

How we did it: Holding developers to housing delivery

25 November 2016 by Lee Baker , Be the First to Comment

How one planning authority is pioneering a new method for ensuring the swift build-out of housing permissions that ministers are urging. By Lee Baker.



Delivering homes: Central Bedfordshire's director of regeneration and business Jason Longhurst and development infrastructure group manager Andrew Davie (Pic: Central Bedfordshire Council)

Project: Central Bedfordshire Council's five-year delivery clause for developers

Organisations involved: Central Bedfordshire Council, Saira Kabir Sheikh QC, David Wilson Homes

Many local authorities have expressed frustration at the pace of the delivery of housing schemes after they are granted planning permission. Now the government seems to be listening sympathetically. Planning minister Gavin Barwell told a Conservative Party Conference fringe event in October that it was considering a

Key lessons

- **Take time to brief council members and your key developers to explain the rationale behind imposing delivery timescales.** It is important that members support the approach and that developers understand its motivation, say Central Bedfordshire planners
- **Be bold when considering different planning solutions**

requirement for developers to provide councils with a "clear timetable" indicating build-out rates before they are given consent.

However, one authority has already started stipulating the rate at which developers must build out housing consents. At the start of this year, Central Bedfordshire Council introduced a requirement for developers of residential schemes to identify how many homes they would build within five years of gaining permission.

Because it does not have a five-year supply of housing land, the authority's local plan policies have been rendered out of date under the National Planning Policy Framework, so it is vulnerable to development that is contrary to local policies being approved.

Jason Longhurst, the council's director of regeneration and business, and Andrew Davie, its development infrastructure group manager, felt they needed to ensure that approvals are built out more rapidly and thereby make a bigger contribution to the five-year supply. Longhurst adds: "Developer reticence to build on approved sites has been an ongoing frustration." He adds that 10,000 of the homes planned for by the council are "part of two of big schemes, but the sites are not yet contributing to supply".

There have been calls, for instance by the House of Lords' economic affairs committee, for developers to face penalties for not building out approved homes. Last autumn, the council had a different idea: using section 106 planning gain agreements, which are negotiated with developers before permission is granted, to specify the rate at which homes must be built.

It sought legal advice from Saira Kabir Sheikh QC, a barrister at Francis Taylor Building, who describes the move as "innovative". She says: "Often, a scheme conflicts with policy and is only acceptable because it will contribute to a five-year housing supply. I advised that it is reasonable to require schemes to contribute to that supply." She also advised that the clause could only be used while the area does not have a five-year supply.

The authority decided to introduce the clause to section 106 agreements, rather than through the adoption of a formal planning policy. Davie says: "As the delivery clause does not seek financial contributions, it does not require the adoption of policy and can be executed under the defined use of section 106 in the Town and Country Planning Act 1990."

Davie says that the quantity of proposed homes to be built within five years outlined in the clause varies between applications, but the council aims to secure 100 per cent. "But we recognise that some larger developments have infrastructure requirements that make it unfeasible to achieve this," he says.

The first developer to be subject to the clause was David Wilson Homes, which had submitted an application for two developments of 42 and 31 homes. The housebuilder was initially surprised at the request, according to Longhurst. He says: "They wanted to

to help achieve your goals.

Once you've found a solution, it helps to promote its benefits as contributing to the national growth agenda, says the council.

- **Keep your initiative as simple as possible and avoid procedural complications.** Explain the measure simply and seek legal advice for clarity on the process needed to implement it, suggest Central Bedfordshire planners.

understand our reasons, given that they were committed to delivery." After some discussion, the firm accepted the approach, confident that it could complete its scheme in the agreed timescale. This required all proposed homes to be built between 36 and 60 months after the agreements for the two schemes were signed in May this year.

Mindful of the delivery challenges faced by housebuilders, such as finance hurdles and construction skills shortages, the council's planners say that they will only ask for build-out rates that are both achievable and desirable. Davie adds that the clause might delay planning applications because extra work is required by applicants ahead of submission to ensure the site is ready to deliver.

However, he says it will also lead to less renegotiation of signed agreements where the developer subsequently discovers a site constraint. "We're happy to support developers to gain a greater understanding of how fast a site can be built out. But we expect them to complete due diligence before they submit an application," he says.

The council says that the clause is now standard in all its section 106 agreements and will be applied to two further consented schemes. If a developer does not abide by the agreement and no significant unforeseen change has prevented building, Davie says the council will apply for a High Court injunction requiring the applicant to build the houses they have agreed to.

The authority is keen to continue to use the clause after it achieves a five-year housing land supply. In this respect, Longhurst and Davie were heartened by Barwell's support of delivery timetables in his party conference announcement. Davie says: "We want 'delivery' to be a specific material planning consideration, so that the clause could apply in circumstances where we have a five-year housing supply."