement to an affordable housing requirement

Notwithstanding the above lack of clarity due to lack of definition and whether a development management officer may class a proposed scheme C2 or C3, we note that the Council is advocating that they can simply switch the CIL amount in the LPVS (exam ref: D/VA/02a and b) into an affordable housing contribution. However, the Council do not appear to have considered that the amount their calculator is requiring for affordable housing is substantially more than that required by CIL. As such older persons housing proposals would then become even less viable than shown in the LPVA.

For example, we note that the currently indexed rate for CIL for a C3 scheme is currently in the 2024 CIL schedule is £140.59 /sqm. Para 2.12.11 of the Council's statement confirms that *'the 'Affordable housing Calculator' would be used to establish the contribution due from developments involving an element of care (whether to be provided on or offsite). This would be calculated (as with the existing calculator) on the basis of a floorspace levy, though this would be based on net sale area (NSA) rather than the gross internal area (GIA) of the development as a whole, in order to make allowance for the high proportion of communal space which typically exists in such developments. On this basis, a levy of £350 per square metre would be used, as currently, to reflect the boroughwide 40% requirement. A lower levy of £218.75 per square metre would be applicable for the purpose of achieving the 25% requirement in the Town Centre'*.

The Council have provided a worked example in their hearing statement on page 38 para 6.12.13 and this is the same as MM41. This concludes:

'C2 Scheme: A scheme with a Gross Internal Area (GIA) of 10,000 square metres, outside the Town Centre, comprising 100 self-contained dwellings, and with a Net Sale Area (NSA) of 6,500 square metres, would result in an affordable housing requirement of £2,275,000.00 (£350 x 6500).'

Overall, this would clearly result in a requirement of £2,275,000.00. If this 10,000 sqm floorspace was instead translated into a CIL requirement, at the current 2024 rate of £140.59 /sqm, this would result in a CIL payment of £1,405,900, leaving a difference or shortfall of £869,100. The rate of £350 per square metre, even on a net floor area basis would therefore result in a substantially greater planning obligation being requested than that of the CIL used in the LPVS (exam ref: D/VA/02a and b), and this is all on the basis that the development management officer seeks to define all forms of specialist housing for older people as C2 housing at the application stage and exempts the scheme from CIL.

This example clearly shows that the CIL amount used in the LPVS (exam ref: D/VA/02a and b) cannot simply just be replaced by an affordable housing requirement as the affordable housing amount is substantially greater and such a requirement would make older persons housing schemes even less viable than that shown within the councils LPVS (exam ref: D/VA/02a and b).

Flexibility / Exceptional circumstances

Policy H5 does try to provide some flexibility (as required by the PPG) to the way the policy is implemented in 'exceptional circumstances'. However, the policy confirms that *'The council will only consider relaxing this*

affordable housing requirement, in part or in full, in exceptional circumstances, **where a scheme is clearly subject to abnormal costs, not including land costs, and not otherwise envisaged by the Local Plan Viability Assessment**’.

However, specialist housing for older persons has been tested and envisaged by the LPVS (exam ref: D/VA/02a and b) and therefore there is great concern that not only would a development management officer define an older persons scheme as C3 housing and Require CIL and affordable housing, as no definition is provided, but they also **not deem** such housing to be exceptional as it has been tested within the LPVS (exam ref: D/VA/02a and b) and thereby not apply flexibility.

Conclusion

The requirement for all ‘residential development, including those providing care regardless of whether it falls into Use Class C2 or C3’ is not justified and will not be effective in delivering the older persons housing need within the Borough. This approach is not consistent with national policy and undermines delivering much needed specialist housing to meet the needs of older people. Specifically, the approach is not consistent with paragraphs 002 Reference ID: 10-002-20190509 and Paragraph 004 Reference ID: 10-004-20190509 of PPG on Viability.

The Council have attempted to justify the affordable housing requirement for specialist housing for older people within their hearing statement (CBC/MIQ/006 section 6.12 and 6.17) by implying that there is a likelihood that any form of specialist housing for older person housing will be deemed to be C2 and therefore subject to a zero charge in respect to CIL, despite the Council having no definition, and that as the C3 CIL charge had been included in the Councils viability appraisal this sum could simply counterbalance the affordable housing requirement. However, the affordable housing requirement, using the example given in the hearing statement (CBC/MIQ/006 section 6.12 and 6.17), shows such a financial sum to be much more substantial than the CIL charge which would result in schemes being even less viable than already shown to be in the LPVS (exam ref: D/VA/02a and b). The Council’s justification is therefore flawed.

In addition, there is no certainty that a development management officer would class specialist housing for older people into the C2 use class and exempt it from CIL or that they would consider older persons housing to be an exceptional circumstance and flexibility provided, as the typology has been tested through the Local Plan Viability Assessment.

The Main modifications are therefore not justified and not consistent with national policy. The modification will not be effective at delivering any of the much needed private specialist housing for older people including care homes indeed the main modification will make schemes even less viable and the plan less effective.

If the examiner does not feel they can provide exemption to older peoples housing to providing affordable housing in accordance with the evidence, as should be the case for the plan to be justified, in our Matter 6 Issue 2 hearing statement para 6.17.24 (REP-133-001) we put forward some amendments to the policy to ensure clarification and flexibility to the policy and again advocate these in order for the examiner to find the plan sound. For east the flexible amendments recommended were as follows:

Amend para 1 of the policy to read:

40% affordable housing will be required from all residential development, ~~including those providing care regardless of whether it falls into Use Class C2 or C3,~~ resulting in a net increase of at least one new housing unit across the borough which fall outside the Town Centre.

Delete para 7 ‘Affordable Care’ as follows:

Affordable Care

~~**This Policy applies to all new residential developments, including those providing care, regardless of whether it falls under Use Class C2 or C3. Affordable provision for such schemes should be met on-site and equate to:**~~

~~**▲ Borough Wide: 40% affordable provision (tenure to be determined);**~~

~~**▲ Town Centre: 25% affordable provision (tenure to be determined).**~~

~~**For traditional Care Homes, the requirement will be for the provision of the equivalent percentage in affordable care beds in order to meet the Policy.**~~

Amend para 9 as follows:

The Council will only consider relaxing this affordable housing requirement, in part or in full, in exceptional circumstances, where a scheme is clearly subject to abnormal costs, not including land costs, and not otherwise envisaged by the Local Plan Viability Assessment. This must be evidenced by robustly assessed viability appraising various permutations of affordable housing provisions to best address local affordable housing needs which will be independently assessed. Should concessions be agreed by the Council then claw-back mechanisms will be expected to be put in place **for multi-phased development schemes** and independently monitored. The scheme must also evidence that it addresses a demonstrative and immediate housing need.

Add to end of policy

Specialist older persons' housing including sheltered and extra care accommodation falling into either C2 or C3 of the use class order is an exceptional circumstance. Proposals delivering older persons housing will be considered on a case-by-case basis in terms of viability and affordable housing and given the single phased nature of such schemes will not be subject to a review mechanism.

Thank you for the opportunity for comment.

Yours faithfully

N. Styles

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