

Affordable Housing

Supplementary Guidance - February 2020



Contents

- 1 Introduction
- 2 Affordable Housing Need
- 3 The Provision of Affordable Housing
- 4 Types of Affordable Housing
- 5 Delivering Affordable Housing
- 6 Development Viability

Appendix 1 Draft Minute of Agreement

1.0 Introduction

1.1 This document provides detailed guidance in support of Local Development Plan 2 adopted October 2019 (LDP2) Policies H5: Affordable Housing and OP3: Developer Contributions and sets out how the affordable housing requirement is expected to be delivered.

1.2 The guidance has been informed by the requirements outlined in Scottish Planning Policy (SPP), PAN 2/2010: Affordable Housing and Housing Land Audits, The Housing (Scotland) Act 2001 and the Council's Local Housing Strategy.

1.3 The provision of affordable housing is essential in the makeup of sustainable communities, and helps to provide equal opportunities for all. Co-operation between all parties concerned is absolutely critical.

Policy H5: Affordable Housing

In all housing developments which will, either individually or through phasing, result in the development of 5 or more units 20% of those units will need to be affordable. Development proposals will be assessed on a case by case basis by the Council.

If the developer is unable to provide the affordable housing on the application site the Council will seek off-site provision in the form of units or serviced land on another viable site in the developer's ownership within the same Housing Market Area of the site being developed. In exceptional circumstances a commuted sum payment may be considered.

The details of provision, including tenure, house size and type, will be a matter for agreement between the developer and the Council and based upon local housing need and individual site characteristics.

Supplementary guidance sets out, in more detail how the above will be applied along with further information on the submission of a development appraisal where development viability issues arise.

1.4 Affordable housing is identified as a developer contribution in overarching policy OP3: Developer Contributions. This enables the provision to be factored in with other contributions and addressed in any arising planning agreement and / or legal agreement.

Policy OP3: Developer Contributions

Developer contributions will be sought where a development proposal (or a combination of developments) creates an identified need: to secure the mitigation required to address an adverse environmental impact; or to provide for new, extended or upgraded public infrastructure facilities or services. Contributions

secured through a planning obligation or other suitable legal agreement, as necessary, will be consistent with the tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Developers will be required to make a fair and reasonable contribution (financial or “in kind”), proportionate to the scale and nature of the development, towards these additional costs or requirements, relative to:

- Affordable housing;
- Open space and green networks;
- Leisure, recreation and tourism infrastructure;
- Education;
- Biodiversity;
- Community facilities, including health facilities;
- Waste management infrastructure;
- Offsite infrastructure works including transport infrastructure.

The proposals listed in the settlement statements and shown on the Inset Maps will be subject to a planning obligation or other suitable legal agreement to secure the required contributions towards the relevant actions specified in the Council’s Action Programme. For other proposals, individual assessments may be necessary to identify the impacts arising from the development and the mitigation required.

Supplementary guidance provides further details on the scale and nature of developer contributions; any exceptions that may apply; and the submission of development appraisal information where development viability issues arise.

Guidance on measures to conserve and enhance biodiversity is provided in the Local Biodiversity Action Plan.

2.0 Affordable Housing Need

2.1 The Housing (Scotland) Act 2001 places a duty on local authorities to develop Local Housing Strategies (LHS), informed by an assessment of housing need in their area. The Dumfries and Galloway Housing Market Partnership, which comprises members from the Councils Development Planning, Development Management and Strategic Housing Services, as well as NHS officers involved in Integrated Health and Social Care, carried out a comprehensive analysis of housing need and demand in order to determine the range of housing need, demand and affordability issues within the area. The Scottish Government confirmed in August 2016 that the process

and methodology used to produce the Housing Need and Demand Assessment are robust and credible.

2.2 Table 1 below shows the ratio of house prices compared with income levels, which is a key indicator of the relative affordability of owner occupation. Comparing the ratio of lower quartile house prices to lower quartile earnings enables analysis of whether households with the lowest incomes can afford the cheapest housing.

Table 1 - Housing Affordability - Ratio of House Price to Income

Housing Market Area	House Prices 2013 ¹		Income		Housing Affordability Ratio	
	Lower Quartile	Median	Lower Quartile	Median	Lower Quartile	Median
Annan HMA	£80,000	£110,000	£12,179	£22,036	6.57	4.99
Dumfries HMA	£85,000	£123,500	£11,626	£21,941	7.31	5.63
Eskdale HMA	£62,000	£85,000	£12,130	£22,721	5.11	3.74
Mid Galloway HMA	£63,000	£80,000	£11,357	£20,678	5.55	3.87
Stewartry HMA	£101,125	£140,000	£11,434	£22,075	8.84	6.34
Stranraer HMA	£69,000	£100,000	£10,616	£20,066	6.50	4.98
Dumfries and Galloway	£80,000	£120,000	£11,533	£21,571	6.94	5.56

Source: CHMA HNDA Datapacks 2014 (Additional data cleaning was carried out on the RoS house price data by DGC) and Herriot-Watt Small Area Income Estimates, HNDA2

(1) Excludes properties worth less than £20k and more than £1m.

2.3 Table 1 shows that the HMA with the most significant affordability issue is Stewartry, where house prices in the lower quartile cost nearly 9 times the average lower quartile income (bottom 25% of incomes) and those in the median price range cost over 6 times the median income. Dumfries HMA also has high ratios for both lower quartile and median house prices, whilst Eskdale and Mid Galloway HMAs tend to be more affordable. All HMAs, however, tend to have high price to income ratios, particularly for the lower quartiles, meaning that affordability is an issue across the region.

3.0 The Provision of Affordable Housing

3.1 Developers who submit proposals which will, either individually or through phasing, result in the development of 5 or more units will be required to clearly set out the proposed mechanisms for contributing to local affordable housing need in their planning application.

3.2 Although care must be taken not to unduly burden those housing developments which may be on the margins of viability, the fundamental concept of the policy approach is to marry the cost of providing the affordable element of the development with the uplift in land values resulting from the grant of planning permission. The Council recognises that a requirement to make a contribution to affordable needs will result in a cost to the developer. In order to offset this cost, developers will be expected to take the requirements for affordable housing or any associated developer contributions into account in negotiating a land value prior to purchase. This approach should therefore prevent an increase in the final sale price of open market housing or erode profit margins of the developer. More detail on development viability is contained in Section 6.

3.3 In the case of planning permission in principle applications, the Council will seek to secure an affordable housing contribution through a section 75 agreement. It is likely that the agreement will deal with the principle of securing the contribution as opposed to the form or amount. This will be dealt with at the detailed planning application stage. A draft Minute of Agreement is attached at Appendix 1.

4.0 Types of Affordable Housing

4.1 SPP and PAN 2/2010 broadly define affordable housing as “...*housing of a reasonable quality that is affordable to people on modest incomes.*” The PAN goes further by adding “*In some places the market can provide some or all of the affordable housing that is needed, but in other places it is necessary to make housing available at a cost below market value to meet an identified need.*” Based on this definition and the guidance from the Scottish Government there is a broad range of affordable housing tenures. The following tenures types have been included in the SG by way of example, it is not an exhaustive list as new mechanisms are developed and new funding streams become available and should not be taken as a checklist:

i) **Social rented** - housing provided at an affordable rent and usually managed locally by a Registered Social Landlord (RSL) such as a Housing Association, Housing Co-operative, Housing Trust or other housing body regulated by the Scottish Housing Regulator.

ii) **New Supply Shared Equity (NSSE)** - the owner purchases part of the dwelling, with the remaining stake funded by the Scottish Government through an agreement with the owner. Unlike shared ownership, the owner pays no rent for the equity

stake, which is retained by the Scottish Government. Instead the owner owns the home outright, but the Scottish Government holds a security over the proportion it has funded. Shared equity provides an option for first time buyers to enter into home ownership under the Scottish Government's LIFT scheme.

iii) **Mid Market Rent (MMR) or Intermediate Rent** – Private rented accommodation available at rents below market rent levels in Dumfries and Galloway. The rents are normally no more than 100% of the Local Housing Allowance. MMR is aimed at assisting people on low and modest incomes to access affordable rental accommodation.

iv) **Subsidised and Unsubsidised low cost housing for sale** - (including plots for self-build) – this can be delivered in a number of ways, the list below gives some examples:

- Subsidised Low Cost Home Ownership Shared Equity – the owner pays for a majority share in the property with an RSL or the Scottish Government holding the remaining share under a shared equity agreement, unlike shared ownership, the owner pays no rent and owns their share of the property outright;
- Subsidised Low Cost Home Ownership Shared Ownership - the owner purchases part of the dwelling and pays an occupancy payment to an RSL on the remainder;
- Subsidised Low Cost Home Ownership Discounted Sale – a subsidised dwelling sold at an affordable level;
- Discounted serviced plots for self-build can be included. A legal agreement can be used to ensure that subsequent buyers are also eligible buyers;
- Unsubsidised Low Cost Home Ownership Discounted Sale – a dwelling without public subsidy sold at an affordable level. A Deed of Conditions will be attached to the missives in order to maintain the house as an affordable unit to subsequent purchasers. The conditions are agreed and codified between the developer and the Council within the Section 75 Agreement. Dumfries and Galloway Small Communities Housing Trust (DGSCHT) can be contacted as a potential provider of this type of affordable housing;
- Unsubsidised Shared Equity – the owner purchases part of the dwelling, usually 60-80% of the value, with the remaining stake held by the developer. The maximum price paid for the purchaser's stake must not exceed 3.5 times the median income level for the relevant Housing Market Area;
- Unsubsidised Low Cost Home Ownership Golden Share - the asking price is set at 80% of the market value in perpetuity, the market value being set by an independent or district valuer to the satisfaction of the Council. Purchasers must be able to evidence local connection and an inability to finance the purchase of the full market value of the property.

Different tenure types – General Advice

Subsidised			Unsubsidised					
RSL Sector			Private Sector					
Rented Housing			Housing for sale					
RSL Housing	RSL Mid-Market rent	Private sector mid-market rent	Lower cost			Q2 cost	Q3 cost	Q4 cost
			Shared equity or shared ownership	Discounted or shared ownership	Up to £86,215	Up to £125k	Up to £180k	£180k above
Affordable housing			Non-affordable private market housing					

5.0 Delivering Affordable Housing

5.1 As the delivery of affordable housing is the prime objective of the policy, close liaison between the applicant/developer and the Council's strategic housing service, legal service and planning service must be maintained to ensure that the affordable housing requirement is delivered.

5.2 The policy applies the following sequential approach to the delivery of affordable housing:

1. Provision of affordable housing on-site;
2. Provision of affordable housing off-site either in the form of houses or serviced land within the same housing market area as the application site;
3. Commuted sums.

5.3 Commuted sums will only be considered in exceptional circumstances where the development has exceptional costs or the development meets the terms set out in paragraph 5.8.

5.4 On-Site Provision (Land or Units). There are two principal mechanisms through which developers can deliver affordable housing obligations on-site. Developers should enter into discussion at the earliest opportunity possible with the Council's Planning and Strategic Housing Services to determine the most appropriate delivery mechanism.

- Land: The developer would provide serviced land free from development constraints which could be developed by or for a RSL or the Council. This land would be transferred either at a value relating to its end use for

affordable housing or by agreement between the developer and the RSL or Council, at a lower value. In any event it should be transferred at less than value for private market housing for sale. The value of the land should be independently determined by the District Valuer and should reflect the location, the type of affordable housing and any other factor which will influence the value;

- Units: The developer builds the houses using one of the low cost housing for sale mechanisms outlined above. So the affordable houses are indistinguishable from the market houses on the rest of the site, the external finishes used on the affordable houses should be the same as those used on the market homes.

5.5 Off-Site Provision.

On some sites it may not be possible for the developer to provide the affordable houses on the actual application site. Where the developer has been able to demonstrate to the Council's satisfaction that this is not possible, the Council may agree to the developer providing the affordable units off site. Where the Council confirm that off-site provision on an alternative site is acceptable, the details of both sites should be submitted at the time of the application so that the merits of the overall scheme can be assessed. Situations where the Council may agree to off-site provision include:

- Where the location of the application site would make it difficult or uneconomic for an RSL to manage the units;
- Where there are exceptional circumstances e.g. poor access to public transport and services on the original site;
- Where the provision of the affordable housing on an alternative site would help achieve more balanced communities.

5.6 If the Council is prepared to accept off- site provision, assurances will be sought from the developer that the alternative site is suitable, available for development and can be delivered within an appropriate timescale i.e can be provided at the same time or in advance of houses on the application site. The off-site provision must be within the same Housing Market Area as the application site. The alternative site must be capable of accommodating the transferred requirement for affordable housing as well as any requirements arising from its own development such as provision of open space. The development of both sites will therefore be linked by means of a legal agreement, preferably a section 75 agreement.

5.7 Commuted Sums.

The use of commuted sums to enable the provision of affordable housing will only be considered in exceptional circumstances.

5.8 The instances where a commuted sum may be acceptable include:

- Where it is a small development and economies of scale make the management of a small number of units difficult for RSLs and the developer has demonstrated the house(s) cannot be provided. See paragraph 4.1 for examples of tenures types.
- Where there is a sufficient supply of affordable housing in the settlement and the provision of a commuted sum would help achieve more balanced communities elsewhere in the housing market area.
- Where the Council's Strategic Housing Service recommend that this is the most appropriate form of contribution in considering the Council's strategic housing priorities.

5.9 All commuted sums will be paid into a fund which will be administered by the Council to facilitate meeting the need for the affordable housing throughout the region. These funds may be used in assisting RSLs, DGSCHT or other appropriate organisation in the purchase of development land or to support these organisations in meeting exceptional infrastructure costs associated with delivering an affordable housing development. The Council will aim to invest the commuted sum in the same housing market area as the original application. However, this may not always be possible and the Council reserves the right to invest the contribution in an alternative housing market area.

5.10 In those cases where the cost of acquiring or supporting an individual site in a particular housing market area may exceed the value of commuted sums for that housing market area at that time, the Council reserves the right to aggregate contributions until sufficient funds have been achieved.

5.11 Alternatively the commuted sum could be used to assist in the implementation of the affordable housing policy such as providing funding for a post for an Officer to help the delivery of affordable housing and negotiate the affordable contribution between developers and RSLs.

5.12 The simplest mechanism for the payment of commuted sums will be for these to be paid prior to planning consent being issued. Where this option is pursued an exchange of letters between the developer and the Council will be required to provide an audit trail. However, it is recognised that in some circumstances this may not be possible. In such situations where a developer is unable to pay the contribution up front it may be possible to phase the commuted sum in line with the development, in these circumstances a legal agreement will be required. In the case of in-principle planning applications the Council will seek to confirm the affordable contribution at planning permission in principle stage.

5.13 Calculation of Commuted Sums Paragraph 22 of PAN 2/2010 states that commuted sum payments should be "of a value equivalent to the cost of providing the percentage of serviced land required by the policy". The Council's interpretation of this is that the "cost" to the developer of providing land for affordable housing is

the amount less which the developer will receive by selling the land to an RSL for affordable housing than would be received for selling at market value, i.e. the difference between affordable land value and market value. Furthermore an RSL may have to purchase land on the open market in order to provide the affordable units elsewhere. The commuted sum is therefore the difference between the affordable land plot and the value of a plot for private development i.e. the additional amount the RSL will have to pay over and above the affordable land value to obtain the plot within each respective HMA.

Example of Commuted Sums Calculation:

Private development plot value = x

Affordable housing land value = y

Difference between the value of private and affordable housing development plots is:

$x - y = \text{commuted sum}$

5.14 The Council has not determined at what level the commuted sum should be set for each HMA, as these values may vary significantly across each HMA and any figures may become outdated should market conditions change. The onus is therefore on the developer to submit proposals detailing and justifying the value of the respective sum to be paid. This will be then agreed by the Council and should any discrepancy occur, the Council will instruct an independent valuer, at a cost to the developer, to agree on the disputed valuation.

5.15 Management of Contributions

The management of contributions will be carried out by the Council. Developer contributions will be secured within the relevant accounts within the Council and will be clearly ring fenced for the purpose specified in the planning obligation. A Planning Obligation secured through a Section 75 agreement or other appropriate legal agreement will provide developers with the opportunity to have their contribution returned should work the Council is responsible for not be allocated or commenced within the timeframe outlined in the agreement.

Timescales may vary pending on the circumstances of a development and the requirement of the contribution.

6.0 Development Viability

6.1 The Scottish Government's definition of viability is where the value (revenue) generated from a development must exceed the costs of undertaking the development ("costs" include the developer's profit). If however, the costs exceed the revenues, then the development would be considered unviable and unlikely to progress on this basis. Viability is the key factor which determines whether

development proceeds or not and given the current economic climate it is crucial for public and private sectors to work together.

6.2 The Council recognises the implications developer contribution may have on the financial viability of a proposal and is therefore acknowledged that this expense is levied on the land value rather than the end user of the development. By outlining the type of infrastructure and facilities the Council expect developers to provide there should be no hidden surprises when the developer submits their planning application.

6.3 If the provision of developer contributions makes a scheme financially unviable the developer will be required to provide a full development appraisal demonstrating the negative impact the contribution has upon the proposal. Where it is considered that the burden imposed by the contribution is so great that the proposal would not otherwise take place the Council will negotiate with the developer. Negotiations will assess the benefits the development brings to the community and determine if mitigation can be met through other means.

6.4 To assist in providing a development appraisal, a template setting out how to structure a development appraisal has been prepared and is provided on the Council website alongside the Developer Contributions Supplementary Guidance. Submitted development viability appraisals will be kept confidential and will only be used to assess the viability of the development being proposed.

Planning permission for all developments will be assessed individually.

7.0 Planning Obligations

(Modification or Discharge)

7.1 The developer should be aware that if changes are made that a separate application to modify or vary planning obligation may also be required and it is recommended that the developer discusses these as part of any negotiations with the Council at the earliest opportunity and prior to submitting a formal application.

7.2 An application for a modification / variation should include supporting information setting out the reasons for the request and such an application will only be supported if it can be demonstrated that affordable housing benefits would still be met or can be met through other means. If an application for modification/variation is approved then the developer should note that it is their responsibility to advise the Register of Sasines / Land Registry.

Appendix 1

MINUTE OF AGREEMENT

between

THE DUMFRIES AND GALLOWAY COUNCIL, constituted under the Local Government etc. (Scotland) Act 1994 and having their Council Headquarters at Council Offices, English Street, Dumfries, the Planning Authority for the Dumfries and Galloway area for the purposes of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as the “**Planning Authority**”)

and

[], a company incorporated under the Companies Acts and having its Registered Office at [], the heritable proprietors of the Subjects hereinafter defined (who and whose successors in ownership of the Subjects (as after defined)) are hereinafter referred to as “**Landowner**”)

WHEREAS:

I) This obligation is entered into in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 (“**Act**”) for the purpose of permanently restricting and regulating the Development (as hereafter defined) and use of ALL and WHOLE [] (hereinafter the “Subjects”).

II) A planning application has been lodged with the Planning Authority under Planning Application Number [] (“**Planning Application**”), by [] a company incorporated under the Companies Acts and having its Registered Office [], seeking planning permission for [] (the “Development”).

III) The Planning Authority have agreed to grant the Planning Permission sought under the Planning Application upon certain conditions,

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:-

1. Definitions.

In this Agreement the following terms shall have the meanings set out in this Clause:

“**Affordable Housing**” means housing made available for low cost rent, mid-market rent, shared equity, shared ownership or such other scheme as the Planning authority may deem appropriate.

“**Planning Permission**” means the permission to be issued to by the Planning Authority for the

Development pursuant to the Planning Application.

“RSL” or “Registered Social Landlord” means any company, charity or other body corporate registered with the Scottish Housing Regulator under the Housing (Scotland) Act 2001

2. Affordable Housing

a) The Landowner shall, within the Development, provide units for the purposes of Affordable Housing in accordance with the Dumfries and Galloway Council LDP2 Policies H5 and OP3, The number of Affordable Housing units provided within the Development shall be 20% of the total units, [number of units] to be constructed on the Subjects unless otherwise agreed in writing with the Planning Authority. The Affordable Housing Units shall be provided [*timing*]. Prior to the occupation of any of the [number of units] Affordable Housing units on the Development site, occupation of any other unit constructed in the Development shall be prohibited

b) Subject to the terms of Clause 2c) hereof, the Affordable Housing units to be constructed with in the Development shall be transferred to a Registered Social Landlord operating within the Planning Authority's area.

c) Where the Landowner demonstrates to the reasonable satisfaction of the Planning Authority that no RSL operating within the Planning Authority's area is willing and able to purchase any or all the Affordable Housing Units the Planning Authority shall confirm in writing that Clause 2 b) is superceded by this clause and that the Landowner may sell those Affordable Housing Units under its own Affordable Housing scheme.

4. The Planning Authority shall within [14] days following upon the production of evidence of the date of recording of this Agreement in the Land Register (declaring that written acknowledgement from the Keeper of receipt of this Agreement shall be sufficient evidence for the purpose of this clause) deliver to the Landowner a valid and proper planning permission (“Planning Permission”) pursuant to the Planning Application.

5. The Landowner hereby undertakes not to dispose of the Subjects or any part of it or interest in it prior to the date of registration of this Agreement in the Land Register of Scotland.

6. The Landowner hereby binds and obliges himself to reimburse the Planning Authority all reasonably incurred legal costs in the preparation and registration of this Minute of Agreement, including for the avoidance of doubt the time of its own solicitors, and any recording or registration dues.

7. Each of the terms of this Agreement has been and is agreed independently of the others and in the event of any term becoming or being held to be ineffective whether by operation of law or otherwise the remaining terms of this agreement shall continue in force.

8. The Landowner and any person deriving title to the Subjects shall not be obliged to implement the Planning Permission and nothing shall prohibit the Landowner from developing the Subjects (or part thereof) in accordance with a planning permission or planning permissions (other than The Planning Permission) granted after the last date of execution of this Agreement.

9. Any request for modification or discharge of any terms of this Agreement shall be made in accordance with Section 75A of the Act, any legislation amending or replacing that provision and any regulations made thereunder.

10. The Parties by execution hereof consent to the recording of this Agreement for preservation and execution.

11. This Agreement is governed by the Law of Scotland and the Scottish Courts shall have exclusive jurisdiction.

IN WITNESS WHEREOF these presents typewritten on this and the [] preceding pages [*together with plans & schedules*] are executed as follows: