

## **Affordable Housing in the Draft National Planning Policy Framework**

### **Introduction**

1. The draft National Planning Policy Framework (NPPF) proposes to cancel Planning Policy Statement 3 (PPS3) 'Housing' (2005 – updated 2011) and Circular 05/2005 'Planning Obligations'. National planning policy guidance on planning for housing, including affordable housing, will henceforth be set out in 107 to 113 of the NPPF, part of a section headed 'Planning for People'.

### **Issue**

2. The purpose of this short paper is to examine whether:
  - (i) the Government's desire to abbreviate existing national planning policy guidance on housing has done no more than to "condense" it into "user-friendly and accessible" terms "which can be understood and used by everybody who has an interest in shaping the development of their area" (NPPF Consultation paragraph 10); or
  - (ii) the "condensation" of national planning policy guidance on housing reveals a substantial shift in policy, at least insofar as planning for affordable housing is concerned.

### **Some History and Context**

3. A brief history of policy guidance on planning for affordable housing sets the context.

*PPG3 (1992)*

4. A convenient starting point is PPG3 “Housing” (1992). That policy guidance note was promulgated at a time of increasingly widespread public concern at the diminution in supply of public sector housing, following the success of the right to buy initiative during the 1980s. Consistent with prevailing economic and political orthodoxy, the Government’s response was not to encourage an increase in public sector housing provision; but rather to encourage the house building industry to recognize and contribute towards meeting the need for affordable housing through the planning process.

5. Paragraph 38 of PPG3 (1992) was headed ‘Affordable Housing’. It stated-

*A community’s need for affordable housing is a material consideration which may properly be taken into account in formulating development plan policies.*

6. At the time, the introduction of that policy provoked considerable controversy in planning circles. In Mitchell v Secretary of State, Roy Vandermeer QC sitting as a deputy High Court Judge held that a planning appeal decision based upon considerations of housing price and tenure was unlawful, on the ground that such considerations had nothing to do with the character and use of land. Had that view prevailed, the now conventional approach to delivering affordable housing through the planning process would have been dead in the water, considerations of price and tenure being part and parcel of the means whereby affordable housing is actually secured through the development control process.

7. That view did not, however, prevail. The Court of Appeal overturned Mr Vandermeer's decision. In Mitchell v Secretary of State [1994] 2 PLR 23, Saville LJ said (page 26G-H) –

*On the law as it presently stands, therefore, the need for housing in a particular area is a planning purpose which relates to the character and use of land. Given that this is so, the proposition advanced on behalf of Mr Mitchell is that the need for a particular type of housing in an area is not a planning purpose which relates to the character of the use of land if that need is itself dictated or generated by considerations of cost or type of tenure.*

*I cannot accept this argument. To my mind there is no sensible distinction to be drawn between a need for housing generally and a need for particular types of housing, whether or not the latter can be defined in terms of cost, tenure or otherwise. In each case the question is whether, as a matter of planning for the area under consideration, there is a need for housing which the grant or refusal of the application would affect.*

*The fact that the need may be dictated by considerations of cost or type of tenure seems to me to be immaterial...*

*...the fallacy in the argument is that it simply confuses the need for housing (which on the authorities is a legitimate consideration) with the reasons for that need and concentrates exclusively on the latter while effectively ignoring the former.*

#### *Circular 6/98*

8. Thereafter the national planning policy for the delivery of affordable housing through the planning process became encapsulated in a departmental circular devoted to that topic - DETR Circular 6/98 "Planning and Affordable Housing". Building on the established materiality of the need for affordable housing, paragraph 1 of the circular required local planning authorities to investigate the degree of need for affordable housing in their area and, based on that evidence, to include in their local plans a policy for seeking an element of such housing on suitable sites. Such policies would then be material consideration in determining an application for planning permission.

9. The Circular stated the then Government's "preferred approach" to planning and affordable housing, its objectives being to help local planning authorities to adopt a "realistic and consistent approach" to preparing planning policies and handling planning applications involving affordable housing. It encouraged a co-operative approach to policy preparation; required that affordable housing policies be based in a clear and up-to-date assessment of local need; provided guidance on securing and controlling the occupancy of affordable housing; and sought to ensure that affordable housing delivered through the planning system was likely to be attractive to lenders of private finance.

*PPS3 (2005)*

10. That policy guidance remained in place until 2005, when PPS3 'Housing' was published. That policy statement left one in no doubt as to role of the planning process in delivering affordable housing.
11. Paragraph 9 stated the Government's 'key housing policy goal' as being –  
  
*To ensure that everyone has the opportunity of living in a decent home, which they can afford, in a community where they want to live.*
12. Paragraph 10 identified the 'specific outcomes' that the planning system should deliver as including –  
  
*A mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas, both urban and rural.*

*Current national planning policies for affordable housing – PPS3 (2005)*

13. Most importantly, the stated 'National Planning Policies' for housing included the heading 'Affordable Housing' and, in paragraphs 27 to 30 of PPS3, a detailed process that local planning authorities should follow in planning for affordable housing.
14. In those paragraphs, the then Government stated its national planning policy commitment to-

*Providing high quality housing for people who are unable to access or afford market housing....as well as helping people make the step from social-rented housing to home ownership.*

15. In order to realize that policy commitment, regional targets were to be set for the delivery of affordable housing. Locally, planning authorities were required to set overall targets for affordable housing during the plan period based on (inter alia) the findings of a Strategic Housing Market Assessment; to include separate targets for social rented and intermediate housing; to specify the size and type of affordable housing likely to be needed in particular locations; to set out the range of circumstances in which affordable housing would be required; and to set out the approach to seeking developer contributions towards affordable housing provision in their area. There was further guidance on the provision of affordable housing in rural areas.
16. This is the national planning policy context that is now to be cancelled and replaced by the relevant provisions of the NPPF.

*The NPPF and planning for affordable housing*

17. The Government's key housing objective is set out in paragraph 107 of the NPPF. It is to 'increase significantly' the delivery of new homes. The Government states that everyone should have the opportunity to live in high quality, well designed homes, which they can afford, in a community where they want to live. The planning system should aim 'to deliver a sufficient quantity, quality and range of housing consistent with the land use principles and other policies of this Framework' (paragraph 108).
18. Paragraph 107 identifies four objectives – increasing housing supply; delivering a wide choice of high quality homes that people want and need; widening opportunities for home ownership; and creating sustainable, inclusive and mixed communities, including through regeneration and renewal of areas of poor housing.
19. Whilst planning for the delivery of affordable housing falls within these broadly stated housing and planning policy objectives, it is notable that the NPPF has very little to say in specific terms about that topic. A national planning policy initiative that was considered to merit a policy statement in its own right in 1998 and specific guidance in 2005 is no longer to be identified explicitly as a national planning policy objective.
20. The two sub-headed planning policy objectives for housing identified by the NPPF are 'Significantly increasing the supply of housing' (paragraphs 109-110) and 'Deliver a wide choice of quality homes' (paragraph 111-112). Within these broad objectives, the Government requires local planning authorities to do the following –
  - (1) use an evidence base to ensure that their Local Plan meets the full requirements for market and affordable housing in the housing market area, including identifying key sites which are critical to

the delivery of the housing strategy over the plan period (paragraph 109 bullet 1);

(2) where they have identified affordable housing is required, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (paragraph 111 bullet 3); and

(3) in rural areas, be responsive to local circumstances and plan housing development to reflect local requirements, particularly for affordable housing. LPAs should consider whether to allow some market housing would facilitate the provision of significant additional affordable housing to meet local needs (paragraph 112).

21. The Glossary defines “affordable housing” in the terms that reflect the reissue of PPS3 in 2011 – social rented housing, affordable rented housing and intermediate housing. The Glossary defines a Strategic Housing Market Assessment as ‘a key part of the evidence base required to ensure the delivery of housing that meets the needs of communities now and in years to come’.

*Summary of NPPF policy on planning for affordable housing*

22. In summary the proposed NPPF as regards planning and affordable housing is as follows –

(1) A local planning authority should assess the need for affordable housing in the housing market area(s) covered by its local plan as part of its overall assessment of local housing demand and need;

- (2) The principal tool for that purpose remains the Strategic Housing Market Assessment.
- (3) Based on that assessment, the LPA should include policies and where appropriate, proposals in its local plan which serve to meet the identified local need for affordable housing as part of overall supply.
- (4) Where the LPA has identified a need for affordable housing, its policies should require that need ordinarily to be met on site.
- (5) A rural LPA should be responsive to local affordable housing need and to the opportunities presented by market housing schemes to add to the supply of affordable housing in rural areas.

## **Discussion**

23. Does this represent a (fairly radical) condensation of existing national policy in PPS3? Or is there a significant shift away from the policies for the delivery of affordable housing through the planning process currently set out in PPS3?
24. In my view, in practice there is a significant shift away from PPS3.
25. In paragraphs 14 and 15 above, I have summarized current national planning policies for the delivery of affordable housing in paragraphs 27 to 30 of PPS3. Those national policies are prescriptive. LPAs are required to respond to an explicit national policy commitment for the delivery of affordable housing through the planning process and to regional targets whose purpose is to fulfil that commitment. The emphasis is upon consistency of approach at local level.



26. This is a clear example, therefore, of what the current Secretary of State castigates as a 'top down' approach to planning. In the development control context, however, my understanding is that current national policies have shifted the debate away from whether the development should provide affordable housing and towards the amount of affordable homes that the development can be required to provide. The first question raised in pre-application discussion has ceased to be "Why any?". It is now generally "How many?". Moreover, the combination of the strong and explicit national planning policy commitment and the target based regional policy has tended to discourage house builders from testing the reliability of local housing needs assessment relied upon by the LPA. Developers and LPAs have generally taken the view that the default position on appeal is likely to be in favour of affordable housing provision broadly in accordance with the LPA's assessment.
27. In the brave new world of the NPPF, (*pace* Cala Homes) there will no longer be regional policies and regional targets. There will no longer be an explicitly stated national planning policy commitment to the delivery of affordable housing through the planning process, based upon a nationally prescribed policy model for local plans and development control decision making. In short, to a much greater extent than they have known since the mid-1990s, LPAs will be on their own. To a significantly greater degree, they will have to rely on their own housing needs assessments to provide the justification for seeking affordable housing provision and the amount of such provision. Conversely, as it seems to me, house builders have good reason to be more confident in challenging the reliability of the LPA's evidence base in order to justify the level of provision (or lack of provision) that they propose to make in any given case. Moreover, there are likely to be better prospects for

arguing that a reduced level or absence of affordable housing provision is justified by other benefits offered by the proposed development.

28. In short, increasingly the question “How Many?” may well come to be replaced by “How Few?” or again, “Why Any?”.

## **Conclusion**

29. People will rightly applaud the desire to shorten and simplify national planning policy. Increasing the responsiveness of the planning process to local needs is also an objective that many people will instinctively support. However, there is a balance to be struck between that objective and consistency of outcome. The role of the planning system in delivering affordable housing as a specific policy objective was a controversial issue from the outset. Over the intervening years, that role had become more settled and pretty well understood by planning authorities and house builders alike. PPS3 reflects that understanding. In my view, it has always been driven by the strength of the national policy commitment towards the delivery of affordable housing through the planning process. It short, if it has delivered, it has done so on the basis of a ‘top down’ approach. I am not so sure that it will continue to do so under the proposed NPPF.

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