



Circular from the

Department of the Environment
2 Marsham Street, London SW1P 3EB

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Planning and Affordable Housing

Introduction

1. This circular supplements Planning Policy Guidance note 3 (PPG3) Housing by amplifying the Government's preferred approach to planning and affordable housing. It aims to give practical advice to local planning authorities on how to increase the supply of affordable housing in appropriate circumstances through negotiation with developers and others.

2. A key role of the planning system is to enable the provision of homes, and other new development, in a way which is consistent with the principles of sustainable development. It operates in the public interest and should not impose unreasonable restrictions on people's ability to develop their own land. It also needs to be positive in planning for the additional homes needed, while protecting the environment and amenity. Local planning authorities have a duty to allocate sufficient land for housing in their development plans. A key objective will be to use already developed areas in the most efficient way, by concentrating a large proportion of the additional housing on land that was previously developed and in conversions within urban areas. This will often involve increasing existing development densities, particularly in town and city centres, whilst ensuring that the quality of the urban environment is maintained or improved.

3. In addition to providing more housing, especially in urban areas, there is a need to ensure that there is an appropriate mix, both of housing and other uses and of different types of housing, to meet the needs of the different types of households. Whilst the primary objective will be to ensure that there is enough housing to meet the agreed needs in quantitative terms, local authorities should also ensure that there is a mix of types of housing to encourage the development of mixed communities. This will have different implications for different areas. Where there is already a high proportion of social housing, a significant addition of market housing would be appropriate. Conversely, where there is a shortage of affordable housing and there is a good supply of market housing, it will be desirable to promote a more mixed community by encouraging an element of affordable housing on suitable sites.

4. The community's need for affordable housing is a material planning consideration which may properly be taken into account in formulating development plan policies. Therefore, where planning policies indicate a need for including an element of affordable housing on a site this will be a material consideration in determining the application. Within the overall number of homes to be developed during the period of a local plan, a mix of dwelling types and sizes is needed - whether through new housebuilding or conversions - to cater for a range of housing needs.

5. In preparing their local plans', authorities should involve housing and planning committees, to ensure that planning policies for affordable housing are compatible with their housing strategy, and with their objectives for land use planning and urban and economic development. They should also take account of the views of those likely to be involved in the delivery of housing. As well as local authority housing departments, acting as "enablers", planners should involve those who represent main landowners, developers, registered social landlords and the Housing Corporation*.

6. The terms "affordable housing" or "affordable homes" are used in this document to encompass **both** low-cost market **and** subsidised housing (irrespective of tenure, ownership - whether - exclusive or shared - or financial arrangements) that will be available to people who cannot afford to occupy houses generally available on the open market. This document refers to other housing as "general market housing". The Government's wish to encourage diversity of housing tenure, advocated in the 1995 Housing White Paper, applies equally to affordable housing delivered through the planning system and it therefore wishes to avoid excessive concentration on one form of tenure.

Assessment of need for affordable housing

7. Any local plan policy for affordable housing should reflect a good understanding of the needs of the area over the development plan period. The need should be clear from the assessments used to develop the authority's housing strategy. However, if the local planning authority considers its assessment inadequate, it may want to obtain additional information. The Audit Commission has produced guidance on preparing housing strategies'. The Department's research report on planning for affordable housing⁴ also gives advice on the assessment of need.

8. Assessments will need to be rigorous, making clear the assumptions and definitions used, so that they can withstand detailed scrutiny. Double counting of those in need must not occur and full account must be taken of affordable housing already available. Assessments should usually include factors such as:

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1. references to local plans in this circular include part II of Unitary Development Plans
 2. references to registered social landlords in this circular are to bodies regulated by the Housing Corporation as social landlords - see proposals in the Housing Act 1996.
 3. Developing Local Authority Housing Strategies by the Audit Commission. Local Government Report No. 9 (ISBN 0 11 886073 9). Available from HMSO Publications Centre (tel: 0171 873 9090)
 4. Planning for Affordable Housing, Department of the Environment, 1994 (ISBN 0 11 752969 9) Available from HMSO.

local market house prices and rents, local incomes, the supply and suitability of existing local affordable housing (including both subsidised and low-cost market housing), the size and type of local households, and the types of housing best suited to meeting these local needs. Assessments should be kept up to date during the plan period.

9. Structure plans should not provide detailed guidance on the provision of affordable housing, for example, by imposing on districts a so-called 'normal' proportion of affordable housing to be secured. The Government considers that local housing strategies and the surveys needed to underpin local plan policies are essentially a matter for districts. Where appropriate, counties may help in the design of surveys and by supplying information and analysis of Census data.

Affordable housing policies in local plans

10. Where local surveys or other data demonstrate a lack of affordable housing to meet local needs, authorities should:

- a) define in the plan what they regard as affordable housing. This should include both low-cost market and subsidised housing, as both will have some role to play in providing for local needs. Definitions should be framed to endure for the life of the plan, for instance, through references to the level of local incomes and their relationship to house prices or rents, rather than to a particular price or rent; and
- b) indicate in the plan how many affordable homes need to be provided throughout the plan area, set indicative targets for specific suitable sites (expressed either as numbers of homes or a percentage of the homes on the site), and indicate in the plan the intention to negotiate with developers for the inclusion of an element of affordable housing on such sites.

In doing this, and in assessing any sites that may come forward which are not allocated in the plan, it is particularly important to take the following factors into account:-

- i) site size, suitability and the economics of provision;
 - it will be inappropriate to seek any affordable housing on some sites. In practice the policy should only be applied to suitable sites in Inner London and in settlements with a population of 3,000 or fewer to developments of 25 or more dwellings, or to any residential site of 1 or more hectare irrespective of the number of dwellings and elsewhere to developments of 40 or more dwellings or residential sites of 1.5 hectares or more
 - the proximity of local services and facilities and access to public transport;
 - whether there will be particular costs associated with development of the site and whether the provision of affordable housing would prejudice the realisation of other planning objectives that need to be given priority in development of the site;

5. For this Circular Inner London includes the City of London, City of Westminster and the London Boroughs of Camden, Hackney, Hammersmith and Fulham, Haringey, Islington, Kensington and Chelsea, Lambeth, Newham, Southwark, Tower Hamlets and Wandsworth.

- ii) the need to achieve a successful housing development:
 - wherever possible such sites should incorporate a mix of affordable housing types, such as family housing and homes for smaller households; and
 - care is needed in determining the proportion of affordable housing in the overall numbers on the site and in implementation and subsequent management of the affordable housing element;
- c) include policies⁶ in the plan to meet the need for affordable housing through:
 - bringing vacant housing units back into use (for example above shops and offices);-
 - conversions of larger houses into units more suited to smaller household sizes and of former office or other buildings into flats; and
 - making full and effective use of land within existing urban areas, particularly vacant and derelict land.

If the need for affordable housing ceases in a particular area, the basis for the policy will disappear and the local planning authority will need to reflect this in their development plan.

11. Where a registered social landlord is to manage affordable housing on any given site, this should be an effective way of controlling occupancy without the need for additional occupancy controls to be imposed by the local planning authority (see paragraphs 16 and 22). However, the local plan should set out the other circumstances in which planning decisions for affordable housing will need to include arrangements to control occupancy, identify the preferred approach for controlling occupancy and include criteria of eligibility against which occupancy can be determined. The eligibility criteria should be clear and unambiguous, in order to avoid difficulties in determining compliance and in enforcement.

12. In some cases, the identified need for affordable housing may exceed the total number of affordable homes likely to be achieved from public investment and the sites specified in the plan. If so, the plan should include the criteria, set out in paragraph 10, for other sites (so-called windfall sites) which will be identified for housing after the plan is adopted or approved on which the local planning authority would seek an element of affordable housing.

13. Local authorities should ensure that planning policies for affordable housing are in line with the strategic planning objectives of the development plan. For instance, objectives to make the most effective use of land within existing urban areas, reduce the need to travel particularly by car, and maintain the viability and vitality of town centres, may point to policies for higher housing densities on central or easily accessible sites. Sites no longer likely to be needed for office or industrial purposes may be appropriate locations for affordable housing (as well as general market housing). Higher densities

6. The policies in c) are not exclusive to affordable housing and will also be relevant in the provision of general market housing.

should be encouraged on easily accessible sites, where appropriate (see paragraph 3.3 of PPG13 Transport) but this will need to be carefully designed to ensure a quality environment. In particular, local planning authorities should be flexible on car parking standards as car ownership rates are generally lower for the occupants of affordable housing than for those of general market housing. This approach may make it easier for the developer to provide affordable housing.

Rural sites

14. So-called rural exception sites can provide a small but important additional source of affordable housing in rural areas. Local plans should make clear that such sites will be released as an exception to normal plan policies. Such housing should be regarded as additional to the provision of housing for general housing demand. However when the plan is rolled forward such housing can be taken account of in the calculation of housing need which remains to be met (see paragraph 2 of Annex A to PPG3). The case for releasing such sites is a matter for local judgement.

15. Concern has been caused by the granting of planning permission for single homes in rural areas, as an exception to the provisions of the development plan, for people with local connections but no proven agricultural or forestry need. Such proposals should be considered with reference to the rural exceptions policy in the development plan (see also paragraph 2.18 of PPG7). The local planning authority should set an upper size limit for such single homes (in terms of floorspace or number of bedrooms) and should make arrangements to restrict occupancy to people who meet the criteria of need as defined in the plan. Rural exceptions housing should be located within or adjoining existing villages and should accord with Annex A to PPG3.

Securing affordable housing and controlling occupancy

16. Both conditions and planning obligations may legitimately be used, where justified, to achieve the development and use of land in a way that ensures:

- a mixed development that would contribute to the identified need for affordable housing; and
- that some of the housing built is occupied, either initially or in perpetuity, only by people falling within particular categories of need for affordable housing. Local planning authorities should not normally impose additional occupancy controls where a registered social landlord is to be responsible for the management of the affordable housing, although on rural exception sites local planning authorities should satisfy themselves of the adequacy of occupancy controls to reserve the housing in question for local needs in perpetuity, and this may involve the use of conditions or planning obligations.

17. When deciding whether to use conditions and planning obligations, and in formulating their terms, authorities will need to be aware of the need both for secure arrangements to cover all eventualities and for flexibility to enable or encourage the scheme to proceed. While arrangements should be legally binding and ensure the housing is occupied as intended, they should also take account of

the needs of developers and registered social landlords who must ensure that schemes are financially viable - including the need to raise development finance - and who may well need to operate within certain time limits. Local planning authorities should not prescribe which partners developers should use to deliver the affordable housing, but rather should aim to ensure that arrangements will deliver the objectives of the policy as set out in the local plan. Decisions about what affordable housing types to build should reflect local housing need and individual site suitability and be a matter for discussion and agreement between the parties involved. Within that framework, developers should be given reasonable flexibility to decide the detailed mix of affordable housing types most appropriate to a particular site, provided that it will contribute to satisfying a local need for affordable housing as demonstrated by a rigorous and realistic assessment of local need.

18. Local authorities or developers may consider that, on certain sites, it is preferable respectively to seek or give a financial or other contribution towards the provision of affordable housing on a different site in the local authority area. This approach may be acceptable in relation to sites which are considered suitable for an element of affordable housing, having regard to the size threshold and other factors set out in paragraph 10. It should not be used in relation to other sites, such as those below the size threshold; either the site in question is suitable for an element of affordable housing, taking into account the factors mentioned in paragraph 10, or there should be no requirement for, or contribution towards, affordable housing as part of the proposed development.

19. Although the development plan should outline the preferred approach for controlling occupancy, where a registered social landlord is not involved, the details of such arrangements will be influenced by the circumstances of each case and by negotiation on each scheme. The drafting of appropriate conditions and planning obligations need not take an excessive amount of time, given co-operation between the parties. It may be possible to use or adapt existing arrangements on other sites already developed. However, the local planning authority should not use conditions or planning obligations to control directly the detailed allocation of housing to nominated individuals.

20. The wording and timing of these arrangements need care. Inappropriate conditions and planning obligations create uncertainty and may halt the progress of a scheme or, later, could be the subject of applications for modification or discharge. If a planning obligation is to be effective the local planning authority should ensure that it is executed before granting planning permission. Paragraphs 27 to 29 contain possible approaches to the use of conditions and planning obligations in different situations.

21. Where occupancy criteria are included as part of conditions or planning obligations, a cascade approach may be preferable. This should ensure that occupants will always be found for any accommodation, thus safeguarding an adequate stream of revenue for those managing the development (and thus enabling loans to be raised for the development), whilst ensuring that people in local housing need take priority. Under this approach the eligibility criteria would, initially be restricted to local residents, people employed locally or

people with local connections'. If the housing remained unallocated after a certain time* the criteria would widen (eg. to include neighbouring local planning authority areas) to ensure that a suitable occupant was found.

Involvement of a registered social landlord

22. An effective way of achieving control over occupancy will be to involve a registered social landlord. The body's continuing interest in the property will ensure control over subsequent changes of ownership and occupation. This provides two safeguards. First, registered social landlords are obliged' to have publicly available policies and procedures for allocating tenancies. These should be "open, fair and based on housing need". Second, should disposal of registered housing association assets become necessary, it will generally take place under Housing Corporation controls.

23. The Secretary of State considers that the involvement of a registered housing association (to be referred to in future as registered social landlords) secures sufficient control over future occupancy of affordable housing. The Housing Act 1996 introduces a purchase grant scheme to help extend the chance of sustainable home ownership to those tenants who do not already have the right to buy. However, the existence of this purchase grant scheme should not be used as a reason to impose additional occupancy controls where a registered social landlord is involved. As announced in the Rural White Paper, the scheme will not apply to settlements, designated by the Secretary of State, with a population of 3,000 or fewer.

24. Where a local planning authority seeks to place strict occupancy controls, lenders of private finance often require registered social landlords to negotiate for the inclusion of clauses in planning obligations which would enable the lender to dispose of the property on the open market as a last resort, if the registered social landlord is in financial difficulties. The need for such clauses can therefore be avoided, in the vast majority of cases, if the local planning authority leaves the issue of controlling occupancy to the registered social landlord (see paragraphs 16, 22 and 28). Such clauses are inappropriate on rural exception sites (where it would be unacceptable, in planning terms, for such housing to be sold on the open market). However, should lenders seek the inclusion of such clauses in planning obligations relating to affordable housing on other sites local planning authorities should make their own judgements as to their appropriateness. The Housing Corporation would take steps to persuade lenders against open market disposal, but could not prevent lenders from doing so if the terms on which they had lent allowed such disposal. Local planning authorities will therefore wish to weigh the balance of interests carefully before agreeing to such clauses on non rural exception sites.

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7. terms such as local residents, people employed locally and local connections would need to be clearly defined by the local planning authority.
 8. the appropriate period of time would be influenced by the form of tenure. For rental schemes this period might be 4-6 weeks but might be 3 months or more in the case of owner occupied or shared ownership schemes.
 9. as part of the Housing Corporation's "Performance Standards" for social landlords, reinforced by the "Tenant's Guarantee" issued under statute.

Content and discharge of conditions and obligations

25. Conditions and planning obligations should fulfil a proper planning objective. Their terms should be sufficiently certain as to the nature of the restriction. They should not normally be used to control matters such as tenure, the rent or purchase price payable by prospective occupiers, or ownership.

26. Procedures exist under sections 73 and 106A of the 1990 Act which would have the effect of discharging occupancy restrictions imposed by conditions or planning obligations, if these cease to be justified in terms of the need for affordable housing.

Possible approaches to the use of conditions and planning obligations in the range of general situations

27. In seeking to ensure an adequate supply of affordable housing in their areas local planning authorities might find helpful the following possible approaches to the use of conditions and planning obligations. These are only examples and not intended as standard forms of wording. Authorities will need to consider carefully, in the circumstances of each case, whether the use of conditions or planning obligations can be justified and the precise form they should take. Authorities should also assess whether conditions or planning obligations are most appropriate.

Situations where a registered social landlord is involved

28. A) Where a site is being developed and a proportion of the units are to be transferred by the developer to a registered social landlord to manage (whether or not a transfer of ownership of land is involved) the local planning authority might ask the developer to execute planning obligations or it would impose conditions which provide that:

- a) a specified proportion of the general market housing on the site cannot be occupied until the affordable housing element, however defined (included in planning application V and shown on plan W), has been built and transferred to a registered housing association in accordance with the criteria set out in (condition X/plan policy Y/para Z of this or other planning obligations);
- b) the affordable housing should only be used for the purposes of providing housing accommodation to meet the objectives of a registered social landlord (except where tenants exercise their right to acquire property under the purchase grant scheme under the Housing Act); and
- c) if funding, which is necessary for the development of an affordable housing scheme to operate, is not forthcoming by a certain date then a specified alternative arrangement can be used, such as low cost market housing, which would still provide affordable housing on the site.

B) Where a registered social landlord develops and manages the housing, the local planning authority might ask the registered social landlord to execute planning obligations or it would impose conditions. Such an approach is essential for rural exceptions sites. Such conditions would provide that the affordable housing should only be used for the purposes of

providing housing accommodation to meet the objectives of a registered social landlord, (except where tenants exercise their right to acquire property under the purchase grant scheme under the Housing Act).

Notes for paragraph 28:

- i) An alternative to the above would be an arrangement to transfer land from the developer/land owner to a registered social landlord to build the affordable housing with funds which will be available within a reasonable period of time.
- ii) Planning obligations should not include requirements to transfer interests in land or the transfer of such interests. Transfers of interests in land should only be achieved under other statutory powers and included in separate instruments from planning obligations.
- iii) In appropriate cases it may be possible to impose a condition worded in a negative form on a planning permission, or include a negatively worded requirement in planning obligations, which restricts the use or development of land until the transfer of ownership of land has been carried out.
- iv) The provisions in planning obligations will bind successors in title and, except for personal permissions, planning permissions also bind successors in title.
- v) Where the land owner or developer is not the registered social landlord the local planning authority should ask the land owner and developer to be a party to appropriate instruments (so that the land is not useable for general market housing).
- vi) Any transfers of land between registered social landlords would take place under Housing Corporation rules and would not therefore need to be the subject of a separate legal agreement.
- vii) Conditions or planning obligations relating to affordable housing should only be used with registered social landlords on sites where planning policy is seeking an element of affordable housing, and **not** on sites where a normal housing developer would have been granted a planning permission to develop general market housing without an element of affordable housing.

Situations where no social landlord is involved

29. Where a site is being developed and the developer/land owner is to provide an element of affordable housing but no social landlord is involved, it might be appropriate for the local planning authority to ask the applicant to execute planning obligations, or it would impose conditions which provide:
 - a) that a specified proportion of the general market housing on the site cannot be occupied until the affordable housing element, however defined, (included in planning application V and shown on plan W) has been built and allocated in accordance with the occupancy criteria set out in (condition X/plan policy Y/para Z of this or another planning obligation)
 - b) occupancy criteria, preferably with some form of cascade approach (see paragraph 21) to ensure adequate supply of suitable occupants, with reference made to the appropriate plan policy.

Notes for paragraph 29:

- i) Local planning authorities will need to monitor conformity with occupancy criteria and take appropriate enforcement action. This points to the need for clear and unambiguous eligibility criteria, in order to avoid difficulties in determining compliance.
- ii) Except for personal permissions, planning permissions bind successors in title.

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