

Affordable Housing and the 2018 NPPF

A Briefing note

November 2018

1 Introduction

- 1.1. This note has been prepared in response to recent changes to affordable housing policy in the 'new' 2018 National Planning Policy Framework (NPPF), and updated National Planning Practice Guidance (NPPG). It examines the differences in the requirements between the previous and new guidance in relation to the provision and types of affordable housing. It goes on to consider the impact of the changes on the affordable housing policy in the Local Plan for Bolsover District as submitted for independent examination and the current Bolsover District Local Plan.
- 1.2. The Local Plan for Bolsover District as submitted for examination will be considered against the 2012 NPPF, which was current throughout its development. However, future planning decisions will need to also consider the requirements in the 2018 NPPF. Due to these changes, this paper has been prepared to ensure that a relevant, robust and up to date policy framework is in place to guide the future delivery of affordable housing in the District.

2 Current and Emerging Policies in the Local Plan

- 2.1 The policy requirement for the delivery of affordable housing in the current Bolsover District Local Plan is set out in policy HOU 6. This states that when determining planning applications for housing the Council will seek to negotiate the inclusion of an element of affordable housing to meet a proven local need on sites which are for 25 or more dwellings or more than 1 hectare.
- 2.2 The Local Plan for Bolsover District submitted for examination by an independent inspector contains Policy LC2: Affordable Housing Through Market Housing. This states: 'The Council will require applications for residential development comprising of 25 or more dwellings to provide 10% as affordable housing on site. Where this is stated not to be viable, a detailed site viability appraisal of the development proposal shall be required to inform an alternative level of provision'.
- 2.3 This policy was based on national guidance in the 2012 NPPF, and evidence in up to date studies. The 2018 NPPF, published on 24th July, came into force on the day it was published, and replaced the 2012 NPPF in its entirety. However, in relation to the Examination of Local Plans and the transitional arrangements, the Publication Local Plan will be tested against the requirements in the 2012 NPPF, not the 2018 version.
- 2.4 It is recognised that once the Plan is adopted and used in decision making, it will have to take account of the 2018 NPPF. Therefore, it is important that the policies in the new Local Plan, reflect the 2018 NPPF to provide robust policies for development management in the longer term.

3 A Comparison of Old and New Guidance

- 3.1 Both the 2012¹ and 2018² NPPF promote the Government's objective of boosting the supply of housing. The 2018 NPPF contains a requirement to use a new standard methodology to establish the overall level of housing needed in a district. Having established the overall level of housing, Councils are then required to break this down. This involves a consideration of size, type and tenure needed by different groups in the community including: affordable housing; families with children; older people; students; people with disabilities; and service families.
- 3.2 It is considered in relation to this issue that the Council have chosen a robust housing figure, with a 10% buffer built into the Local Plan housing provision. The SHMA objectively assessed need is well justified and significantly higher than the figure that the Governments approach promoted in September 2017(276 compared to 244).
- 3.3 In relation to the Affordable Housing, where a need for affordable housing is identified, both the 2012 and 2018 NPPF expect affordable housing to be provided on site³. The exceptions to this are where off site provision or an appropriate financial contribution in lieu of provision, can be robustly justified, and the agreed approach contributes to the objective of creating mixed and balanced communities.
- 3.4 The definition of affordable housing need is almost identical in both the 2012 and 2018 NPPF. It is defined as 'those whose needs are not met by the market'. However proposals for how to address these needs differs.
- 3.5 The 2012 NPPF required that the scale of obligations (including affordable housing) should not be such that viability is threatened⁴. The 2018 NPPF requires that all viability assessments conform to a nationally applied methodology, including standardised inputs⁵.
- 3.6 The key changes between the two NPPF's in relation to affordable housing is in the consideration of the types of housing that are considered to constitute affordable housing. The 2018 NPPF emphasises the provision of affordable market housing. The new definition has four categories. Three of these relate to home ownership products, in an effort to make more people able to access the home ownership market, whilst the fourth category relates to affordable housing for rent. (see Appendix 1 for a full definition).
- 3.7 Importantly in the 2018 NPPF requirements in relation to the delivery of affordable housing is set out at paragraph 64. This states

¹ Paragraph 47 of the 2012 NPPF

² Paragraph 59 of the 2018 NPPF

³ Paragraph 47 of the 2012 NPPF & paragraph 62 of the 2018 NPPF

⁴ Paragraph 173 of the 2012 NPPF

⁵ Paragraph 57 of the 2018 NPPF

‘Where major development involving the provision is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership⁶, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups’ (Our emphasis, see appendix 3 for details).

3.8 Whilst this approach could be allowed for by the existing policy, it is clear from the evidence base that low cost market housing is not what the district requires to better meet its housing need.

3.9 The 2018 NPPF also introduces a requirement on local planning authorities to support the development of entry-level exception sites. Para 71 states:

“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. These sites should be on land which is not already allocated for housing and should:

- a) comprise of entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of this Framework; and
- b) be adjacent to existing settlements, proportionate in size to them, not compromise the protection given to areas or assets of particular importance in this Framework, and comply with any local design policies and standards.

3.10 Once again, there is little evidence to indicate that there is a need for such sites within the District where housing values are generally low, or that such sites would provide for sustainable development in the long term.

3.11 There is also concern that this may be seen by some developers as a way of bringing forward housing sites, in relatively unsustainable locations.

3.12 It is considered that both of these issues need to be addressed in the Local Plan if it is to be robust following adoption. Therefore it is recommended that the Council propose amendments to the submitted Local Plan to address these issues.

4. Housing Needs within Bolsover District

4.1. The Council has an up to date local housing need assessment, as part of the North Derbyshire and Bolsover Objectively Assessed Need (OAN) update from October 2017⁷. This includes assessments of:

- a. The overall level of affordable housing need in the District, and wider Housing Market Area;

⁶ As set out at paragraph d of the appendix

⁷ As part of the joint (HMA wide) North Derbyshire and Bassetlaw Objectively Assessed Need Update

- b. The need for different types of affordable homes;
 - c. The needs of older people and other groups for specific types of homes and tenures
- 4.2. In terms of overall housing needs, the model used in the OAN update is based largely on housing market conditions (particularly the relationship of housing costs and incomes) at a particular point in time. A base date of 2014⁸ was used for this assessment.
- 4.3. An important consideration is that it was noted that house prices and private sector rents in Bolsover are fairly low compared with both the regional and national averages.
- 4.4. Within the District, 61.5% of households with a current affordable housing need are estimated to be likely to have insufficient income to afford market housing⁹ without subsidy. In terms of newly forming households 47.7% will be likely to be able to afford market housing¹⁰ without subsidy. The annual net affordable housing need for the District was given as 126 homes a year¹¹
- 4.5. In interpreting the affordable needs evidence the Report¹² notes that:
- a. Bolsover is part of a relatively low value housing market. Low house prices impact on residential development viability, and this significantly impacts on the level of affordable housing that can be delivered through mixed-tenure developments;
 - b. There are other means of delivering affordable housing besides through Section 106 Agreements, including through schemes brought forward by Registered Providers, through rural exception development and through delivery funded through the National Affordable Housing Programme. These will contribute to affordable housing delivery;
 - c. The need for affordable housing is very sensitive to housing costs and incomes. Increasing overall housing delivery can be expected to support improvements in the affordability of market housing. This will contribute to reducing the affordable housing need;
 - d. There is a clear need for economic regeneration. Improving employment levels and incomes will contribute to reducing the affordable housing need.
- 4.6. Housing in Bolsover district is 43% cheaper than the national average. It is important to note that the income levels likely to be required to access owner occupied housing are often lower than might be needed to rent privately. This would suggest that a key issue in the District is about access to capital (e.g. for deposits, stamp duty, legal costs) as well as other mortgage

⁸ The 2014 projections were released in 2016 meaning that the assessment was based on the most up to date information available

⁹ Paragraph 5.21 and table 43 of the North Derbyshire and Bassetlaw OAN update

¹⁰ Paragraph 5.24 and table 43 of the North Derbyshire and Bassetlaw OAN update

¹¹ Paragraph 5.33 et al and table 48 of the North Derbyshire and Bassetlaw OAN update

¹² Paragraph 5.42 of the North Derbyshire and Bassetlaw OAN update

restrictions (e.g. where employment is recent, short term, temporary or zero hours). Whilst the 2018 NPPF suggests a clear policy direction to provide 10% of all new housing as affordable home ownership, (at 20% below market costs), it is clear that this does very little to help the affordable housing issues within Bolsover District.

- 4.7. The evidence suggests that if one can access a mortgage, there will be properties available within their price range that they can afford to buy. It is unlikely that new homes, even at a notional 20% reduction off market value, would be cheaper than existing properties currently available. Also, this approach does not help those people whose issue is the inability to access a mortgage at all.

Needs of specific groups in the district in relation to affordable housing.

- 4.8. In respect of the makeup of the current and future population of the District, the OAN update notes that the percentage of older people (65+) in the District at 19.6% is higher than both the East Midlands (18.8%) and National (17.7%) average¹³. Within the district over the period between 2014– 035 the population of people over 65 is predicted to rise by 48.7%¹⁴. The projected need for specialist housing for older people within the District is predicted to increase by 37 units annually between 2014–2035¹⁵ (this excludes residential care housing for which the expected need is 15 units for each year over the same period¹⁶).
- 4.9. In 2011 24.7% of the population of the District had a long-term health problem or disability. This is predicted to increase by 4,689 between 2014-2035¹⁷. The Housing Market Area has a high level of disability when compared with other areas¹⁸. An aging population means that the number of people with disabilities is expected to increase substantially in the future.
- 4.10. People with a long term health problem or disability are more likely to live in social rented housing and are also more likely to be outright owners. Given that typically the lowest incomes are found in the social rented sector, and to a lesser extent for outright owners, the analysis would suggest that the population/households with a disability are likely to be relatively disadvantaged when compared to the rest of the population.

Viability

¹³ Table 76 of the North Derbyshire and Bassetlaw OAN update

¹⁴ Tables 77 & 78 of the North Derbyshire and Bassetlaw OAN update

¹⁵ Table 97 of the North Derbyshire and Bassetlaw OAN update

¹⁶ Table 80 of the North Derbyshire and Bassetlaw OAN update

¹⁷ Tables 82 & 83 of the North Derbyshire and Bassetlaw OAN update

¹⁸ And within the HMA Bolsover District has the predicted highest increase between 2014 and 2035 Table 83 of the North Derbyshire and Bolsover OAN update

- 4.11. In the 2018 NPPF the expected threshold for affordable housing should be 10 houses or 0.5ha. Within the submitted Local Plan for Bolsover District (LPfBD) ensuring the delivery of new housing in the District where there is marginal viability and delivery is challenging is identified as a key issue for the district¹⁹. As part of the evidence base for the LPfBD a Whole Plan Viability Assessment of the Plan was carried out. This indicated that sites of less than 25 units would not be viable in providing affordable housing and that the level of affordable housing that can be realistically be sought before residential development becomes unviable is 10%.
- 4.12. If the threshold and/or requirement for affordable housing is too high, this affects viability to the point where less housing gets built in the district. Affordable housing is usually provided as a percentage of market housing. Therefore, a reduction in market housing also results in less affordable housing being built.

Key Issues

- 4.13. There is a clear mismatch between the type and level of affordable housing that the new NPPF generally encourages local authorities to deliver, and the type and level of affordable housing predicted to be needed by people living in the district.
- 4.14. The Government's aspiration is for young people to be able to get on the property ladder and purchase their own homes. This is shared by the Council, who also recognise that in some cases even young working people will have difficulty accessing sufficient funds to provide a necessary deposit to acquire a mortgage and will need to access rented accommodation. However, a significant part of the existing and future expected population growth in the District is characterised by an increasing aging population with long term health problems. The local housing needs assessment in the OAN update notes that people with long term health issues are more likely to live in social rented accommodation. The other group that will see a high increase in growth of the plan period, are older people (65+), who are less likely to work, or have a limited income. As such they are less likely to be able to obtain or pay a mortgage, even for products such as affordable home ownership.
- 4.15. Low viability within the District means that if the expectation in the NPPF for 10% of new homes to be available for affordable home ownership was met, this would be the only type of affordable housing built in the District in future.
- 4.16. The Council's Strategic Housing officers consider that to provide the entire affordable housing requirement as affordable home ownership would significantly prejudice the Council's ability to meet the needs of households who cannot afford to purchase, but need social or affordable rented housing. As market prices are low, they would not want to provide Affordable Home Ownership at the expense of social or affordable rented housing. In relation

¹⁹ Paragraph 2.41 of the Publication Local Plan for Bolsover District May 2018.

to determining planning applications they would recommend that applications are refused where it is proposed to meet the affordable housing requirement through affordable home ownership where there is an identified need for social or affordable rented housing to meet an existing shortfall in provision.

- 4.17. The requirement in the 2018 NPPF appears to allow flexibility to meet local needs, in so far as an exception is provided within Para 64 where such provision (10% Affordable market housing) would, '*significantly prejudice the ability to meet the identified affordable housing needs of specific groups*'.
- 4.18. Given the demographic projections for residents in the district (i.e. that the groups that are expected to increase as a proportion of the population over the Plan period are those aged 65+, and people with long term health problems), it is considered that these are specific interest groups; and their needs would be prejudiced by the delivery of all of the District's affordable housing in the form of affordable home ownership.

Equalities and Human rights

- 4.19. Not only would the NPPF proposed approach appear to mitigate more against groups in society that for a variety of reasons may not be able to access mortgages, but within this District, but also within this district the identified groups, being mostly older people and people with a disability, are groups who share protected characteristics under the Equalities Act 2010.
- 4.20. A housing policy that would reduce the availability of rental property in favour of market housing, clearly has a disproportional impact on those elements in society that need to access rented rather than market housing.
- 4.21. The NPPF is not fully prescriptive on this issue as it allows local council's not to follow the 10% Affordable Market housing scenario where it would, '*significantly prejudice the ability to meet the identified affordable housing needs of specific groups*'. This seems to have been included specifically to avoid such charges being levelled at the government in terms of this issue.
- 4.22. The Council can seek to make changes to affordable housing policies in the Local Plan for Bolsover District to reflect the requirements of the 2018 NPPF. The level and type of affordable housing most suitable to meet local circumstances could be included as one of the major modifications to the submitted Local Plan before the Hearing Sessions.
- 4.23. In relation to the determination of planning applications, Annex 1: Implementation, of the 2018 NPPF states that the policies in the Framework are material considerations, which should be taken into account in dealing with applications from the day of its publication, and that planning policy documents may need to be revised as quickly as possible to reflect the

changes in the Framework. However, it then goes on to say that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to existing policies, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

4.24. Based on this, the key material considerations in determining the level and type of affordable housing on major sites in Bolsover District are:

- a. The existing Bolsover Local Plan;
- b. The provisions of the 2018 NPPF;
- c. The robust evidence base in respect of the type of affordable housing required to meet the needs of people in the district;
- d. The affordable housing policies in the emerging Local Plan.

4.25. Given the recent publication date of the 2018 NPPF, there is not yet any case law or appeal decisions to indicate what weight is likely to be given to each of the material considerations above. However, given the evidence outlined above it is considered that the Council would be found to be reasonable if they sought affordable housing based on the existing and future needs of the population of the District.

5. Suggested changes to the affordable housing policies in the Local Plan for Bolsover District.

5.1. Given the provisions of the 2018 NPPF and the evidence underpinning policies in the Publication version of the Local Plan for Bolsover District, it is considered essential that clarity is given to the affordable housing situation within the District.

5.2. In order to prevent concerns arising over the compatibility of the Plan with the Equalities Act 2010, and in order to ensure that the future delivery of affordable housing within the district, meets the needs of the community, it is proposed that the current policy in the Local Plan is put forward for amendment as a major modification to read:

PROPOSED MODIFICATION

Policy LC2: Affordable Housing Through Market Housing

The Council will require applications for residential development comprising of 25 or more dwellings to provide 10% as affordable housing on site. **This should be in the form of affordable housing for rent. Where an applicant can demonstrate that this requirement would lead**

to issues of viability (for example where there has been a change in site circumstances since this Plan was adopted) they should justify the need for a viability assessment, and submit it with the planning application.

- 5.3. In relation to Para71 of the 2018 NPPF relating to Entry level exception sites, a paragraph should be added at the end of the section on Affordable Housing stating that :

“The evidence base for the Local Plan indicates that the need for entry level housing at low cost, as provided for by Paragraph 71 of the 2018 NPPF, is generally well met across the district. Where exceptional circumstances apply and a proposal can clearly show that a specific need is being met and the dwellings will provide for that need over the long term, proposals will be supported.”

- 5.4. On the basis of the above proposals it is considered that the Local Plan remains compliant with the 2012 NPPF, but is also robust to address the issues raised in the 2018 NPPF.

APPENDIX 1 – DEFINITION OF AFFORDABLE HOUSING IN THE 2018 NPPF

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household’s eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

APPENDIX 2: REQUIREMENT IN 2018 NATIONAL PLANNING POLICY FRAMEWORK TO SUPPORT ENTRY-LEVEL EXCEPTION SITES

71. 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. These sites should be on land which is not already allocated for housing and should:

a) comprise of entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of this Framework; and

b) be adjacent to existing settlements, proportionate in size to them, not compromise the protection given to areas or assets of particular importance in this Framework, and comply with any local design policies and standards.

APPENDIX 3: TYPE OF AFFORDABLE HOUSING, AND EXEMPTIONS TO THIS PROVISION IN THE 2018 NPPF

64. Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

- a) provides solely for Build to Rent homes;
- b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);
- c) is proposed to be developed by people who wish to build or commission their own homes; or
- d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.