


Non-Executive Report of the: Housing Scrutiny Sub-Committee 10th October 2016	 TOWER HAMLETS
Report of: Melanie Clay, Director of Law, Probity and Governance Aman Dalvi, Corporate Director Development and Renewal	Classification: Unrestricted
Challenge session progress update – The Quality of s106 funded Social Housing	

Originating Officer(s)	Owen Whalley, Service Head Planning and Building Control Jackie Odunoye, Service Head Strategy, Regeneration and Sustainability Paul Buckenham, Development Manager, Planning and Building Control Alison Thomas, Head of Housing Strategy, Partnership and Affordable Housing Kevin Kewin, Interim Service Head Corporate Strategy and Equality Louise Fleming, Strategy, Policy and Performance Officer, Corporate Strategy and Equality
Wards affected	All

Summary

This report follows up from the scrutiny challenge session on the Quality of s106 funded Social Housing. The report and recommendations were agreed by the Overview and Scrutiny Committee in April 2015. An action plan was developed to address the recommendations. The report and accompanying action plan was endorsed by Cabinet in November 2015. This report reviews the progress against the original recommendations.

Recommendations:

The Housing Scrutiny Sub-Committee is recommended to:

1. Note the progress in implementing the recommendations from the scrutiny challenge session, based on the evidence in the action plan.

2. Raise any issues in relation to the progress detailed in the action plan

1. DETAILS OF THE REPORT

- 1.1 This report follows up from the scrutiny challenge session, led by Councillor David Chesterton on the Quality of s106 funded Social Housing. The report went to Overview and Scrutiny Committee in April 2015. An action plan was developed to address the recommendations. The report and accompanying action plan was agreed by Cabinet in November 2015. This report reviews the progress, detailed in the action plan, against the original recommendations.
- 1.2 Overview and Scrutiny identified a concern amongst some councillors and residents that the quality of the social housing being built in the Borough through s106 agreements was not robust enough and there were concerns about landlord's ability to maintain these properties over the long-term. There was an issue that the materials being used in construction were not suitable for high density social housing, with a much greater intensity of use than private dwellings.
- 1.3 The focus of the challenge session was therefore to see if there was an issue with the design and build quality of some of the affordable housing in the Borough provided through s106 planning obligations. If there was an issue, what changes to planning policy, practice or procedures could be made to address these concerns, whilst still ensuring the continued provision of affordable housing in the Borough. The session was chaired by Councillor David Chesterton, the then Scrutiny Lead for Development and Renewal.
- 1.4 The report made four recommendations they included:
 - RECOMMENDATION 1: The Council investigate the feasibility of adopting a minimum design standard, developed with the Tower Hamlets Housing Forum, governing materials specification, enforced through the planning process, as part of its refresh of the Local Plan.
 - RECOMMENDATION 2: The Council reinvigorate the LBTH Developers Forum and encourage developers to identify and work with a Registered Provider from the Council's preferred list earlier on in the planning application process.
 - RECOMMENDATION 3: The Council work in partnership with Registered Providers through the Tower Hamlets Housing Forum to develop specific expertise in contracting for and managing high density developments, and to encourage reinvestment of money into existing housing stock.
 - RECOMMENDATION 4: The Council consider options and resources available to monitor and enforce compliance with S106 legal agreements.

- 1.5 Progress against each recommendation is recorded in the accompanying action plan (Appendix One).
- 1.4 Of the four actions developed by services in the scrutiny action plan, all were due to be completed in 2015/16, with one action ongoing. There has been progress in delivering the actions.

2. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 2.1 This report requests the Housing Scrutiny Sub-Committee to note the progress in implementing the recommendations from the scrutiny challenge session, and raise any issues in relation to the aforementioned progress.
- 2.2 Appendix 1 outlines the progress made in implementing the recommendations from the scrutiny challenge session; the work undertaken has been absorbed within existing staffing structures and budgets.

3. LEGAL COMMENTS

- 3.1 This report notes the progress made in implementing the recommendations from the scrutiny challenge session which asked officers to consider options available to the Council to seek to drive up the quality of affordable housing. The importance of building high quality affordable housing cannot be down played, however the planning system is primarily concerned with the broader impacts of development such as *inter alia*, the external appearance, impacts on neighbouring properties, and the internal quality in respect of space and daylight/sunlight for the residents living within the development. Setting minimum standards which governed the quality of internal materials would go beyond the level of detail normally considered to be controlled through the planning system. As such if the Council were to seek to control internal standards in this detail there is a prospect of a legal challenge against any decision to do so. Because the planning regime is normally considered to be plan led, the Council would have a more robust basis for seeking compliance if the requirement flowed from national policy, whereas there is currently nothing in national policy or guidance to suggest that the planning system should extend this far.
- 3.2 A planning application must be determined in accordance with the development plan unless material considerations indicate otherwise. The scope of what has been considered by the Courts to be a material consideration in determining a planning application is broad and case law provides that in principal any consideration which relates to the use

and development of land is capable of being a material planning consideration.

- 3.3 It is therefore open to the Council to adopt guidance on the quality of affordable housing and this could be considered a material consideration in determining planning applications, with applicants and registered providers being steered towards the guidance through the pre-application process, through the Developer Forums and Tower Hamlets Housing Forum Development Sub-Group. There is however a question as to how much weight it would be reasonable to give the design standards given they are likely to extend beyond that normally controlled by the planning system. There is also a further question as to how compliance with them could be secured in light of this.
- 3.4 National policy and the Community Infrastructure Levy Regulations 2010 provide that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 3.5 It is questionable whether an obligation securing compliance with internal design standards would meet the first of these tests because it would go beyond what is normally within the remit of the planning system. Any obligation would also need to be capable of being monitored and significant resources could be required to monitor compliance with a detailed design standard. The enforcement of a planning obligation requires injunction proceedings to be filed in the High Court. As such it could be onerous for the Council to enforce through this mechanism and the cost of doing so is unlikely to be proportionate.
- 3.6 An approach which operates alongside the planning system, through partnership working with developers and registered providers and tries to increase standards would not give rise to the same questions and might be preferable for this reason. However, it should be noted that this would not give the Council the power to enforce compliance through the planning system.
- 3.7 When considering whether to adopt any guidance or standards whether formally or otherwise, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). An equality analysis is required

which is proportionate to the functions in question and the potential impacts. To this end it should be noted that the adoption of minimum standards could lead to an increase in the build costs associated with developments, which would affect the viability of schemes. In turn this could impact on the amount of affordable housing which can be delivered.

4. ONE TOWER HAMLETS CONSIDERATIONS

- 4.1 The scrutiny report's recommendations support the Council's One Tower Hamlets aims, including to reduce inequality. The Council has strategic objectives to provide good quality affordable housing and to improve the quality of housing. The scrutiny report identifies an inequality relating to housing tenure. The report sets out concerns that some affordable housing, built by private developers under s106 agreements, may not be fit for purpose. The report's recommendations propose a number of actions to help address this and the action plan sets out the progress made.

5. BEST VALUE (BV) IMPLICATIONS

- 5.1 The recommendations in the report and the resultant action plan, are made as part of the Overview & Scrutiny Committee's role in helping to secure continuous improvement for the Council, as required under its Best Value duty.

6. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 6.1 There are no direct environmental implications arising from the report or recommendations.

7. RISK MANAGEMENT IMPLICATIONS

- 7.1 There are no direct risk management implications arising from the report or recommendations.

8. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 8.1 There are no direct implications of crime and disorder as a result of the recommendations of this review.

9. SAFEGUARDING IMPLICATIONS

- 9.1 There are no direct implications of safeguarding as a result of the recommendations in this review.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

Appendix 1 – Action Plan

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

N/A

Appendix 1 – Quality of s106 Social Housing Challenge Session Action Plan

Comment	Action	Responsibility	Date	Progress Update - September 2016
Recommendation 1: The Council investigate the feasibility of adopting a minimum design standard, developed with the Tower Hamlets Housing Forum, governing materials specification, enforced through the planning process, as part of its refresh of the Local Plan.				
<p>Current government guidance is suggesting less intervention for local planning authorities on internal design arrangement and materials.</p> <p>However, local guidance could be produced and used as a material consideration on determining planning applications.</p> <p>Resource implications: Existing resources</p>	<p>Working Group to be set up to explore feasibility of delivering design guides</p>	<p>Jackie Odunoye/Owen Whalley</p>	<p>October 2015</p>	<p>A Working Group has been established comprising officers from LBTH Legal, DM Planners, Strategic Planners and the Affordable Housing and Partnerships Team</p>
Comment	Action	Responsibility	Date	Progress Update - September 2016
Recommendation 2: The Council reinvigorate the LBTH Developers Forum and encourage developers to identify and work with a Registered Provider from the Council's preferred list earlier on in the planning application process.				
<p>LBTH Developers Forum relaunched. Two meetings held this year. Private House builders – Registered Providers invited and attend</p> <p>Resource implications: Existing resources</p>	<p>To be included as agenda item for discussion at next Forum</p>	<p>Owen Whalley/Paul Buckenham</p>	<p>September 2015</p>	<p>A Developer Forum has been arranged for 10 October. Registered Providers (RPs) will also be invited to attend. This work will be included as an item on the agenda.</p>

Appendix 1 – Continued

Comment	Action	Responsibility	Date	Progress Update - September 2016
Recommendation 3: The Council work in partnership with Registered Providers through the Tower Hamlets Housing Forum to develop specific expertise in contracting for and managing high density developments, and to encourage reinvestment of money into existing housing stock.				
<p>Tower Hamlets Housing Forum Development Sub Group to set up a sub-group to share expertise on managing high density schemes</p> <p>This sub-group will also act as an advisory group for the South Quay Master plan and the affordability commission</p> <p>Resource implications: Existing resources –</p>	<p>Agenda item for the September meeting to set up sub group</p>	<p>Jackie Odunoye/Alison Thomas/Jen Pepper</p>	<p>September 2015</p>	<p>Tower Hamlets Housing Forum Development (THHF) Sub-Group met on the 22 September 2015 and a presentation was given by Swan HA on the outcome of the Overview and Scrutiny Group and the request for THHF Preferred Partners to take this piece of work forward. it was agreed that a sub-group be set up and a follow up email was sent at the beginning of October calling for volunteers from THHF dev-sub to get involved.</p>
	<p>Sub- group to meet and produce details of costs in contracting for and managing high density housing</p>	<p>Jackie Odunoye/Alison Thomas/Jen Pepper</p>	<p>November 2015</p>	<p>Swan HA, on behalf of the sub-group, tendered for the services of a consultant to help draw up a guidance note with a number of internal and external design and construction standards to be used by members of THHF when working with developers to build affordable housing secured as planning obligations. Philip Pank Partnerships were appointed and ran a workshop, which was very well attended, at Swan HA Offices in November 2015.</p> <p>Since then a draft guidance note has been produced which covers core standards, common parts, external walls, roofs, balconies and terraces, windows and external doors, internal partitions, internal doors, wall, floor and ceiling finishes, kitchen units, plumbing and mechanical services, electrical services, centralised energy, vehicular and pedestrian gates, drainage and external services, landscaping, maintenance and scheme management.</p> <p>This draft document is currently being reviewed by THHF and the internal working group.</p>
	<p>Affordability Commission advised of outcomes of research</p>	<p>Jackie Odunoye/Alison Thomas/Jen Pepper</p>	<p>March 2016</p>	<p>A Developer Forum has been arranged for 10 October. Registered Providers (RPs) will also be invited to attend. This work will be included as an item on the agenda.</p>

Appendix 1 – Continued

Comment	Action	Responsibility	Date	Progress Update - September 016
Recommendation 4: The Council consider options and resources available to monitor and enforce compliance with S106 legal agreements.				
<p>The Development Management Service actively monitor compliance with planning permissions and associated agreements</p> <p>Resource implications: Existing resources –</p>	<p>1) Seek legal advice on potential incorporation of minimum standard without affordable housing S106 agreements.</p>	<p>Owen Whalley/Paul Buckenham</p>	<p>September 2015</p>	<p>Initial Legal advice is that detailed minimum standards covering matters such as internal finishes, fixtures and construction standards could not be insisted upon in Legal Agreements made under S106 of the Town and Country Planning Act, unless this was linked back to planning policy.</p> <p>Introducing this formally to the Council's planning policies is not straightforward for a number of reasons. The Government published "Nationally described space standards" for new dwellings in 2015 and noted that local authorities should only adopt different internal standards if there is a clear evidence based need and uses this to underpin policies in the local plan.</p> <p>The standards in the guidance being produced for THHF (see above) would also go beyond the remit of town planning and would be contested if introduced into the Council's emerging Local Plan as a formal policy. However, if these standards are adopted by registered providers who are represented on THHF (the Council's preferred partners), the Local Plan could reference the guidance in the supporting text to the policies and planners would also refer developers to the standards in their negotiations at pre-application stage to encourage developers to approach the preferred partner RP's early on in the development process.</p> <p>Whilst it is not possible to specify which RP a developer works with when granting planning permission, the informal approach outlined above should result in the standards being embedded in a high proportion of S106 affordable housing schemes.</p> <p>Once THHF has adopted the guidance the planning teams will be updated and the approach will be communicated to a range of key developers in Tower Hamlets at the next Developers' Forum, being arranged for October 2016.</p>
	<p>2) More focused approach to compliance through restructure of Development Management Service which includes the creation of a more substantive dedicated compliance team.</p>	<p>Owen Whalley/Paul Buckenham</p>	<p>December 2015</p>	<p>The restructure of Development Management was substantially completed in December 2015, including an expansion of the former Enforcement Team of four officers, to provide a more comprehensive Planning Compliance Team with a total of seven officers including a Team Manager, Compliance Officers, Service Development Officer and Project Officer. New job descriptions have been agreed and grades enhanced to allow for greater career progression.</p>
	<p>3) A regular report to the Development Committees is to be introduced to enable Members to better understand the delivery of S106 agreements. Half yearly newsletters are published on the Council's website providing information on S106 delivery.</p>			<p>Regular reports have been introduced to update the planning committees on the delivery of planning obligations secured through Section 106 agreements. The first of these reports was presented to Strategic Development Committee on 10 March 2016.</p>