

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

CABINET – TUESDAY, 7 DECEMBER 2021



Title of Report	AFFORDABLE HOUSING SUPPLEMENTARY PLANNING DOCUMENT (SPD) - ADOPTION	
Presented by	Councillor Keith Merrie Planning Portfolio Holder keith.merrie@nwleicestershire.gov.uk	
Background Papers	National Planning Policy Framework (July 2021)	Public Report: Yes
	National Planning Practice Guidance Adopted Local Plan Statement of Community Involvement Consultation responses	Key Decision: Yes
Financial Implications	The cost of preparing the SPD is being met through existing budgets.	
	Signed off by the Section 151 Officer: Yes/No	
Legal Implications	None from the specific content of the report. The preparation of the SPD must comply with the Town and Country Planning (Local Planning) (England) Regulations 2012.	
	Signed off by the Monitoring Officer: Yes/No	
Staffing and Corporate Implications	No staffing implications associated with the specific content of this report. Links with the Council's Priorities are set out at the end of the report.	
	Signed off by the Head of Paid Service: Yes/No	
Purpose of Report	An Affordable Housing Supplementary Planning Document (SPD) has been prepared to provide additional guidance about the application of the Council's planning policies for affordable housing and the Council's wider operational support for affordable housing. This report describes the responses received during the public consultation on the draft SPD, the changes to the SPD proposed in response and recommends the adoption of the amended SPD by Local Plan	

	Committee.
Reason for Decision	To ensure up to date planning guidance on the subject of affordable housing is in place to help local users of the Planning service.
Recommendations	THAT CABINET REQUESTS THAT THE LOCAL PLAN COMMITTEE ADOPTS THE AFFORDABLE HOUSING SUPPLEMENTARY PLANNING DOCUMENT IN APPENDIX 2.

1.0 AFFORDABLE HOUSING SPD - ADOPTION

1.1 Officers from the Planning Policy and Strategic Housing Teams have together prepared an Affordable Housing Supplementary Planning Document (SPD). To recap, a SPD is a document which provides further information about a development plan policies, in this case Local Plan Policy H4 – Affordable Housing, Policy H5 – Rural Exceptions Sites and Policy H6 – Housing Types and Mix. In overview, the Affordable Housing SPD covers the following matters:

- changes to national planning policy since the Local Plan was adopted
- commuted sums, including guidance on the limited circumstances when commuted sums in lieu of on-site affordable housing could be acceptable and commuted sum calculations
- affordable housing-led schemes
- information for developers about affordable housing ownership and eligibility
- approach to rural exceptions sites

1.2 A draft version of the SPD was agreed for public consultation at meetings of Cabinet (27 July 2021) and Local Plan Committee (8 September 2021). The 6-week consultation ran from 10 September to 22 October 2021.

1.3 The Consultation Statement in Appendix 1 sets out details of the consultation arrangements. Four bodies commented on the SPD and we received a further 8 ‘no comment’ responses. The table in Appendix 1 also includes officers’ consideration of the comments and proposes changes to the draft SPD in response. An additional clarification concerning rural housing needs surveys is proposed following a recent discussion with a Registered Provider and this is also incorporated in Appendix 1. In officers’ view, these changes improve the clarity and accuracy of the SPD and do not fundamentally alter its content or scope. A revised version of the SPD highlighting the proposed changes is included in Appendix 2.

1.4 A decision to adopt the SPD will mean it is capable of being a material consideration in planning decisions and will provide valuable guidance to developers about the council’s expectations and approach. We will publish the adopted SPD on the council’s website alongside the Consultation Statement and an Adoption Statement. The Regulations also require us to notify key parties about the adoption of the SPD.

Policies and other considerations, as appropriate	
Council Priorities:	<p>The preparation of the Affordable Housing SPD will be particularly relevant for the following Council Priority;</p> <ul style="list-style-type: none"> - Local people live in high quality, affordable homes

Policy Considerations:	Adopted Local Plan National Planning Policy Framework
Safeguarding:	None specific.
Equalities/Diversity:	None specific
Customer Impact:	None specific
Economic and Social Impact:	The SPD, if approved, will have social benefits by supporting the delivery of affordable housing in the district
Environment and Climate Change:	None specific
Consultation/Community Engagement:	The consultation arrangements which have been followed have been governed by the Town and Country Planning (Local Planning) (England) Regulations 2012 and in turn by the Council's own Statement of Community Involvement (as amended).
Risks:	None specific
Officer Contact	<p>Ian Nelson Planning Policy & Land Charges Manager 01530 454677 IAN.NELSON@nwleicestershire.gov.uk</p> <p>David Scruton Housing Strategy & Systems Team Manager 01530 454612 DAVID.SCRUTON@nwleicestershire.gov.uk</p>

Affordable Housing Supplementary Planning Document (2021): Consultation Statement

The council's Statement of Community Involvement (Addendum 2020) sets out the requirements for consultation on a Supplementary Planning Document (SPD). The consultation on the draft Affordable Housing SPD was publicised in the following ways:

- on the NWLDC website and consultation portal (CitizenSpace)
- notifications to bodies and individuals on the planning policy team's consultation database, including statutory agencies
- dedicated email to Registered Providers active in the district
- dedicated email to Parish and Town councils
- via the council's social media (Twitter)

Consultees were told that if they were unable to view the document online, a hard copy would be posted out (free of charge) on request.

The public consultation ran for 6 weeks from 10 September to 22 October 2021.

Four responses were received. These are summarised in the table below which also includes an assessment of where changes to the SPD are merited in response. Proposed additions to the SPD text are shown in underlined italics and deletions are shown ~~struck through~~. Additionally, we received 'no comment' responses from the following organisations:

- Coal Authority
- Environment Agency
- Highways England
- Historic England
- Kegworth Parish Council
- Marine Management Organisation
- Natural England
- Castle Donington Parish Council

Respondent	Comments	NWLDC Response
Davidsons Developments Ltd.	<p>Re Proportion of social rented units. In the case of the NWLDC Local Plan, there is no specific requirement for a certain percentage of affordable housing to be provided at social rented levels, instead leaving the split open and listing a number of criteria that will be considered on a scheme by scheme basis. Therefore, the wording at paragraph 2.17 of the draft SPD which states that it is 'the Council's strong preference' for the balance of any requirement to be met by social rented units is probably as strong as the SPD can be on this point as the SPD cannot set a requirement for the social rented units which is not already imbedded in Development Plan policy. To do so would be outside of the remit of the SPD and would stray into the territory of the Charnwood Housing SPD, which was quashed in the courts (William Davis Ltd & Ors v Charnwood Borough Council [2017] EWHC 3006 (Admin) (23 November 2017)).</p> <p>Indeed, whilst recognising that social renters are those who are in greatest housing need, it maybe that the wording goes too far suggesting the whole balance should be provided as social rent, given the Council's own viability evidence looked at an equal share of social and affordable rent (e.g. 40.5% social rent), which would not constitute 'the balance' of affordable housing after 25% first homes are taken into account. Therefore, on balance, we consider that the wording should be adjusted to place less emphasis on remaining 75% of homes on site, after First Homes are provided, being socially rented. This could be done by cross reference back to the criteria in policy H4, which sets out the factors that will be considered in assessing schemes.</p>	<p>Agree. Insert a cross reference to Policy H4 as suggested.</p> <p>2.17Once account is taken of the requirement for 25% of the affordable housing requirement to be First Homes, <u>and taking into account the considerations in Policy H4</u>, 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.</p>
	Re local criteria for First Homes. The position set out	In overview, a revised affordable housing policy

Respondent	Comments	NWLDC Response
	<p>at 2.18 which clarifies that changes to the First Homes criteria to make them more locally specific should be established through a Local Plan and justified by evidence is accurate.</p> <p>However, in addition, we feel that this paragraph would benefit from recognition that the impact on affordable housing viability and tenure split as whole will need to be picked up by the Local Plan review as it is not just the local specificity of the criteria that will need to be reviewed.</p>	<p>reflecting the new range of tenures will be developed and tested as part of the Local Plan Review.</p> <p>Changing the maximum sale price for a First Home for example is a local change which could have an impact on viability. We could make a factual addition to paragraph 2.18 to confirm that 'evidence' includes viability testing.</p> <p>2.18. 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 <u>including viability testing as necessary</u>. 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.</p>
	<p>Re Alternatives to on-site provision. Section 3 of the draft SPD covers the approach to cascading the delivery of affordable housing, with a preference for onsite provision. The approach set out is generally in line with adopted Local Plan policy H4. However, as is rightly recognised, there may be occasions where on site provision is not appropriate or possible. In this case, the first alternative is off site provision, followed by a commuted sum. The draft SPD sets out at paragraph 3.8 and 3.9 the stages that will need to be gone through to justify why provision cannot be met on site. Whilst we agree with the general approach of looking at reducing the level of affordable housing and amending the tenure split as the first step when viability is an issue, the list of 6 further factors to consider at 3.9, in our view,</p>	<p>It is agreed that paragraph 3.9, option 'b) all rented' does not accord with national requirements for First Homes and affordable home ownership whilst option 'a) a different mix of tenures' effectively encompasses option 'c) all affordable Home Ownership'. Accordingly, the list could be simplified to:</p> <ul style="list-style-type: none"> 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

Respondent	Comments	NWLDC Response
	<p>needs to be considered in more detail as it may give rise to a conflict with the points on First Homes and Affordable Home Ownership, discussed above. For example, it is not realistic to look at an all rented scheme given the requirement for Affordable Home Ownership set out in national policy. Therefore, we suggest the list needs to be reviewed and a note added recognising that the issues need to be considered in accordance with the limitations of national policy.</p>	
	<p>Re off-site provision. In the discussion of off-site provision at section 3.10-3.12 of the draft SPD, greater up front clarity is needed as to what is meant by 'equivalent' - is it equivalent in value, mix, tenure etc... These factors need further clarity ahead of paragraphs 4.3-4.6 because as it stands the guidance is ambiguous and open to interpretation.</p>	<p>Agree. Clarification to be added as follows:</p> <p>Off-Site Provision</p> <p>3.10 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 <u>as a last resort</u> through a commuted sum payment, as would have been secured on site. <u>'Equivalent' in these circumstances means the same number and tenure of affordable homes as would have been sought on the originating site. If this cannot be achieved, off-site units to the same value should be provided.</u></p> <p>3.11. 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</p>

Respondent	Comments	NWLDC Response
		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.
	Re commuted sum calculation. With regard to commuted sums, we agree that there are likely to be limited situations where this can be justified, particularly given the need to first negotiate what can be provided viably on site. Whilst the approach to calculating the commuted sums in different scenarios (i.e. in the case of viability or equivalency) appear appropriate, other than reference to market values, there is a lack of clarity as to what factors will be taken into consideration is establishing the value of the commuted sum. This could have an impact on any developer or promoter seeking to take out an option on land and we suggest more detail needs to be added to provide a greater degree of certainty.	No change necessary. Appendix 4 - The Equivalency Calculation for Commuted Sums affirms that 'value' is equivalent to the difference between the dwelling's market value, established through the average of 3 valuations, and the maximum price that a Registered Provider would pay which would be established by comparing 3 Provider offers.
	Re spending of commuted sums. We also feel that there may be some merit in outlining how commuted sums may be spent, possibly linked to the Council's emerging Housing Strategy on which we made separate comments, or locational factors that would be considered, as this would help ensure a clear link through to the efficient use of commuted sums to meet identified need. It would also be beneficial if the timescales for spending the commuted sums were provided.	No change. Paragraphs 4.14- 4.18 provides information on how commuted sums will be spent and timescales. The response to Ashby de la Zouch Town Council below explains why commuted sums are not always be spent in the same settlement as they arise.
	Re design. Section 6 of the draft SPD touches on design considerations and we are pleased to see that	Noted

Respondent	Comments	NWLDC Response
	<p>the wording does not start to introduce new, specific policy standards on which development should be judged, such as the level of pepper potting of affordable units. This would take the SPD beyond its remit and should be avoided in any future revisions.</p>	
Intro Crowd	<p>Re rural exception sites. These representations have been prepared by Pegasus Group on behalf of Intro Crowd, and are made in relation to our clients' interests in land to the south of Park Lane, Castle Donington. The site extends to circa 1.81ha and could accommodate some 45 – 60 dwellings. It is important that the Affordable Housing SPD recognises that sites on the edge of Key Service Centres like Castle Donington can provide an opportunity for rural exception sites, in accordance with the above definition within the Framework. This approach has been considered at a recent appeal for 20 affordable dwellings, at Stone, Staffordshire (appeal reference number: APP/Y3425/W/18/3202676). The Inspector in that case considered whether a site located on the edge of an urban settlement (Stone) can be regarded as a rural exceptions site. At paragraph 43, the Inspectors advises that "in principle, I do not see any reason why rural housing needs should not be provided for on sites adjacent to the larger settlements, even where they are properly characterised as urban settlements, provided they are in a sustainable location". In setting out overall conclusions and the planning balance at paragraph 94, the Inspector concludes that although the site lies outside the settlement boundary of Stone, the proposal would comply with local policy on rural exception sites. The appeal was therefore allowed. The SPD should make clear that sites on the edge of</p>	<p>No change. The NPPG states the following: “Where can rural exception sites come forward? As set out in the National Planning Policy Framework, <u>rural exception sites can come forward in any rural location</u>. In designated rural areas and areas designated as Green Belt, rural exception sites are the only sort of exception site than can come forward.” (emphasis added) Paragraph: 011 Reference ID: 67-011-20210524</p> <p>Policy H5(1) refers simply to ‘outside the Limits to Development’ which this Castle Donington site would comply with.</p> <p>On this basis, there is no necessity to add further clarification in the SPD in respect of this specific proposal.</p>

Respondent	Comments	NWLDC Response
	settlements like Castle Donington can be delivered as rural exception sites, where there is a locally identified affordable housing need, in accordance with the NPPF definition and local policy.	
Ashby de la Zouch Town Council	Section 4 paragraph 16. The Town Council states that the commuted sums should be used for residents of the area where the houses are being built and should not be used anywhere else within the district. If the commuted sums relate to a development within Ashby de la Zouch then these should be used for affordable housing within Ashby de la Zouch.	<p>No change. The following factors mean it is not always feasible to spend commuted sums in the same settlement as they arise.</p> <ul style="list-style-type: none"> • taking a district-wide approach to both needs and resources means the money can be used to maximum effect to meet the highest priority needs • generally, contributions from a number of different planning permissions need to be pooled to have enough money for a worthwhile scheme • insisting the money is spent in the same settlement would result in small, piecemeal projects based on opportunity rather than need or, at worst, repaying monies to the developer because they have not been spent in time • the approach would mean that some settlements would never get affordable housing
	Policy H4 - Affordable housing The Town Council has asked for clarification as to why the affordable housing contribution percentage is disproportionate for Ashby de la Zouch on previously developed land e.g. Ashby, Castle Donington, Kegworth, Measham and all other settlements have an affordable housing contribution of 30% for greenfield sites but for brownfield sites Ashby and Measham carry a 30% contribution whereas all of the other areas carry just 5%.	<p>No change. The percentage contributions in Policy H4 were considered by the Local Plan Inspector in his report (pages 30-31), taking into account viability evidence that the council had prepared. He concluded that a 15% contribution would be generally achievable in Ashby and Measham whereas elsewhere 5% should be the limit.</p> <p>The percentage requirements will be reviewed as part of the Local Plan Review.</p>
Measham Parish	3.14 Should 'providing essential infrastructure' read	Agree. We could improve the understanding of this

Respondent	Comments	NWLDC Response
Council	'providing essential affordable housing'	<p>section by reversing the order of paragraphs 3.13 and 3.14 as follows:</p> <p>3.14. <u>3.13</u> A commuted sum is a capital payment by a developer towards the cost of providing essential infrastructure as part of new development.</p> <p>3.13. <u>3.14</u> Where <u>affordable housing</u> 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.</p>
	<p>8.5 The parish council feel that Planning authorities should NOT have the right to waive the DPA restrictions for new developments as it could affect the provision of affordable housing.</p>	<p>The DPA restrictions only cover shared ownership housing. Sites located in a Designated Protected Area require that restricted shared ownership leases are used. Whilst this legislation seeks to protect shared ownership properties in perpetuity, this has unforeseen consequences that can result in fewer affordable homes being provided on housing sites</p> <ul style="list-style-type: none"> • Limited mortgage availability on restricted ownership properties reduce choice for initial purchasers and subsequent purchasers. • Reduced opportunities to sell often means owners are trapped in properties that no longer meet their needs • Any risk (longer empty periods) reduces the amount of money RP's can raise to purchase shared ownership properties. The result is often lower RP offers which could impact on site viability potentially reducing affordable homes being provided • Adding a Rural Buy Back clause, requiring RP's to buy the properties back means RP's have to set

Respondent	Comments	NWLDC Response
		<p>aside the money needed to do this. This money cannot be used to raise money across their portfolio to fund new developments</p> <ul style="list-style-type: none"> Alternative affordable home ownership tenures (First Homes, Discounted open market, Rent to Buy etc) are provided without restrictions and may prove more popular, affecting sales of restricted Shared Ownership properties Boundaries are out of date and include sites allocated through the Local Plan which are within the limits to development. Such sites are important to maintaining future affordable housing, but are less popular to RP's because of the restrictions attached through DPA's. Developers may struggle to receive RP offers on these sites, or much reduced offers, and may seek to provide commuted sums rather than onsite delivery <p>All of the above could result in the delivery of fewer affordable homes. To maintain delivery of affordable homes the Council's position on DPA waivers remains as</p> <ul style="list-style-type: none"> a) Urban areas where DPA is as a result of outdated boundaries we are willing to waiver b) Rural areas where delivery is not specifically under an exception type policy or justified by local need we will have regard to any local needs surveys but will consider a waiver c) Rural areas where delivery is either under an exception type policy or application has been considered favourably because of locally identified need – no waiver
Post consultation clarification		

Respondent	Comments	NWLDC Response
	<p>Following recent discussions with a representative of a registered provider, it is considered that paragraph 7.10 of the SPD should be amended to make it clearer that other approaches to undertaking a survey other than Midland Rural housing, may be acceptable.</p>	<p>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. <u>Other survey formats may be acceptable and, in such cases, we would strongly recommend that applicants consult the council beforehand.</u>"</p>