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## Introduction

North West Leicestershire District Council has a strategic responsibility to meet the housing needs in the District.

The National Planning Policy Framework 2019 (NPPF) defines Affordable Housing as “*Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision*”. The NPPF sets out the types of tenures that are acceptable forms of Affordable Housing.

The purpose of this Supplementary Planning Document is to support the delivery of affordable housing in North West Leicestershire particularly through the operation of Policies H4 and H5 of the North West Leicestershire Local Plan 2017 [\[insert link\]](#). The SPD covers the following specific matters;

- alternative ways to secure site-based provision which should be explored before commuted sums are considered
- examples of circumstances which could be sufficiently ‘exceptional’ to justify commuted sums
- two approaches for calculating commuted sums
  - where viability is an issue, the contribution is that which can be afforded based on an independent review of the applicant’s viability assessment. The requirements for the viability assessment are set out in the SPD.
  - in all other cases, the contribution is based on the value of the affordable housing which would have been provided on site. The methodology is set out in the draft SPD.
- timings of when commuted sums must be paid
- the types of measures commuted sums could be spent on
- information about what we expect to see in viability statements where viability has been raised as a concern;

## Planning Policy Position

### Overview of National Planning Policy

The National Planning Policy Framework 2019 (NPPF) sets out the three overarching objectives of the planning system namely an economic objective, a social objective and an environmental objective. One aspect of the social objective is to ensure that “a sufficient number and range of homes can be provided to meet the needs of present and future generations”.

Relevant sections of the NPPF which relate to affordable housing include the following:

- the definition of affordable housing includes affordable housing for rent, discounted market sales and other affordable routes to home ownership (Annex 2 Glossary).
- plan policies should set out the levels and types of affordable housing which will be required as part of development and should do this in a way which does not undermine the overall deliverability of the plan (paragraph 34)

- the size, type and tenure of homes required for different groups in the community (including those who require affordable housing) should be assessed and reflected in plan policies (paragraph 61)
- the presumption is that affordable housing will be provided on site unless “a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities.” (paragraph 62)
- affordable housing should not be sought on schemes which are not major development (paragraph 63)
- in certain circumstances, a reduced affordable housing requirement applies to schemes which reuse/redevelop vacant buildings (paragraph 63)
- subject to some exceptions, at least 10% of the homes on major sites should be for affordable home ownership (paragraph 64)
- opportunities for local affordable housing needs to be met by means of rural exception sites should be supported and this could be enabled by the inclusion of an element of market housing in the scheme (paragraph 77).
- Local planning authorities should support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home), unless the need for such homes is already being met within the authority’s area (paragraph 71).

## Overview of Local Planning Policy

### Local Plan

The North West Leicestershire Local Plan 2017 [[link to be inserted](#)] provides the local planning policy framework for the district for the period to 2031. The plan contains 15 overarching objectives; objective 2 is to “support the delivery of new homes balanced with economic growth to provide a stock of housing that meets the needs of the community, including the need for affordable housing”.

Local Plan Policy H4 deals with the matter of affordable housing. The policy sets out the affordable housing percentage requirements according to a) settlement and b) whether the site is greenfield or brownfield, where a site is being brought forward as general market housing.

The policy does not provide detail on the tenure of affordable housing being delivered however Part (3) states

“The Council’s preference is for on-site affordable housing provision which should:

- include a mix of types and tenure that reflects the type and nature of any need at the time that the application is determined;”

The evidence base for the adopted Local Plan (currently under review) revealed a tenure split 80:20 between social/affordable rent and intermediate tenures. ([HEDNA 2017](#) Table 43 paragraph 7.57)

The viability study prepared in support of the adopted Local Plan tested affordable housing scenarios based on 81% rented provision (split evenly between social and affordable rent) and 19% Shared Ownership ([Paragraph 3.3.1](#) (Local Plan Viability Study 2015) and section 3 (Proposed Publication Version Local Plan, Viability Review (Addendum) 2017)).

Part (2) of the policy identifies that site characteristics and financial viability will be taken into account when agreeing affordable housing provision and that the council will take a positive approach when viability is an issue.

Part (4) deals with legal agreements and part (5) addresses affordable housing for the elderly.

A copy of policy H4 is attached at Appendix 1

Policy H5 sets out the considerations which will apply to applications for rural exceptions sites. The purpose of the policy is to enable the delivery of affordable housing to meet local housing needs in locations outside the Limits to Development where new housing would not normally be allowed. Policy H5 requires the local affordable housing need to be demonstrated through evidence and confirms that legal agreements will be used to ensure that the affordable housing is for local needs and remains affordable in perpetuity. The policy also sets out site specific criteria and describes the circumstances when an element of market housing would be acceptable on a rural exceptions site.

A copy of policy H5 is attached at Appendix 2

Policy H6 deals with housing types and mix. It sets out that “We will seek a mix of housing types, size and tenures in new housing developments of 10 or more dwellings, in order to meet the identified needs of the whole community.” This policy is applicable to both market and affordable housing lead schemes. To ensure that identified needs are met it is expected that all affordable rented housing delivered in the district is covered by a nominations agreement with the Housing Department in line with our standard legal agreements.

A copy of Policy H6 is attached at Appendix 3

### Neighbourhood Plans

There are currently two made Neighbourhood Plans in the district. Policy H5 of the Ashby de la Zouch Neighbourhood Plan is concerned with affordable housing. The percentage requirements and site size thresholds it contains match those in Local Plan Policy H4 and it also requires at least 40% of the affordable housing to be 1- or 2-bedroom homes. Commuted sums, where justified, should be used to fund affordable housing in Ashby de la Zouch or specialist accommodation elsewhere in the district.

Policy H2 of the Ellistown and Battleflat Neighbourhood Plan requires a mix of affordable housing types and sizes to match parish needs. The provision of smaller affordable homes and those for people with a local connection is supported.

### Changes to National Policy since the adoption of the local plan

Since the Local Plan was adopted in November 2017, the Government has introduced or announced several changes which are relevant to the content of this SPD.

1. **Site size threshold.** The NPPF confirms that the site size threshold for affordable housing is schemes of 10 dwellings or more or where the site is 0.5Ha or more. This means that the Local plan policy is misaligned with the NPPF as Local Plan Policy H4 that sets a threshold of 11 dwellings/1,000sqm in Local Plan Policy H4 which was based on a previous Written Ministerial Statement on the subject. The council applies the national site size threshold to application proposals. This creates a scenario where sites of 10 dwellings are subject to the national policy requirement for affordable housing as explained below whilst the Policy H4 applies to sites of 11 or more (or more than 0.5Ha.)
2. **10% Affordable Home Ownership.** The NPPF expects that at least 10% of the homes on a site which triggers an affordable housing requirement should be for affordable home ownership. The council applies this requirement to application proposals The NPPF glossary gives examples of affordable home ownership products and this includes discounted market sales housing, shared ownership, equity loans, other low cost homes for sale and rent to buy. Therefore, sites of 10

units are subject to this provision and at least 1 home should be provided as affordable home ownership.

3. **Starter homes.** Whilst the statutory framework for Starter Homes is provided by the Housing and Planning Act (2016), the necessary secondary legislation to enable Starter Homes to be delivered through the planning process has never been laid before Parliament. The Ministry of Housing, Communities & Local Government no longer has a budget dedicated to the delivery of Starter Homes.
4. **Entry Level Exception Sites.** Entry level exception sites are exception sites providing housing suitable for first-time buyers or renters. They are sites unallocated in the local plan on the edge of existing settlements. The government has proposed that changes to the NPPF will see this category removed, but at the present time it has not published the change.
5. **First Homes.** First Homes are a form of discounted market housing specifically for first-time buyers where the discount is at least 30% of the full market value. The Government introduced First Homes in the Written Ministerial Statement of 24 May 2021 and in updated planning practice guidance issued the same day. Homes which meet the specified First Homes criteria qualify as 'affordable housing' for planning purposes (from 28 June 2021 onwards). The discount must be secured through a legal agreement so that it is available to future purchases in perpetuity. The Written Ministerial Statement specifies that at least 25% of the affordable housing requirement on a site should be First Homes.

Planning Policy Guidance for First Homes states that “once a minimum of 25% of First Homes has been accounted for, social rent should be delivered in the same percentage as set out in the local plan. The remainder of the affordable housing tenures should be delivered in line with the proportions set out in the local plan policy.”<sup>1</sup>

The Government’s stance on the prioritisation of social rented units recognises their importance as part of a tenure mix. Policy H4 of the adopted Local Plan does not specify a tenure breakdown. However, evidence used to develop the plan identified was based on 81% of provision as rented units with the remaining 19% as Intermediate Equity Based Housing. Once account is taken of the requirement for 25% of the affordable housing requirement to be First Homes, the Council’s strong preference is for the balance of any requirement to be met with social rented units which are the most suitable tenure option for those in the greatest housing need.

Any alterations to the First Homes criteria to make them more locally specific must be set through a Local Plan and such changes would need to be justified with evidence. This will be a matter for the Council to consider through its Local Plan Review process. In the meantime, the national criteria will be applied in planning decisions.

#### What do these changes mean for the application of policy H4?

The combined effect of the changes in national policy in respect of a) the First Homes requirement and the 10% affordable home ownership requirement on the requirements in Local Plan Policy H4, is best illustrated using examples:

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<sup>1</sup> <https://www.gov.uk/guidance/first-homes>

<b>Proposal</b>	<b>10% affordable home ownership</b>	<b>Policy H4 requirement</b>	<b>First Homes requirement</b>	<b>Remainder</b>
<b>80 dwellings on a greenfield site in Ashby de la Zouch</b>	10% of 80 = 8 affordable home ownership	30% = 24 affordable homes	25% of 24 = 6 First Homes which will be part of the affordable home ownership requirement	16 x other affordable tenures
<b>30 dwellings on a brownfield site in Coalville Urban Area</b>	10% of 30 = 3 affordable home ownership	5% = 1.5 rounded up to 2 affordable homes	25% of 1.5 = 0.38 First Homes rounded up to 1 (as 25% is a <u>minimum</u> requirement) which will be part of the affordable home ownership requirement.	Nil
<b>50 dwellings on a brownfield site in Measham</b>	10% of 50 = 5 affordable home ownership	15% = 7.5 rounded up to 8 affordable homes	25% of 7.5 = 1.88 First Homes rounded up to 2 which will be part of the affordable home ownership requirement.	3 x other affordable tenures

## Cascade Approach to Affordable Housing

Policy H4 sets out the level of affordable housing that should be delivered on sites based on location and site type. These contributions were set following viability testing of the overall plan and so the expectation is that any site coming forward can deliver the prescribed affordable housing and remain viable.

The assumption for any development should be that provision will be onsite. We would expect this to form part of the design brief for any new proposal and the site be designed accordingly.

With creativity and forethought it is expected that almost any site can be designed to support an on-site affordable housing contribution.

The Council's preference, therefore, as set out in Policy H4 is for affordable housing to be delivered onsite and we expect developments to be planned with this approach in mind.

Furthermore, we would secure this expectation through a section 106 agreement.

This agreement will include a cascade approach. This approach will establish the steps that are required to be taken in the event that post the conclusion of a S106 Agreement it is suggested that

the agreed on-site provision is not possible. The cascade approach adopts the following priority order:

- consideration of alternative on-site provision then,
- off-site provision then
- the use of commuted sums.

These are considered in more detail below.

### On Site Provision

Where a site has viability constraints that make a policy compliant contribution undeliverable the Council will in the first instance discuss either a reduction in the amount of affordable housing and/or a switch of tenure to create a more favourable financial position. The developer will need to evidence via a viability assessment why the policy compliant contribution cannot be achieved.

The assessment will then need to consider what if anything the site could deliver having regard to the following which are not in priority order -

- a) A different mix of tenures
- b) all rented
- c) all Affordable Home Ownership
- d) a different mix of properties
- e) overall numbers
- f) changing the delivery timescale

### Off Site Provision

Where it is concluded that a development cannot provide the affordable housing on site or the site has such constraints that the affordable housing on site would severely constrain the development, then the equivalency principal will be applied whereby we would expect the equivalent level of affordable housing provision to be delivered off-site or through a commuted sum payment as would have been secured on site.

Where off -site provision is to be made the developer should look to provide the equivalent affordable housing provision offsite through alternative development on land under their control or by making arrangements with another developer to provide the same. Any off site provision should account for the affordable housing requirement of the combined sites treated as a whole.

Where a developer promotes this approach, the Council will require clear evidence as to why on-site provision cannot be achieved or demonstrate the added value that delivering offsite would bring over and above the onsite contribution. This will be entirely at the discretion of the Council.

### Commuted Sums

Where provision cannot be delivered onsite or through offsite provision then a commuted sum payment will be agreed in lieu of housing where it is demonstrated the site can generate one.

A commuted sum is a capital payment by a developer towards the cost of providing essential infrastructure as part of new development.

### Commuted Sums and Planning Policy

The NPPF presumes that affordable housing will be provided on site unless there is clear evidence to support a commuted sum approach:



“Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless: a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities.”

**(paragraph 62, emphasis added)**

The adopted Local Plan reflects the NPPF position and states:

“In accordance with the NPPF our preference is for any provision to be made on-site. However, in exceptional circumstances, for example because of site specific constraints or demonstrable viability issues, then we may accept a sum of money (usually referred to as a commuted sum) instead and use this money to make provision for affordable housing on another site(s). ” (paragraph 7.34, emphasis added).

### Situations where on-site provision may not be achieved

There may be a limited number of situations where on-site provision is not possible and so the requirement for onsite provision may be waived. Exceptional circumstances will need to be demonstrated.

The situations described below may qualify as ‘exceptional circumstances’. In all cases, it would also need to be demonstrated how the approach would help to achieve mixed and balanced communities in accordance with the NPPF. It is recognised that one or more of these issues could impact upon the viability of a proposed development.

Local Plan Policy H4(2) identifies that site constraints can impact on affordable housing provision. As a starting point, however, a site which can physically accommodate market housing and is a sustainable location for market housing, should also be able to accommodate affordable housing.

Accordingly, there are likely to be limited circumstances where it can be agreed that a site is physically unsuitable for affordable housing. The Council would need to be convinced that the constraints identified could not be addressed and that the site is still likely to deliver market housing that was sustainable.

### Building conversions

Where an existing property is being converted, the existing physical structure may limit the ability to provide accommodation which would meet the standards expected for social housing such as space standards. Where a conversion does generate an amount of development which would require an affordable housing contribution, it would be for the developer to demonstrate how they have tried to incorporate affordable housing into the design and why this could not be achieved.

### Leasehold Properties

There may be circumstances where a development for practical purposes needs to be provided on a leasehold basis, for example in as part of an apartment based scheme.

Management arrangements and service charges can make such units unfeasible for transfer to a Registered Provider or may significantly impact the offer a Registered Provider would be able to make due to the need to fund future service charges out of the rent.

In the first instance we would expect such schemes to be designed in such a way as to allow the freehold of a proportion of the site to be transferred thereby putting all charges within the control of a Registered Provider and the requirements of policy H4 (3) to ensure affordable housing is indistinguishable may be waived.

### Specialist housing

There may be situations where specialist housing, usually with support provision, make it unfeasible to have affordable housing mixed with market units in the same residential block due to the need to manage the balance of residents centrally or because of the practicality of separating our access to communal facilities. As with general needs leasehold schemes however we would expect in the first instance an onsite solution to be considered.

### Where a need can be better met elsewhere

There may be very rare occasions where there is a particular need for a specific type of affordable housing. Where the Council has identified this specific need and where the Council (or a Registered Provider) has developed proposals, additional resources may be required to bring this forward. In such circumstances on occasion, the Council may agree to take a commuted sum to support development nearby in the district. This should only occur when a specific development has been identified and there is a need for additional financial support to bring it forward. Such circumstances will be discussed with the applicant.

### Lack of Registered Provider interest

There may be sites where there is no Registered Provider interest for reasons other than the number of dwellings. Occasionally Registered Providers may not have capacity in their Business Plans to be able to offer on planning gain sites and decline to offer on units. Historically North West Leicestershire has remained an area where Registered Providers still look for planning gain units and where demand has been lower than expected Registered Providers without stock in the district have stepped in.

Where there is a lack of interest from a Registered Provider, the developer should inform the Council of this in writing and provide the following information

1. The marketing strategy used to dispose of the Affordable Housing including copies of all marketing material and details of the length of time the Affordable Housing were marketed;
2. a copy of any offer letter and pack on which the Registered Provider was asked to offer; and
3. a copy of any responses received to the marketing or offer letter.

The Council will respond in writing informing the Owner/developer either:

1. that it is satisfied by the evidence provided and we move onto alternatives set out in the cascade; or
2. that the evidence we received is insufficient to make a decision and request further information and until we receive this the on site requirements remain; or
3. that we will look to either extend the timescales for entering into a contract for the transfer of the Affordable Dwellings to a Registered Provider or renegotiate the tenure split to reflect any Registered Provider's offer(s) to date .

The degree of flexibility afforded to the Council is dependent on the size of development, with fewer options available on smaller sites. **The preference will still be to maximise the onsite provision.**

### Calculation of Commuted Sum

There are two methodologies that may be applied for calculating a commuted sum. The first is the equivalency basis. This is where there will be an accepted policy compliant level of affordable housing but it has been agreed this will not be delivered onsite. The decision may be made at

planning application stage under a number of limited circumstances or after construction has started if it is identified that there is no RP willing to take on the affordable housing negotiated as part of the permission.

The alternative methodology is the viability basis. This is where a permission has been granted for a site where it has been demonstrated that no onsite delivery of affordable housing would be viable but where instead a commuted sum is to be paid.

#### Calculating a commuted sum on an equivalency basis

Where a commuted sum is being paid on an equivalency basis the Council will identify the value of the units that were expected to be delivered as affordable housing . It will then seek notional offers for the units were a Registered Provider to be willing to take them on and the commuted sum will be calculated by subtracting the notional offer from the market value to calculate the “subsidy level”.

A more detailed explanation of this calculation together with guidance notes is included in Appendix 4.

#### Calculating a Commuted Sum on the Viability basis

Where a developer believes that a development cannot deliver any onsite affordable housing this will in the first instance need to be backed up with a viability assessment.

The onus, in accordance with national policy, is on the applicant to demonstrate that market conditions and extraordinary costs mean that either a fully policy compliant provision on site is not viable or that no on-site provision is viable. Any viability assessment will need to be consistent with that set out in national policy (include reference to PPG).

To assist developers who are seeking to demonstrate a site is not viable with onsite affordable housing the Council has developed an Economic Viability Assessment Checklist, attached as **Appendix 5** to this document.

Any viability assessment submitted should comply with this checklist.

The Council will expect that the applicant will meet the cost of the viability assessment along with the Council’s reasonable costs for the independent checking and verification by the District Valuer or other independent valuer appointed by the Council.

It should be noted that any comparators in relation to costs or sale prices provided should be directly applicable to the development in question. If there are no developments in the same area, the Council would expect that similar developments in comparable market areas are used.

A decision will be reached based on the outcome of the independent viability assessment to ascertain what level of commuted sum can be supported.

This will then be secured through a section 106 agreement or amendment to the existing agreement if one is in place and will include details of the amount, or basis for calculating the amount if it is still to be determined and the phasing of payments.

#### Payment of Commuted Sums

The timing of further payments is negotiable and will generally reflect the size of development. The Council recognises that on small schemes it may not be possible to front load payments but unless specified in the legal agreement it is expected that payments will be delivered in the following tranches:

- 50% at commencement (or occupancy of a percentage of the market properties as contained in the legal agreement)
- 50% on occupation of the 80% market property (or as contained in the legal agreement)

### Use of Commuted Sums

Committed sums in lieu of onsite affordable housing are ring-fenced and can only be used to support the delivery of affordable housing.

When financial contributions are received, these will be spent on the provision of affordable housing through a range of mechanisms, including:

- grant aid to RPs to help them provide affordable housing in the District
- the Council's own programme for building affordable homes;
- any development company that may be formed by the Council;
- acquisition of land for affordable housing;
- to offset the cost of any land being provided by the Council which might otherwise be sold on the open market;
- purchase of second hand units for use as affordable housing;

The committed sum may be used to provide affordable housing anywhere in the district.

Whenever committed sum money is committed a pro-forma will be completed demonstrating the strategic fit of the spend, as well as identifying the contribution being released to demonstrate that the use meets the criteria of the receipt.

To recognise the timescales involved in progressing affordable housing scheme the Council will as standard include a 10 year spend period for any sums received before payments will be returned if unspent. However where committed sums have been ringfenced for specialist provision this period will be extended to 20 years in recognition of the added complexities involved.

### Monitoring

The Council will publish information yearly highlighting on the amount of committed sums received, the amounts spent & the schemes supported with committed sums and schemes with committed supported

### Affordable Housing-led Schemes

Although the majority of new housing sites will be market-led schemes, it is recognised that affordable housing-led schemes can make a significant contribution to the delivery of affordable housing in the district and may be a more appropriate vehicle for meeting specialist need. A scheme is considered an affordable-led scheme where the majority of units being proposed are an affordable tenure, but with an element of market housing as well to allow cross subsidy and to support a more balanced housing mix.

### Application of Local Plan Policies on Affordable Housing-led Schemes

Affordable-led schemes are still expected to adhere to the policies set out in the local plan.

As a result, affordable-led schemes are expected to demonstrate how they satisfy the requirement of policy H6 in terms of achieving a mix of housing types, sizes and tenures.

Furthermore policy H6(3) will apply on affordable-led schemes, unless an exception can be demonstrated, whereby a proportion of dwellings will be expected as suitable for the elderly and a proportion particularly suitable for people with disabilities on sites of 50 units or more.

## Other considerations that applicants should be aware of

### Design standards

The Council expects all rented properties be well designed and to be an adequate size for the households likely to occupy them. It is the Council's view that the space standards contained within the HCA Housing Quality Indicators document still reflect an appropriate standard to be achieved. All rented homes will be expected to meet the higher standards in terms of household numbers, for each property type.

In accordance with policy H4 the affordable housing should be integrated within the design and layout of a development such that they are externally indistinguishable from market housing on the same site.

To maintain affordability the council seeks to design out service charges at an early stage in the planning process. In general, flatted accommodation with communal areas will not be accepted as affordable housing as shared areas incur additional costs making the accommodation less affordable. It is therefore unlikely that flatted accommodation above two storeys will be supported as part of the Affordable Housing Scheme.

The Council will accept properties with communal areas where flatted schemes are designed to meet specific, specialist needs. Such specialist needs may include extra care schemes, enhanced sheltered schemes, or group supported schemes for households with for example, Learning Disabilities or for homeless accommodation

### Ownership of Affordable Housing

The Council expects any rented or shared ownership units to be transferred to a Registered Provider of Social Housing. This means:

A registered provider, as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by Homes England for the receipt of social housing grant as may be proposed by the Owner and approved by the District Council.

The Council's preference is to work with Registered Providers who are registered as development partners with Homes England so that we can support them to develop a broad portfolio of properties within the district.

The Registered Provider will also be expected to enter into a nomination agreement with the Council for all new rented affordable homes delivered as specified in our standard legal agreement.

In limited circumstances, we may agree to shared ownership properties being retained by a non-Registered Provider such as the developer who has built the homes. In such circumstances, we would expect the owner to demonstrate the mechanisms they have in place to provide a professional management service comparable with those covered by the social housing regulator and to enter in to a S106 agreement to secure these properties in perpetuity.

## Eligibility and Qualification for Affordable Housing

Eligibility for affordable housing is generally set out in law and relates to an applicant's immigration status. Qualification relates to who is deemed in need of affordable housing.

In the first instance this has regard to someone's financial position and ability to meet their housing need within the market – or otherwise.

Qualification for rented housing via the housing register is set out in the Council's Allocation Policy<sup>2</sup> whereas qualification for Shared Ownership, is set by central government at a national level for areas outside London. The Council has adopted the nationally set threshold for Shared Ownership and by extension this applies to other Affordable Home Ownership Products.

## Rural Exception Sites

Policy H5 of the local plan covers Rural Exception Sites for Affordable Housing

Rural Exception Sites are sites in the countryside (outside the Limits to Development in the Local Plan) that are granted planning permission as an exception to normal planning policies to meet a local identified affordable housing need in rural areas. The approach recognises the issues of affordability that many households face in rural areas and the need for communities to evolve and grow in a sustainable way which supports both the community and the economic stability of the village.

A number of fundamental principles will apply to such developments.

The S106 Agreement will include provisions to ensure that properties will be restricted to those who can demonstrate a strong local connection to the settlement in the first instance. In the event that no one with a connection to the settlement is identified, the S106 Agreement will set out a cascade approach whereby preference will be given to those with a connection to adjacent parishes before moving further out into the district. Further information about this cascade approach is set out below under A definition of locally identified affordable housing need.

As part of a S106 Agreement properties will be secured as affordable housing in perpetuity. Shared Ownership properties are either capped at 80% ownership or allow staircasing to 100% if the Registered Provider agrees to purchase the property (Rural Buy Back) and to resell as a shared ownership property. All rented housing on a Rural Exception Site is also protected in perpetuity with no Right to Acquire or Right to Buy.

As a rural exception site would not secure permission for market housing the expectation is that the values are significantly below open market value. This ensures the deliverability of such sites in areas of land shortage. Where such sites remain unviable the inclusion of market homes may be permitted purely to subsidise the affordable housing in line with the conditions highlighted in Local Plan Policy H5.

## Evidence for Rural Exception Sites

To comply with Policy H5, an applicant must supply evidence that the housing will meet an identified local need for affordable housing. The provision of evidence should be done in consultation with the local community and can be done using a variety of means such as surveys, consultation events alongside additional supporting secondary data.

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<sup>2</sup> [https://www.nwleics.gov.uk/files/documents/allocations\\_policy\\_2018/Allocations+Policy+2018+Final+v2.pdf](https://www.nwleics.gov.uk/files/documents/allocations_policy_2018/Allocations+Policy+2018+Final+v2.pdf)

The information supplied must provide certainty that there is a genuine local affordable housing need. The information must be sufficiently compelling to merit planning permission being granted as an exception to the restrictive policies which would normally apply to sites outside the Limits to Development.

In the Council's view this is best achieved through a local housing need survey which provides an assessment of the actual and potential need for affordable housing from people living in, and connected to, the village in question. Whilst the survey should be the primary source of evidence, this can be supplemented with other information including demographic data and waiting list information. Whatever approach is used, applicants should ensure that the information has been gathered through meaningful engagement with the local community.

The local housing need survey form used by Midlands Rural Housing (Appendix 6) is considered to be an example of good practice and the Council encourages its use by applicants for rural exception sites.

#### [A definition of locally identified affordable housing need](#)

As highlighted in the introduction, Affordable Housing is defined in the NPPF as social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market.

Identifying those with a locally identified affordable housing need is critical for two purposes. Establishing the need for development in the first place and when a development is completed ensuring that the properties meet the need for which they were intended. The Council considers that households, who meet any of the following will have identified a strong local connection to a settlement.

- was born in the Parish or;
- presently resides in the Parish and has, immediately prior to occupation, been lawfully and ordinarily resident within the Parish for a continuous period of not less than twelve months or;
- was ordinarily resident within the Parish for a continuous period of not less than three years but has been forced to move away because of the lack of affordable housing or;
- is presently employed or self-employed on a full time basis in the Parish and whose main occupation has been in the Parish for a continuous period of not less than twelve months immediately prior to occupation or;
- has a close family member who is lawfully and ordinarily resident within the Parish and who has been lawfully and ordinarily resident within the Parish for a continuous period of not less than three years immediately prior to occupation and for the purposes of this clause a "close family member" shall mean a mother, father, brother or sister or;
- has a need to move to the Parish to be close to a relative or other person in order to provide or receive significant amounts of care and support.



### Other locally identified need

The Council recognises that there are people who are able to meet their housing needs on the open market who are seeking a home in a rural area. However, a Rural Exception Site can only meet the housing needs of those households that do not have the income necessary to be able to meet their own needs on the open market. Proposed housing that is aimed at meeting other needs, such as those who have a local connection and have the income to enable them to purchase or rent on the open market, will fall to be considered against the countryside policy of the adopted Local Plan

### Designated Protected Areas

There are a number of areas within the District that are classified as Designated Protected Areas (DPA) under Sections 300-302 of the Housing and Regeneration Act 2008. This has implications for the provision of shared ownership properties in these areas.

The areas are identified in schedule 13 and 14 of the Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009 available on the following links [The Housing \(Right to Enfranchise\) \(Designated Protected Areas\) \(England\) Order 2009 \(legislation.gov.uk\)](#) and [The Housing \(Right to Enfranchise\) \(Designated Protected Areas\) \(England\) Order 2009 \(legislation.gov.uk\)](#)

In most circumstances the purchaser of a shared ownership property can usually staircase out into full ownership. However, to combat the loss of affordable homes in the rural areas shared ownership within DPAs either caps equitable ownership of homes at 80% or requires the homes to be sold back to the Registered Provider who owns the freehold once full ownership is reached through the insertion of a clause within the lease.

It is the developer's responsibility to ensure that shared ownership schemes within Designated Protected Areas, have DPA compliant leases and understand their on-going DPA obligations.

Planning authorities have the right to waive the DPA restrictions for new developments.

The Council will not support a waiver where delivery is either under an exception type policy or application has been considered favourably because of meeting a locally identified need.

However, in settlements where the boundaries of the DPA have not been changed, for example where urban areas have grown as a result of development into surrounding greenfield areas, the Council may support a waiver.

Developers, both market builders and Registered Providers, should be aware that if DPA restrictions apply, this might affect the viability of proposed sites. All developers are strongly urged to reappraise the amount paid for the land if a site falls in area covered by DPA restrictions.

The Regulations and Order are applicable regardless of whether the homes have received grant-funding from Homes England or otherwise. Shared ownership properties provided by private developers through planning gain S106 sites are also subject to DPA restrictions.

More information on the Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009 can be found at

<https://www.legislation.gov.uk/uksi/2009/2098/contents/made>



**Policy H4 – Affordable Housing**

- (1) To support the provision of mixed, sustainable communities the Council will seek the provision of affordable housing on new housing developments. The provision of affordable housing will be subject to the following thresholds above which the level of contributions will be sought:

**Greenfield Sites**

Settlement	Affordable Housing Contribution	Threshold
Ashby de la Zouch	30%	11 or more dwellings OR 1,000sqm (gross floor space)
Castle Donington	30%	11 or more dwellings OR 1,000sqm (gross floor space)
Coalville Urban Area	20%	11 or more dwellings OR 1,000sqm (gross floor space)
Ibstock	20%	11 or more dwellings OR 1,000sqm (gross) floor space
Kegworth	30%	11 or more dwellings OR 1,000sqm (gross) floor space
Measham	30%	11 or more dwellings OR 1,000sqm (gross) floor space
All other settlements	30%	11 or more dwellings OR 1,000sqm (gross) floor space

**Previously Developed Land**

Settlement	Affordable Housing Contribution	Threshold
Ashby de la Zouch	15%	30 or more dwellings OR sites of 1Ha or more
Castle Donington	5%	30 or more dwellings OR sites of 1Ha or more
Coalville Urban Area	5%	30 or more dwellings OR sites of 1Ha or more
Ibstock	5%	30 or more dwellings OR sites of 1Ha or more
Kegworth	5%	30 or more dwellings OR sites of 1Ha or more
Measham	15%	30 or more dwellings OR sites of 1Ha or more
All other settlements	5%	30 or more dwellings OR sites of 1Ha or more

- (2) In agreeing the provision of affordable housing account will be taken of:**
- **site size and site constraints; and**
  - **financial viability, having regard to the individual circumstances of the site.**

**Where it can be demonstrated that the full affordable housing requirement would adversely affect the viability of a proposed development then the Council will agree to look at other measures to increase viability in accordance with policy IM1 (Implementation and Monitoring of the Local Plan) before agreeing to a lesser amount of affordable housing subject to the provision of part (4) below.**

- (3) The Council's preference is for on-site affordable housing provision which should:**
- **include a mix of types and tenure that reflects the type and nature of any need at the time that the application is determined; and**
  - **be integrated within the design and layout of a development such that they are externally indistinguishable from market housing on the same site.**
- (4) Planning permission will be subject to a legal agreement to secure the provision of the agreed amount of affordable housing. Where a site is likely to be developed in phases over the longer term the agreement will include a suitable mechanism to review the amount of affordable housing provided over time as viability improves.**
- (5) The Council will encourage the provision of affordable homes to meet the needs of elderly people. Where bungalow provision is made the Council will consider reducing the overall level of affordable housing contribution, having regard to the type and size of other affordable housing provided across the site.**

**Policy H5 – Rural Exceptions Sites for Affordable housing**

- 1. The provision of affordable housing outside of the Limits to Development will be allowed as an exception where:**
    - (a) the housing is demonstrated to meet an identified local need for affordable housing, and**
    - (b) the development is well-related to and respects the character and scale of the settlement and its landscape setting; and**
    - (c) the development allows accessibility to community services and facilities within it, where appropriate.**
  - 2. Planning permission for ‘Exception’ Sites will be subject to conditions, or a planning obligation will be sought, to ensure that all initial and subsequent occupiers of the affordable dwellings will:**
    - (a) be local people in housing need; and**
    - (b) benefit from the status of the dwellings as affordable housing in perpetuity.**
  - 3. On sites that are outside of, but well related to, a sustainable village or a small village the inclusion of market housing on ‘Exception’ Sites will be supported where:**
    - (a) it is demonstrated that there is insufficient subsidy for the scheme to go ahead without the inclusion of market housing; and**
    - (b) it can be demonstrated through detailed financial appraisal that the scale of the market housing component is the minimum necessary for the successful delivery of the development; and**
    - (c) the majority of the homes provided are affordable.**
  - 4 Any development provided for within this policy which discharges wastewater into the Mease catchment will be subject to the provisions of policy En2. Any such development which does not meet these provisions will not be permitted.**
- A Supplementary Planning Document will be produced to aid those submitting applications for rural exception sites for affordable housing.**



**Policy H6 – House types and mix**

- (1) We will seek a mix of housing types, size and tenures in new housing developments of 10 or more dwellings, in order to meet the identified needs of the whole community.**
- (2) In considering proposals for developments of 10 or more dwellings we will have regard to the following:**
  - (a) evidence of housing needs including the most up to date Housing and Economic Development Needs Assessment, Older People’s Housings Needs Study, local housing needs surveys, parish plans and other evidence of market demand; and**
  - (b) the mix of house types and sizes already built and/or approved when compared to the available evidence; and**
  - (c) the size of the proposed development in terms of numbers of dwellings proposed; and**
  - (d) nature of the local housing sub-market; and**
  - (e) needs and demands of all sectors of the community; and**
  - (f) character and context of the individual site; and**
  - (g) development viability and deliverability.**
- (3) Developments of 50 or more dwellings will provide:**
  - (a) A proportion of dwellings that are suitable for occupation by the elderly, including bungalows, having regard to factors (c) and (g) above; and**
  - (b) A proportion of dwellings which are suitable for occupation or easily adaptable for people with disabilities in accordance with Part M4 (2) of the Building Regulations.**



## **Appendix 4: The Equivalency Calculation for Commuted Sums**

The developer will contact three local estate agents for open market valuations. These three valuations will be provided to the Council who will take the average of the three valuations to calculate the Open Market Values (OMV)

The Council will then contact three active “Not for Profit” Registered Providers, who are registered with Homes England to obtain a price that they would pay to purchase the affordable units from the developer. The Council will use the highest offer level received to determine the RP offer price.

The level of contribution required will be equivalent to the difference between the OMV and the maximum price that the RP could pay.

The Council seek to use Not for Profit Registered Provider Offer levels. Not only are there a greater number of not for profit (NFP) RP's, any offer information provided by these organisations will be more suited to the specific housing market conditions in NWLDC which reflects their greater experience of working in the district. The Council do not wish to create a situation whereby inflated offers, not reflective of the local housing market, push the cost of providing affordable housing beyond the point of sustainability moving forwards.

If three offers from not for profit RP's cannot be obtained the Council may choose to contact a for profit RP for an offer level, but the average RP offer price will be used to reflect higher levels

The following is an example of how the calculation works:

### **Example Calculation of Affordable Housing Contribution**

On a scheme of 10 dwellings it is agreed that four affordable dwellings would have been required, three for affordable rent and one shared ownership.

Based on the average of three independent valuations for all properties the open market value is agreed to be £150,000.

Based on the average of three Registered Provider offers for affordable rented properties the registered provider is able to pay a maximum of £80,000 whilst for shared ownership it is able to pay £100,000.

The level of commuted sum will be:

- £210,000 for the affordable rented properties (open market value (£150,000) – maximum price payable by registered provider (£80,000) = £70,000 per Dwelling X 3 = £210,000) and

- £50,000 for the shared ownership property (open market value (£150,000) – maximum price payable by registered provider (£100,000) = £50,000 per Dwelling).

Thus, the total commuted sum will be £260,000 (£210,000 + £50,000).



## **Appendix 5: Viability Checklist**

The following section details the type of information that the Council and independent Assessors are likely to expect to be provided to enable site viability to be assessed.. A simple checklist is provided as guidance for applicants to assess their viability against.

Providing full, clearly presented and fully justified details on development viability, on an open book basis, are key to enabling a streamline planning application process and allow a collaborative approach.

The Council will expect to see the calculations set out in enough detail for viability to be properly assessed and tested. Any 'assumptions' must be clearly explained and justified. This evidence will be assessed on whether the figures prove that the scheme would be unviable if it were to meet all affordable housing and other planning obligation requirements.

The Council's approved independent professional, will undertake a full review of the total development costs and projected development income in order to determine the level of provision that may be sought from a development. This will involve close scrutiny of all figures.

All costs must be justified, with clear references to supporting evidence, and will be critically scrutinised to ensure each element is robust.

All assessments of development viability will only consider the viability of the particular development site in question. Assessments will not take into account the specific financial circumstances of any given applicant.

In line with NPPF applicants will be expected to show evidence that they have taken known development costs into account in agreeing realistic land values, and only costs that were unforeseeable at the time of acquisition and taking into account appropriate levels of due diligence will be considered abnormal for the purposes of affordable housing negotiations.

### **General requirements:**

- Use the policy compliant position as the starting point for appraisal.
- The level of supporting evidence (i.e. valuations, costs etc.) will depend upon how far the viability inputs deviate from acceptable parameters.

### **Information to be submitted:**

- Open market sale income
- Affordable housing for rent income
- Shared ownership income
- Other affordable home ownership income
- Any other potential revenues to the scheme, such as grant/subsidy; ground rents; income from a commercial element

### **Development costs:**

- Cost estimates should be provided by a Quantity Surveyor or other suitably qualified professional.
- Build costs should be provided as £ per m2 of Gross Internal Area (GIA)
- External works and infrastructure
- Other development cost data.

#### **Site value:**

- An estimate of site value should be provided. Where necessary full justification for this valuation should be provided.
- Where a site has an evidenced existing use, the value of the site should be based on the Existing Use Value (EUV), and not a theoretical value based on obtaining consent for residential use. The EUV is what the site is worth in its current use and condition and evidence in the form of a valuation will be required.
- The site valuation should reflect relevant planning policies and associated planning obligations.
- The site valuation should not be inflated by the specific needs of land owners to maximise the amount they are paid for land to facilitate, for example, the relocation of a service to an alternative location.

#### **Developer margin/profit:**

- Developer margin on open market units should be shown as a percentage of the Gross Development Value (GDV).
- Developer margin on affordable units should be shown as a percentage of costs.
- The level of developer profit will reflect the degree of risk to the developer. The required profit margin should be fully justified.
- For affordable units the level of profit should be significantly less than for open market units, to reflect the lower risk profile.

#### **Phasing:**

- The anticipated build period should be stated along with an estimate of the projected selling prices and projected development costs for the period of the build.
- The applicant should indicate the phasing assumptions for the affordable housing or other Section 106 contributions

#### **Development process:**

- The applicant should state how the development will be procured e.g. is the scheme being developed by a company that has its own building arm, or will the scheme be developed on a Design and Build basis

## **Appendix 6: Midlands Rural Affordable Housing Survey**