

Rotherham local plan

Supplementary Planning Document No. 8 Affordable Housing



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Rotherham
Metropolitan
Borough Council



Affordable Housing

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Executive Summary

Improving Understanding of Affordable Housing Policy

- This Supplementary Planning Document [SPD] sets out **additional guidance on the delivery of affordable housing to assist developers**, amplifying and clarifying Rotherham's adopted Core Strategy [RMBC 2014] and Sites and Policies Local Plan [RMBC, 2018].
- In addition to the Council's own housing delivery efforts, **the Council will work with other housing providers** to deliver an appropriate range of new affordable homes in accordance with its Housing Strategy, including Registered Providers, private developers, charitable agencies and other public sector partners and local housing groups.

National Policy Context

- National planning policy requires local planning authorities to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. **The Council** is working to achieve this by identifying housing needs and **has set policies in its adopted Local Plan to meet these needs in full by securing a wide range of new homes**.
- The National Planning Policy Framework [NPPF] seeks to significantly boost the supply of housing to achieve healthy, inclusive and safe places. **Specifically, paragraph 62 of the NPPF requires local planning authorities to identify where affordable housing is needed and set policies for meeting this need on site**, unless off-site provision or a financial contribution can be robustly justified and that this leads to creating mixed and sustainable communities.
- At the time of writing, the **current guidance defines different types of affordable housing** including affordable housing for rent, starter homes, discount market sales housing and other routes to home ownership such as shared ownership homes. As guidance develops the Council shall follow national guidance in its practice.

Local Policy Context

- In order to create and sustain mixed and balanced communities, in accordance with national planning policy, **The Borough Council's Core Strategy CS7 "Housing Mix and Affordable Housing" requires affordable housing to be provided as part of housing developments over a certain size as set out in the table immediately below:**

Table 1 Thresholds and Affordable Housing Contributions

	Location	Threshold ⁽¹⁾	Contribution
Residential Developments, including Mixed Uses	All Housing Market Areas in Rotherham [i.e. Borough-wide]	10 or more [gross] dwellings or site area of 0.5 hectares or more [gross] irrespective of the number of dwellings or more and greater than 1,000m ² [total gross] floor-space	25% on-site, subject to vacant building credit [14% being Affordable for Rent & 11% being Affordable for Sale Products]

- CS7 specifies that 25% of all homes on qualifying sites affordable housing will be sought by negotiation from developers. **Of these, the Council will require at least 56% of these homes to be for rent, to meet needs in the borough; the other 44% of these homes to be affordable homes for sale.** Developments that seek to avoid the requirements of this policy with unacceptably low density by failing to make efficient use of land or by artificially subdividing land into smaller sites shall not be permitted. The full requirement for the cumulative policy requirement of all the sites shall be required otherwise planning permission shall be refused.
- Overall, Rotherham planning authority has been **shown to be delivering its affordable housing policy requirement over the last decade.** This evidence also shows that the **planning authority has been flexible and respectful of market conditions and site specific matters** that can affect both viability and the ability of a site to deliver its quotient of affordable housing in accordance with local plan policy.
- The Council's Housing Strategy 2019-2022 [RMBC, 2019] has **identified a number of priorities it is pursuing including the provision of affordable housing, and improving and increasing the overall stock of housing in both Council ownership as well as in the private sector.** Complementary priorities relate to the building of more council homes and where appropriate releasing sites in the Council's ownership for new uses and additional housing provision.
- As set out in CS7, the **affordable homes should be provided on site**, and dispersed across the development scheme to provide for mixed communities. Whilst CS7 requires provision of affordable housing on-site, in exceptional circumstances the Council may consider off-site provision or a payment in lieu of on-site provision. In these circumstances, the developer shall contact the Affordable Housing Officer in all cases.

Growing Housing Need and Worsening Affordability

- The 2019 SHMA indicates that **716 additional households per year will require support in meeting their housing needs** in Rotherham Metropolitan Borough area.
- It also concludes that **affordability has significantly worsened** over the period since 2012. Indeed, households living in inadequate housing in Rotherham register an even

1 This reflects the changes to the site capacity threshold in government guidance

lower level of affordability, which clearly limits their options regarding future housing choices largely to renting.

Working with the Council

- Developers are advised to **contact the Council's Affordable Housing Officers to discuss the size and type of affordable homes needed in any particular area**, and to ensure that a registered provider of rented housing with a local presence in the management of affordable homes is involved.

Contesting Viability

- **The Borough Council has prepared a specific Supplementary Planning Document on Viability [RMBC, 2020]. Any applicant/developer who intends to contest the viability of their proposed development should in the first instance contact the Planning Officer and carefully read and follow the viability review procedures that the Council shall be following in evaluating a submitted Financial Viability Appraisal [FVA].**
- **The Viability SPD also provides advice and support for applicants** regarding the kinds of questions the Council shall be asking, and it stresses that the process of review and evaluation involves an open-book approach. This is to **ensure transparency, equity and consistency for all applicants** and an appropriate oversight by decision-makers and relevant third-parties.
- **The approach adopted by the Council is in accordance with national planning and viability guidance, and given the existence of its recently adopted Local Plan, there is a presumption that that all developments are viable.** It is important for applicants to recognise that **the process of contesting viability will need to demonstrate the existence of special or exceptional circumstances to justify departure from the Council's extant planning and affordable housing policy requirements. In the absence of these, the Council shall be minded to refuse planning permission.**

Preamble

- 1 This Supplementary Planning Document [SPD] sets out additional guidance on the delivery of affordable housing to assist developers, amplifying and clarifying Rotherham's adopted Core Strategy [RMBC 2014] and Sites and Policies Local Plan [RMBC, 2018].
- 2 A strategic priority of the Council's Corporate Plan is to provide a range of housing to meet the current and emerging needs. In addition to the Council's own delivery efforts, the Council will work with other housing providers to deliver an appropriate range of new affordable homes in accordance with its Housing Strategy, including Registered Providers, private developers, charitable agencies and other public sector partners and local housing groups [e.g. community land trusts; self-builders; and custom-builders].

National and Local Planning Policy Context

- 3 National planning policy requires local planning authorities to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities [NPPF, MHCLG, 2019a]. The Council is working to achieve this by identifying housing needs and has set policies in its adopted Local Plan to meet these needs in full by securing a wide range of new homes.
- 4 In order to create and sustain mixed and balanced communities, in accordance with national planning policy, Core Strategy CS7 "Housing Mix and Affordable Housing" requires affordable housing to be provided as part of housing developments over a certain size [see overleaf for a full explanation].
- 5 The definition of affordable housing for planning purposes is provided in the National Planning Policy Framework [NPPF] glossary [MHCLG, 2019a], and is included within the glossary to this SPD. This is important, as it defines what homes the Council will accept as an affordable housing contribution.
- 6 The National Planning Policy Framework (NPPF) provides the overarching national requirements for planning policy; local planning documents must be in conformity with these policy requirements.
- 7 The NPPF defines affordable housing as:

"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) as defined in the NPPF Glossary⁽²⁾."

2 This is likely to include "First Homes", a new affordable housing product being currently developed by MHCLG in January 2020.

- 8 The NPPF seeks to significantly boost the supply of housing⁽³⁾ to achieve healthy, inclusive and safe places⁽⁴⁾. Specifically, paragraph 62 of the NPPF requires local planning authorities to identify where affordable housing is needed and set policies for meeting this need on site, unless off-site provision or a financial contribution can be robustly justified and that this leads to creating mixed and sustainable communities.

Policy CS7 Housing mix and affordability

Extract from Rotherham Local Plan, Core Strategy 2013-2028, RMBC, June 2014, pp.76-79

- a. Proposals for new housing will be expected to deliver a mix of dwelling sizes, type and tenure taking into account an up to date Strategic Housing Market Assessment for the entire housing market area and the needs of the market, in order to meet the present and future needs of all members of the community.
- b. The Council will seek the provision of affordable housing on all housing development according to the targets set out below, subject to this being consistent with the economic viability of the development:
 - i. Sites of 15 dwellings or more or developments with a gross site area of 0.5 hectares or more; 25% affordable homes on site
 - ii. Sites of less than 15 dwellings or developments with a gross site area of less than 0.5 hectares; 25% affordable homes on site or a commuted sum of £10,000 per dwelling to contribute towards provision off site. Any agreed commuted sums would be subject to the provision of a payment scheme agreed between the Council and the applicant.

Where it can be demonstrated that these targets would prevent the delivery of a viable scheme, the precise level of provision will be negotiated, based on a viability assessment. Any viability assessment shall be carried out at the expense of the applicant, according to the principles set out below:

The applicant will raise any viability issues with the Council during the pre-application stage. If a third party appraisal is required the applicant, the Council and the third party consultant will meet to scope the details of the appraisal.

An “open book” approach is required, whereby development finances and their underlying assumptions are subject to appraisal in order to support a claim.

At the very least the applicant will need to provide evidence for the following items:

- Projected Gross Development Value (GDV) (e.g. rents, prices, yields; discounted values)
- Construction costs and programme (e.g. £/m², unit size (m²), build period)
- Finance, fees and all other associated costs (e.g. rate of interest, fee rates, lump sums)

3 See paragraph 59 of NPPF, 2019.

4 See paragraph 91 of NPPF, 2019.

- Gross Profit margins (e.g. % on costs; % of GDV)
- Residual Land Value (i.e. the budget to buy the land) or Land Price (if already purchased)

New self-build homes will be exempt from the requirement to provide affordable housing. This exemption will apply to homes built or commissioned by individuals, families or groups of individuals for their own use and that will be owner-occupied.

- c. Where the need for affordable housing has been identified in local service centres and Green Belt villages, which cannot be met on infill sites or in nearby larger settlements small scale rural exception sites will be supported either within the village or as small extensions to the village, as a means of providing affordable housing.

The Council will seek every opportunity to work positively with developers and other partners to deliver affordable housing and a mix of housing types to meet local needs through use of its own land, all available funding opportunities, innovative development models and other available means. Detailed implementation guidance will be laid out in an Affordable Housing Supplementary Planning Document. When considering the mix of house types to be included in any proposal, regard shall be given to the identified needs of people with special requirements including disabled people, older people and people from minority ethnic backgrounds.

- 9 To encourage re-use of brown-field land, any affordable housing contribution due will be offset by the amount of existing gross floor space, in accordance with the vacant building credit instrument.
- 10 On qualifying sites⁽⁵⁾ at least 10% of the affordable homes planned for on the site should be available for affordable home ownership as part of the overall quantity of affordable housing being sought on the site, although there are some exceptions to this⁽⁶⁾.

5 Specifically, these are sites with a capacity of 10 or units and/or of 0.5 or more hectares.

6 See paragraph 64 of NPPF, 2019.

Affordable Housing Delivery in Rotherham [2011 and end of 2019]

- 11** Overall, Rotherham planning authority has been shown to be delivering its affordable housing policy requirement over the last decade. Any deviations from the policy requirement were justified by specific site matters, whether this relates to a lack of viability or where the planning authority has negotiated a different housing mix or an off-site commuted sum that had been judged to be equivalent in planning policy terms. It also reveals that the planning authority has been flexible and respectful of market conditions and site specific matters that can affect both viability and the ability of a site to deliver its quotient of affordable housing in accordance with local plan policy.

Table 2 Compliance With Affordable Housing Policy

AH Policy Compliance	Number of Qualifying Schemes	Comments
Higher than policy	3	e.g. With aid of HCA grant; agreed different AH housing mixes that generate additional AH units.
Policy compliant	29	i.e. 25%
Compliant, but with alternative housing mix	2	e.g. Bungalows taken on a 1: 2 ratio
Compliant, but with compensatory Commuted Sums	4	
Compliant, but with compensatory Overage payments	1	
Lower, as a result of claiming Vacant Building Credit	3	
Total	42	

- 12** Of the 42 agreements to deliver affordable housing on qualifying sites over the period 2011 to 2019, no fewer than 36 of these delivered the planning authority's affordable housing policy requirement either directly through delivery on site, by accepting a different housing mix, or commuted sums which were deemed to provide equivalent compensation for a number of actual units that would normally be delivered on-site.
- 13** It is worth noting that the AH policy could not be delivered because Vacant Building Credits have been claimed on 3 sites, which reduced the provision of affordable housing on these sites.
- 14** Interestingly, there are three other sites where a higher proportion of affordable housing has been achieved [one because of public subsidy, the other 2 because of agreements with the developers to deliver a different mix of affordable units].
- 15** The full report on Affordable Housing Delivery in Rotherham, 2011-2019 is located in Appendix 6.

What is Affordable Housing?

- 16** Affordable Housing is formally defined in the NPPF to provide different types of housing to meet the needs of those who cannot afford to buy on the open market or rent privately.
- 17** At the time of writing, the NPPF (MHCLG, 2019a) defines different types of affordable housing including affordable housing for rent, starter homes, discount market sales housing and other routes to home ownership such as shared ownership homes.

Affordable and Social Rented Homes

- 18** For households on the lowest incomes and those to whom the Council owes a re-housing duty [including households on the Council's Housing Register], the Council requires an element of affordable housing to be provided as social rent and/or affordable rented housing. Affordable and social rented housing is housing let by Affordable Housing Providers to eligible households via the Council's Housing Register, Key-Choice.
- 19** The Council accepts both social rent and affordable rented homes owned and managed by Affordable Housing Providers as meeting this need.
- 20** Social rented housing is owned and managed by Affordable Housing Providers including the Council, for which guideline target rents are determined through the national rent regime and should be made available in perpetuity. Properties in Council ownership are subject to Right to Buy by tenants, except those affordable dwellings secured through planning obligations in accordance with the Council's local plan policy requirements.
- 21** Affordable rent must not exceed 80% of the local market rent, inclusive of service charges and must not exceed the Local Housing Allowance (LHA) for the relevant property type in the relevant location and should be made available in perpetuity.
- 22** The Valuation Office Agency (VOA) is responsible for calculating the LHA. They apply a list of rents that are paid for private sector tenancies across the broad rental market area for each property category.
- 23** The Council generally welcomes new Affordable Housing Providers working in the area. However, due to the need to achieve viable developments and reflecting the geographical position of Rotherham, the Council's preference is for one of Rotherham Council's Preferred Affordable Housing Providers to be appointed, unless the Council wishes to take over ownership itself. Please refer to Appendix 2 for the list of the Council's preferred Registered Providers.
 - Should a new Affordable Housing Provider wish to work in Rotherham, the Council will typically seek additional requirements for the delivery of rented housing as follows:
 - Be registered as an Affordable Housing Provider with Homes England [or its successor];
 - Be eligible to bid for and receive housing subsidy;
 - Have experience of managing the relevant or a similar tenure type;

- Where a RP does not have an existing local management presence, it can demonstrate how an effective local housing management service will be provided; and
- Be willing to enter into nomination arrangements or let their homes in accordance with Rotherham Council's Key Choice register, to ensure homes are provided for the benefit of the local community.

24 For these reasons, the Council shall use planning obligations to provide a mechanism for the Council to approve an Affordable Housing Provider against the above criteria.

Starter Homes/First Homes

25 Starter Homes⁽⁷⁾ are designed to meet the housing needs of young first time buyers by being offered to buyers at a minimum of 20% below their open market value and less than the price cap set for the Local Authority which for Rotherham is presently £250,000. The properties are expected to be offered to people who have not previously owned their own home and are between the ages of 23 and 40. Provisions regarding eligibility have been introduced through the Housing and Planning Act 2016 and secondary legislation is awaited regarding detailed eligibility criteria. Further guidance will be provided accordingly when secondary legislation comes into force, particularly relating to restrictive covenants and protecting the discount so that it is available to future owners.

Discount Market Sales Homes

26 Discount markets sales housing is a route to affordable home ownership where the property is discounted by at least 20% below local market levels. It is essential to ensure that homes are genuinely affordable to local people, based on local incomes and local house prices or rents.

27 To ensure discount market homes are affordable and remain so, a restriction on the disposal price to an amount not exceeding a specified percentage of the market value will be imposed, together with an obligation requiring any subsequent purchaser to enter into a similar restriction. This is achieved through the S106 agreement which will effectively require subsequent purchasers to enter a deed of adherence to the terms of the S106 agreement. A note shall also be registered on the title of the property at the Land Registry requiring a certificate from the Council that the relevant terms of the S106 agreement have been satisfied before a new owner's interest can be registered.

28 Eligible households for first and future purchasers of Discount Market sales homes must be registered and eligible on the Help to Buy North register, or any successor organisation, being the register of low cost home-ownership maintained by the Zone Agent.

29 The Council will also seek to ensure that Discount Market Homes are the only residence of the applicant and are not normally sub-let⁽⁸⁾. Discount Market Homes are not available to assist buy-to-let investors or those who will own any property other than their Discount Market Home after completing their purchase. If the applicant is a homeowner, they will need to have a sale in place before they can reserve on the Discount Market scheme and the home must be sold

7 This affordable housing product may become First Homes. RMBC will follow national guidance in its practice.

8 Presently, the First Homes consultation guidance allows sub-letting for specific periods of times and in certain circumstances. RMBC will follow national guidance in its future practice.

at the time of completion of their purchase. Discount percentages from open market will be set in S106 agreements rather than as a fixed price to ensure that future owners benefit from this affordable housing product on a consistent and equivalent basis.

- 30** Developers are encouraged to consider the level of discount necessary to ensure affordability at an early stage in the development process and advice in this aspect can be provided at pre-application planning stage by the Council's Affordable Housing Officer. The officer shall advise the developer of the required maximum price of a property on a site-by-site basis in accordance with national guidance. Presently the minimum discount is 20%, while for First Homes' products it is suggested that the discount will be 30%.
- 31** For avoidance of doubt, a discounted price does not include properties merely because they are at the cheaper end of the market or because they are otherwise sold at less than market value, as generally they would still be more than expensive than those in housing need can afford .

Private Intermediate Rented Homes [including Build-to-Rent & Rent-Plus schemes]

- 32** Intermediate⁽⁹⁾ rented homes can be provided by private sector housing, including Build-to-Rent. Such homes should be made available in a form which is equivalent to Affordable Rented homes provided by Affordable Housing Providers in terms of affordability. The monthly rent is typically above social housing rent levels but below those of open market rent; so that it is capped at 80% of the market rent or the Local Housing Allowance, whichever is the lowest in perpetuity.
- 33** Build-to-Rent is purpose-built housing that is typically 100% rented out can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control. Affordable rented homes provided by Affordable Housing Providers remains the Council's preference for meeting the needs of households seeking rented housing, as this provides long term assured tenancies and the administration and management arrangements are transparent and subject to national government regulations setting minimum standards.
- 34** Under the NPPF [MHCLG, 2019a], private sector providers are able to deliver affordable private rented homes. Schemes proposing private intermediate rent may be supported by the Council. Please contact the Council's Affordable Housing Officer who will be able to explain the Council's preferred approach to securing and managing private intermediate rented homes. The mechanism for delivery will be secured through S106 agreements.

Shared Ownership

- 35** There are a number of shared ownership products delivered by Affordable Housing Providers and private developers.

9 For further explanation see the glossary in the NPPF [MHCLG, 2019a]

- 36** Shared ownership enables the occupant to purchase an equity share in their home, starting at 25% of the equity, via a conventional mortgage. Rent will then be charged upon the unsold equity and shall not exceed 2.5% of value as specified by Homes England. This is so that parity is maintained between the value and the rent of the property. Purchasers are able to acquire additional shares up to 100% of the equity. However, in some locations⁽¹⁰⁾, this will be limited to 80% of the equity, unless the Affordable Housing Provider covenants to repurchase the home.
- 37** Given the imbalance between typical local income levels of prospective purchasers in Rotherham and the relatively high open market values for shared ownership properties, the Council will seek to establish the total monthly costs, including the rent element. Shared Ownership homes must be genuinely affordable based on local incomes. The mechanism for delivery will be secured through S106 agreements.

Shared Equity

- 38** Shared equity enables the occupant to purchase an equity share in their home via a conventional mortgage. The Affordable Housing Provider retains a mortgage or charge on the property for the remaining equity and there is no rent or interest charged on this share. If so desired, purchasers are able to staircase to 100% ownership.
- 39** Upon resale, if the purchaser has not chosen to staircase to 100% ownership, the equity loan is repaid to the Affordable Housing Provider in relation to the percentage share retained. For example, if 75% share purchased and 25% Equity Charge to the Affordable Housing Providers, 25% of the resale value at the time of the sale, would be payable to the Affordable Housing Provider.

Older Persons and Specialist Housing

- 40** The Council is required to meet the needs of residents who require specialist forms of housing as well as general needs housing. For example, fully adapted accommodation for wheelchair users, housing for older people including Extra Care and supported housing for young people.
- 41** Proposals for types of specialist and age-targeted housing, for example sheltered or Extra Care will generally [but not always] fall within Use Class C3 as set out below and will be subject to affordable housing requirements and should:
- Be individual self-contained units of accommodation;
 - Have individual occupancy rights as tenant or leaseholder;
 - Provide housing management services to all residents;
 - Provide communal facilities within the development;
 - Provide access to 24 hour care and support services available to meet the need of the individual resident;
 - Be based on housing needs and demographic data indicating an increasing requirement for housing suitable for older people, including those with physical disabilities.

10 Applicants should contact the Affordable Housing Officer for further information.

- 42** The Council's Housing Strategy 2019-2022 [RMBC, 2019] identifies that for meeting the needs of older people is to provide housing based solutions across all tenures. These are often the most cost-effective solutions to meet individual aspirations to remain in their own home. Specialist housing may be in the form of supported housing schemes where homes are provided together with additional communal space and facilities or self-contained general needs homes and should be able to be adapted to the changing needs of the occupants including accommodating a wheelchair consistent with Part M of the Building Regulations, or successor regulations. The form and level of provision will vary through negotiation with the Affordable Housing Officer.

Retirement dwellings

- 43** Schemes which provide self-contained accommodation for older people with an age restriction, for example retirement flats for those persons over 50 years of age, shall be required to contribute towards affordable housing as are all forms of Use Class C3 residential homes.
- 44** The Council reserves the right to seek on-site provision in the first instance. However, it is recognised that such developments may not be viable for on-site affordable homes due to factors such as high service charges, management arrangements and communal facilities. In these circumstances, the Council may, at its discretion, negotiate off-site commuted financial contributions from retirement schemes to put towards affordable housing provision elsewhere.

Extra-care Housing

- 45** To meet the growing needs of an older population and provide a choice of care for those with particular care requirements, Extra-care housing schemes may be the most appropriate way of meeting those requirements.
- 46** Extra-care schemes will be subject to planning obligations under S106 depending on the specific characteristics of the relevant scheme. The obligation to make an affordable housing contribution will depend upon the Use Class the scheme is judged to be by the Council. A change of use application to C3 Use, at a later date, might become subject to the provisions within Core Strategy CS7 in relation to affordable housing.
- 47** The Council shall take all the attributes of a scheme into account in determining the Use Class and will not consider any one factor as the defining criterion. Applicants are recommended to contact the Affordable Housing Officer in the first instance to ensure that they understand and identify the factors that distinguish the differences between Use Classes C2 and C3.
- 48** The composition of the affordable housing will be the subject of negotiations and may be Extra-care housing or general needs housing or a mixture of both. The Council shall ensure that demand for proposed Extra-care facilities can be demonstrated as part of this negotiation.
- 49** Core Strategy CS7 seeks on-site provision of affordable housing except in exceptional circumstances where an equivalent off-site contribution can be justified. In assessing suitability of such sites for the provision of affordable housing, the Council will take into account the size, suitability and the economics of provision. However, there may be circumstances in which the

Council seeks off-site provision, or a broadly equivalent financial contribution in lieu of on-site provision in respect of Extra-care housing schemes.

- 50** The Council encourages Extra-care proposals to adhere to the Government's latest guidance on design and resilient principles. Such principles embrace the need for good light, ventilation, room to move around, storage etc. and for such properties to be able to adapt to the occupants' changing needs over time.
- 51** The Government recommends that developments that provide affordable housing incorporate the above design principles where funding for Extra-care schemes is applied.

Self-build and custom-build housing

- 52** The Self-Build and Custom Housebuilding [Time for Compliance and Fees] Regulations 2016 came into effect which places a duty upon local planning authorities to grant

"suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom house-building in the authority's area"⁽¹¹⁾.

- 53** The Council keeps a formal register of individuals or interested associations that are seeking a plot of land in the Metropolitan Borough to construct a self-build or custom-build house as a sole or main residence. The Council will explore options to grant suitable development permissions to meet this demand. To be considered suitable, a plot needs to have access to, or be provided with, road access, connections to electricity, water and waste water. Currently, to be accepted on the Self-build and Custom House-building Register you need to be over 18 years old, a British Citizen, a national of an EEA state or Switzerland, be seeking the plot to occupy as sole or main residence, meet a local connections test, and meet a financial viability test.
- 54** The Council expects self-build or custom-build plots to be provided within larger strategic development sites, but it may also negotiate the provision of plots on smaller housing sites on a case-by-case basis. The Council's approach is set out in the Site and Policies Local Plan [RMBC, 2018]. See in particular, policy SP11 Development in Residential Areas, pages 47 and 48 of the Sites and Policies Document, RMBC, June 2018.
- 55** The Council keeps a self-build and custom house-building register of individuals and associations of individuals who are looking for serviced plots of land in Rotherham. Eligibility for entry on the register is set out in the Government's Planning Practice Guidance on self-build and custom build housing⁽¹²⁾.
- 56** Government policy does not distinguish between self-build and custom-build, however, the Housing and Planning Act states that:

"Self-build and custom house-building' means the building or completion by -

- Individuals,

11 See Housing and Planning Act 2016.

12 See Self-build and Custom House-building Act 2015 [as amended by the Housing and Planning Act 2016]

- Associations of individuals, or
- Persons working with or for individuals or associations of individuals, of houses to be occupied as homes by those individuals.”

57 Self-build housing involves the selection of a site and the commissioning of the building of a home by an individual. Much of the work may be done by the owners or may be arranged through an architect/ contractor to manage the construction process. Self-build may be a route to more affordable home ownership for some families. **Self-build plots will not be accepted as an eligible form of housing in lieu of affordable housing as sought or delivered according to planning policies, but in addition to the required amount of affordable dwellings.**

58 Custom-build housing differs from self-build in that the individual may work with a developer to build their home. Custom-build is a more straightforward delivery process than self-build as the developer usually finds the plot, offers one-off designs, manages the build through their own contractual processes and arranges development finance.

Housing Need

59 Rotherham Metropolitan Borough Council’s Housing Strategy 2019-2022 [RMBC, 2019] has identified a number of priorities it is pursuing including the provision of affordable housing, and improving and increasing the overall stock of housing in both Council ownership as well as in the private sector. Complementary priorities relate to the building of more council homes and where appropriate releasing sites in the Council’s ownership for new uses and additional housing provision. The Housing Strategy has been informed by Rotherham’s 2015 Strategic Housing Market Assessment [SU, 2015] and its recently completed 2018 Strategic Housing Market Assessment [SHU, 2019], and recent statistics from the Council’s housing needs register. Importantly, these datasets are informed by responses from households across the borough to a questionnaire asking them about all aspects of their current housing situation and future housing options.

60 The reason for a high level of affordable housing need in the borough is the high cost of buying homes on the open market in relation to local incomes. The relationship between the cost of homes and wages is termed “affordability”.

61 The Council’s 2018 Strategic Housing Market Assessment (SHU, 2019) assesses future needs for both market and affordable housing, the type and mix of homes required and the needs of specific groups across the six Housing Market Areas comprising Rotherham. It has been prepared in accordance with the planning policy guidance, including the modified guidance on calculating affordable housing need. A key finding is that “overall there is an annual shortfall in affordable units of 716 in Rotherham” [SHU, 2019, p119].

62 The 2018 SHMA [SHU, 2019] indicates that 716 additional households per year will require support in meeting their housing needs in Rotherham Metropolitan Borough area. It concludes that affordability has significantly worsened over the period since 2012. Indeed, households living in inadequate housing in Rotherham register an even lower level of affordability, which

clearly limits their options regarding future housing choices. It found that most of these households [73%] in housing need would only be able to afford rented housing⁽¹³⁾. Of the remaining 27%, a smaller number of households can afford shared ownership with low percentages of equity purchase and residual rent on the outstanding equity, although they may not be able to get a mortgage.

- 63 Unless specifically agreed with the Council's Affordable Housing Policy Officers, the Council therefore require affordable housing provision to be split 56 per cent rented and 44 per cent shared ownership or other intermediate tenures. In accordance with Rotherham's 2019 Housing Strategy 2019 - 2022, affordable rented housing may be provided at up to 80% of market rent, provided it is under the maximum Local Housing Allowance. The Council are likely to need to change this split once details of starter homes'/first homes' requirements are set out in secondary legislation.
- 64 The Council's recently published SHMA reveals that the routes to the delivery of affordable housing units **cannot only rest on their delivery through new private housing developments**. Indeed, the Council recognises this challenge has it harnesses delivery through other mechanisms as set out and demonstrated by the Council's Housing Strategy, 2019-2022.
- 65 Developers are advised to contact the Council's Affordable Housing Officers to discuss the size and type of affordable homes needed in any particular area, and to ensure that a registered provider of rented housing with a local presence in the management of affordable homes is involved. Contact details for Registered Providers operating in the borough are listed in Appendix 2.
- 66 The addition of affordable rent to the government's definition of affordable housing in 2012 and the reduction in public subsidy for developers to provide affordable housing has resulted in a reduction in provision of social rented housing. The additional rent achieved with affordable rent helps to enable the delivery of affordable housing without government grant.
- 67 Affordable rented housing is defined nationally as rent at no more than 80 per cent of market rents. However, in Rotherham this difference between market and social rent levels is relatively small. Thus, for households seeking to become homeowners, the provision of affordable housing for rent or shared ownership remains challenging; for the latter a lack of savings/deposit is the main reason.
- 68 The government has been changing the definition of affordable housing resulting in a wider choice of housing products that can count as affordable housing. Starter/First homes will provide for broadly the same market as shared ownership housing. Currently the national planning definition of affordable housing includes starter homes [i.e. low cost market homes], with a requirement for 10% of homes on a qualifying site to be starter homes. **The Borough Council shall require all other affordable housing to be rented housing [i.e. 15%], available to those on the council's Housing Register.**
- 69 Core Strategy CS7 "Housing Mix and Affordable Housing" [RMBC, June 2014] sets out the Council's policy requirement for housing developers of schemes of 15 or more dwelling

13 Based on a 2 bedroom property

units⁽¹⁴⁾ to provide 25% of all housing on their developments as affordable homes. In negotiating affordable housing provision on development sites, the Council will use planning obligations to secure the homes as “affordable” homes for successive occupiers; a requirement of CS7 and of the national definition of affordable housing [NPPF, MHCLG, 2019a].

- 70** CS7 specifies that 25% [see section on viability below] of all homes on qualifying sites affordable housing will be sought by negotiation from developers.
- 71** As explained above, the Council will require at least 56% of these homes to be for rent, to meet needs in the borough; the other 44% of these homes to be affordable homes for sale. **Developments that seek to avoid the requirements of this policy with unacceptably low density by failing to make efficient use of land or by artificially subdividing land into smaller sites shall not be permitted. The full requirement for the cumulative policy requirement of all the sites shall be required otherwise planning permission shall be refused.**
- 72** As set out in CS7, the affordable homes should be provided on site, and dispersed across the development scheme to provide for mixed communities. Whilst CS7 requires provision of affordable housing on-site, in exceptional circumstances the Council may consider off-site provision or a payment in lieu of on-site provision. In these circumstances, the developer shall contact the Affordable Housing Officer in all cases.
- 73** **In such exceptional circumstances, the Council may accept provision of affordable housing contributions off-site, or by a payment in lieu of on-site provision. In both cases, the Council must be satisfied that:**
- **the contribution is sufficient to provide for the construction of at least the same number, type and size of dwellings on a suitable different site (including the value of the land) and the financial contribution does not result in less affordable housing being provided overall;**
 - **appropriate arrangements are in place identifying the alternative site on which the affordable housing is to be provided;**
 - **any off-site provision or payment is of broadly equivalent value relative to on-site provision, taking into account that land for affordable housing should be provided at nil value.**

14 NPPF paragraph 63 has amended this threshold; currently the threshold relates to sites with a capacity of more than 10 dwelling units or of 0.5 hectares or more.

Viability

- 74** The Refresh Affordable Housing Study 2019 tested, and confirmed that qualifying housing developments across the borough can generally provide 25% of homes as affordable⁽¹⁵⁾, which is the proportion set out in the Council's Core Strategy (CS7)[RMBC, 2014]. The changes in the definition of affordable housing, including introduction of affordable rented housing, potentially including Starter Homes, and Help To Buy scheme in recent years have significantly improved viability for the developer, notwithstanding that there is now rarely any government funding available to developers. In respect of the latter, the Refresh Affordable Housing Study [RMBC, 2019], published as the evidence base to support this SPD, tested viability with nil public grant. Indeed, this position has coincided in developers booking super-normal profits [See FAME, 2019], which are substantially higher than those typically assumed in contestable viability cases [which normally cite blended rates of profits of around 17.5% of gross development value].
- 75** The Council will maintain the approach from the Interim Planning Statement on Affordable Housing [RMBC, 2010] on the contribution percentage of affordable housing. **Having regard to the demonstrable housing need within the borough, developers will be normally be required to make a 25% provision for affordable housing, unless there are clear, substantiated reasons why this is not deliverable. The Council will take into account the specifics of the site, the type of housing, and other considerations in reaching a policy requirement for each individual site. In accordance with national guidance, the Council expect this requirement to have been taken into account in the site's residual land value.**
- 76** As affordable housing is a positive planning policy requirement rather than mitigation, the Council calculate affordable housing requirement from the gross number of homes proposed. In calculating the number of affordable homes to be provided on a site, fractions of homes will sometimes result. **In order to avoid requirements for fractions of homes the Council will therefore round up any part requirement of an affordable housing dwelling in line with common convention at 0.5 of a home, and round down at 0.4 or less. A replacement home would not therefore make any contribution.**
- 77** **Should a developer demonstrate that rounding up from half a dwelling or more would result in the development being unviable, the Council will, in the first instance, negotiate a variation in tenure of some affordable homes, or fewer affordable homes.**

15 See Appendix 6 of this SPD for further information on Rotherham's record on its Affordable Housing Delivery.

Vacant Building Credit and Abnormal Development Costs

- 78** On previously used [i.e. brown field] land where existing vacant [but not abandoned] buildings are being re-used or demolished and rebuilt, the Council shall deduct the existing gross floor-space from the affordable housing requirement in line with the national vacant building credit policy. This is currently based on calculating the relevant vacant floor-space as a proportion of total new development, and applying this proportion to the proposed development.⁽¹⁶⁾
- 79** **There may be some circumstances where abnormal development costs⁽¹⁷⁾ would make the scheme unviable to deliver. Where developers demonstrate to the Council's satisfaction that providing the amount of affordable housing required by this policy would not be economically viable, the Council will follow the following cascade mechanism to assist with delivering a viable scheme:**
- **Vary the tenure mix of the affordable housing [e.g. more intermediate homes and fewer rented homes], size, and/or type of homes to be provided;**
 - **Reduce the overall number of affordable homes;**
 - **To negotiate a commuted sum in lieu of on-site delivery.**

Financial Contributions In Lieu Of On-Site Affordable Housing Provision

- 80** As explained above, the Borough Council will only accept a financial payment in lieu of on-site provision in exceptional circumstances. The Council use a standardised method for calculating contributions in lieu of affordable housing provision, based on an equivalence approach. This involves calculating the financial benefit to the developer of not including affordable housing on the development site. **The Council will use this equivalence methodology when it accepts that the scheme may make a financial contribution rather than provide affordable housing required on the development site, or exceptionally, on a different site.** This money will be ring-fenced to assist in delivery of more affordable housing.
- 81** The calculation is based on the additional value to the developer of not providing affordable housing on-site [i.e. the difference between 0% and 25%, or other required proportion, with a transfer value of 40% to a Private Registered Provider]. If the scheme was to provide on-site affordable housing, the developer would receive about 40% of the market value on transfer of these homes to a Registered [Housing] Provider. If Starter/First homes are involved, developers will receive 80% of the market value although this percentage may change in the future following revisions to Central Government guidance.

16 The Council will require documented evidence regarding the status and use of the site and buildings in determining the applicability of the vacant building credit.

17 The Council shall need to be convinced that these are reasonable and proportionate and be based on documented evidence. Further guidance on what will, and will not be considered as "abnormal development costs" is set out in the guidance note at Appendix 7.

- 82 To calculate the payment in lieu that should be provided, the Council will multiply the total number of affordable homes required under the policy by the floor-space of the market homes proposed.** This calculation generates the total floor-space of the affordable homes required to have been provided on site. **This will be multiplied by the gross development value per square metre [£/m²] at the time of viability is being contested to calculate the required commuted sum.** See Appendix 3 which illustrates the calculation with a worked example.
- 83 For each application, the Council will consider whether it needs to include an “overage” clause if the sales value of market homes increases significantly before the housing is first occupied, or the size of homes on the development site is subsequently changed.**

Contesting Viability

- 84** The Borough Council has prepared a specific Supplementary Planning Document on Viability [RMBC, 2020]. Any applicant/developer who intends to contest the viability of their proposed development should in the first instance contact the Planning Officer and carefully read and follow the viability review procedures that the Council will be following in evaluating a submitted Financial Viability Appraisal [FVA].
- 85** The Viability SPD also provides advice and support for applicants regarding the kinds of questions the Council shall be asking, and it stresses that the process of review and evaluation involves an open-book approach. This is to ensure transparency, equity and consistency for all applicants and an appropriate oversight by decision-makers and relevant third-parties.
- 86** The approach adopted by the Council is in accordance with the NPPF [MHCLG, 2019a] as well as the NPPG for Viability [MHCLG, 2019b] and given the existence of its recently adopted Local Plan, there is a presumption that that all developments are viable. It is important for applicants to recognise that the process of contesting viability will need to demonstrate the existence of special or exceptional circumstances to justify departure from the Council’s extant planning and affordable housing policy requirements. In the absence of these, the Council shall be minded to refuse planning permission.
- 87** In short the Council’s **Viability Review Mechanisms** can be summarised as follows:
- Where schemes do not comply with the Council’s Local Plan policy requirements for affordable housing and related mitigation measures arising from schemes [for viability reasons following an independently evaluated open-book appraisal of the costs and revenues], a review mechanism [or re-appraisal of scheme viability] shall be incorporated in a planning obligation [Section 106 legal agreement] to ensure that any uplift in a scheme’s net value is shared with the Council in the form of an improved affordable housing contribution.
 - As such, these reviews are required prior to near completion or at agreed phases or trigger points during development. The review mechanisms will typically set out a clear, simple and certain method and will include a Council’s expectations for additional homes on-site

or off-site, or for receiving an equivalent financial contribution in the form of a commuted sum.

- The circumstances where such a review is required include:
 - Where there is a delay in starting on site [e.g. of at least 12 months];
 - On submission of reserved matters' applications;
 - Where a large site is to be built out in phases;
 - At the end of a development, which after consideration of and accounting for the developer's risk, it is appropriate for the Council to take a commuted sum to support the delivery of affordable housing.

88 For the above kinds of circumstances the Council shall require these are incorporated into a legal agreement prior to the consideration of the planning application by the Council's planning board.

Qualifying Developments for Affordable Housing Provision

89 Affordable housing provision will generally be required from residential developments within the C3 Use Class⁽¹⁸⁾ over the site size threshold in CS7 and the NPPF (2019). This generally includes retirement homes, as well as self-contained studio flats for single-person households, and other self-contained flats, whether specifically aimed at students or not. Assisted living and or Extra Care flatted developments, and other sui generis residential developments, such as cluster flats for students may be required to make provision; these will be considered on a case-by-case basis, and in some cases, an off-site contribution may be considered more suitable. CS7 does not apply to residential institutions within C2 use class, such as care homes and nursing homes.

Table 3 Thresholds and Affordable Housing Contributions

	Location	Threshold ⁽¹⁹⁾	Contribution
Residential Developments, including Mixed Uses	All Housing Market Areas in Rotherham [i.e. Borough-wide]	10 or more [gross] dwellings or site area of 0.5 hectares or more [gross] irrespective of the number of dwellings or more and greater than 1,000m ² [total gross] floor-space	25% on-site, subject to vacant building credit [14% being Affordable for Rent & 11% being Affordable for Sale Products]

18 Town and Country Planning (Use Classes) Order 1987

19 This reflects the changes to the site capacity threshold in government guidance

Rural Exception Housing

- 90** People who cannot afford to access market housing that meets their needs, either to rent or to buy, need affordable homes. In many rural areas of borough, Green Belt, landscape and environmental designation policies restrict opportunities for development of affordable homes.
- 91** Core Strategy CS7 [RMBC, 2014] and Sites and Policies 8 infilling Development within the Green Belt [Sites and Policies Document [RMBC, 2018] allows for the development of small-scale affordable housing schemes inside or outside of existing settlements as an exception to other Local Plan policies, subject to stringent criteria, including requirement for a local connection and the affordable housing to be secured in perpetuity. In determining whether a site is suitably small-scale, consideration will be given to identified local affordable housing needs and to previous applications for rural exception housing. The sustainability of windfall proposals will be assessed against Policy CS3 Location of New Development.
- 92** **Rural Exception Housing, which is affordable housing for local needs, provided in perpetuity, will be secured where there is recent evidence of need for affordable housing within the Borough's rural areas. Rural exception housing is usually delivered on small sites by Registered Providers, the Council, and by private developers. Affordable housing on these sites in the Borough shall be exempt from the right to buy or acquire, but may also be possible to be delivered without a government grant, via a mechanism which ensures the homes will remain affordable in perpetuity.**
- 93** To ensure that the housing is secured permanently to meet local affordable housing needs, the Council will require the affordable housing provider to enter into a planning obligation with cascade provisions, to provide for situations where there may not be local need for that size of accommodation in the Borough at the time.
- 94** **The Council's cascade allocation approach to allocation of rural exception housing generally requires the housing to be allocated to :**
- **people with a local connection to the parish (through residence, employment or close family), followed by**
 - **those people with a local connection to adjacent parishes within the borough who meet the criteria, and finally**
 - **those people with a connection to the metropolitan borough of Rotherham in accordance with its published scheme Rotherham Key Choices [or equivalent scheme].**
- 95** The Council will consider the specifics of each area's needs at the time of the application, and will use its discretion to ensure that the planning obligation includes the most appropriate allocation cascade for that development site.
- 96** Despite relatively higher land values across the borough, occasionally a developer may consider that a proposed rural exception scheme would be unviable without public subsidy. In these situations where there is no public subsidy available, and where there are no alternative sites available to provide the identified housing needs, as required by national policy, the Council may consider permitting the minimum number of market homes to make the scheme viable,

but not at the expense of raising land values. The Council may also consider allowing at least one market home where this would result in a significant improvement in the housing mix (tenure, type or size) or rent levels.

- 97** The inclusion of market housing must serve to benefit the rural affordable housing stock and not inflate the “threshold land value”. This is the “minimum land value requirement to incentivise a reasonable landowner”⁽²⁰⁾ to sell the land. To ensure that developers take into account the policy requirements of land potentially suitable for rural exception housing, where a developer proposes that at least one market house needs to be included to make the rural exception scheme viable, the Council will require submission of a development viability appraisal in accordance with the Council’s SPD on Viability [RMBC, 2020].
- 98** In considering the appraisal, the Council will limit the threshold land value for small rural exception sites. It is convention that these sites’ land values **exclude any hope value arising from gaining planning permission**⁽²¹⁾. Where agreement cannot be reached, external consultants will be appointed at the developer’s cost to provide an independent assessment of the scheme’s viability. Any market housing must improve the mix of market housing in the village, and must be integrated into the rural exception development.

Sustainable Design and Construction

- 99** Sustainable development is central to land use planning. The overall aim of the Core Strategy [RMBC, 2014] and the Sites and Policies Local Plan [RMBC, 2018] are to promote development that meets the needs of the present without compromising the ability of future generations to meet their own needs.
- 100** Climate change presents a number of challenges for the Council. In order to address these challenges and to deliver national policy and the Council’s aspirations for sustainable communities and buildings through the local planning system, the Council will amplify its approach in the Supplementary Planning Document on Developer Contributions. This SPD shall be setting minimum sustainability standards for new build residential and non-residential developments in the borough in accordance with adopted Local Plan policy requirements and aspirations.
- 101** The local guidance expects residential developments, including all affordable homes, to achieve:
- a water efficiency standard of 110 litres per occupant per day;
 - a ‘Good’ Building for Life standard;
 - Secured By Design accreditation; and
 - to reduce carbon emissions through the provision of on-site low and zero carbon technologies.

20 See NPPG for Viability, MHCLG, 2019b.

21 Presently, the Existing Use Value of Agricultural Land in Rotherham is around £22,500 per hectare [see “Land Value Estimates for Policy Appraisal”, MHCLG, 2018].

102 Homes with blank gable ends should be avoided in any new developments, and the presence of windows will provide extra surveillance over the area. Front and back entrances should be well lit. Where feasible access to the rear of the properties should be prevented. In addition, any garage doors should comply with recommended standards.

103 The Council recognise that developers or householders may wish to use alternative sustainable design and construction assessment methods, or for large-scale developments "BREEAM for Communities". A planning condition will allow for a developer to use an acceptable alternative standard.

Table 4 Thresholds and Contributions for Sustainable Design and Construction

	Location	Threshold	Requirement
Residential Homes, including Affordable Homes	Borough Wide	1 or more [gross] dwellings	A water efficiency of 110 litres per occupant per day A 10% reduction in carbon emissions through the use of low or zero carbon technologies

Community Participation

104 The Council places importance in the engagement of local communities in the process of bringing forward suitable housing sites at the pre-application stage. Proper engagement by Developers with local residents at pre-application stage is important to develop public confidence in the house building industry, as well as to dispel misunderstanding or preconceptions. Recent changes to the planning system have emphasized the importance of public participation accordingly the Borough Council has refreshed and recently published its Statement of Community Involvement [2019].

105 Also, it is important to encourage effective practice at pre-application stage and in the provision of information to support applications. Developers are encouraged to enter into pre- application discussions with the Council. This will facilitate the expeditious determination of planning applications. See Appendix 4 regarding the Borough Council's Key Negotiating Principles.

How Affordable Housing is Delivered in Rotherham

106 The following diagram sets out and summarises how affordable housing is delivered in Rotherham and the roles of the various partners involved.

Delivery of New Affordable Homes	• The majority of affordable homes are delivered by developers on private sites through S106 Agreements. • Private house builders therefore have a crucial role to play in ensuring affordable homes are delivered alongside market homes. • In rural settlements and exceptionally, the development of market housing can cross-subsidise the delivery of affordable homes, without relying on public subsidy.
Developers and House Builders	• Provide affordable housing advice to applicants. • Negotiate affordable housing level, tenure and type in accordance with policy. • Advise on the location of the affordable housing on the site to ensure the homes are integrated and pepper-potted [i.e. tenure blind] throughout the site. • Enabling role to bring forward delivery.
Rotherham Metropolitan Borough Council	• Independent housing associations, charitable organisations and companies. • Provide and manage affordable housing, particularly affordable rent products and shared ownership.
Affordable Housing Providers [RPs]	• Hold a register for people seeking to buy an affordable home. • Advertise all affordable homes for sale. • Checks eligibility of applicants and approve those eligible.
Help to Buy North	• Hold a register for people seeking to buy an affordable home. • Advertise all affordable homes for sale. • Checks eligibility of applicants and approve those eligible.
Planning Department	• Advise applicants of planning issues and obligations. • Determine planning applications.
Elected Members	• Consulted on planning applications and comment on negotiations for Deeds of Variations.

Implementation of Policy

- 107** Decisions regarding the type of affordable housing to build on suitable sites should reflect the local housing needs and the individual site's attributes. This, therefore, will be a matter of negotiation and agreement between the Borough Council and the Landowner/Developer, but should contribute to satisfying the needs identified in the most recent Strategic Housing Market Assessment [SHU, 2019] and other relevant local housing needs evidence.
- 108** **In entering into a voluntary legal agreement with the Borough Council, all reasonable legal costs incurred by Legal Services of the Borough Council will be reimbursed by the developer.**
- 109** Though the delivery of affordable housing is a high priority in Rotherham, the Borough Council recognises occasionally a full policy compliant scheme cannot be delivered due to concerns about viability. In these cases, the Council will examine the balance of all planning and policy requirements so that schemes can proceed toward delivering viable schemes.
- 110** In establishing the appropriate level of affordable housing for individual development proposals, the Borough Council shall apply a number of planning criteria to assess the appropriateness of each planning application. The following summarise the issues that shall be used in this regard:
- a) Location of Affordable Homes
 - b) Alternative Provision
 - c) Tenure Preference and Tenure-Blind
 - d) S106 Legal Agreements to secure Affordable Housing through Planning Obligations
 - e) Planning Practice Guidance on Obligations
 - f) Site Suitability:
 - 1. Abnormal Development Costs and Competing Uses
 - 2. Other Considerations
 - g) Integration of Affordable Housing Units
 - h) Scheme Quality
 - i) Sheltered Housing/Retirement Communities
 - j) Timing of Affordable Housing Provision within Development Schemes
 - k) Social Housing Provision: using Registered Social Landlords [RSLs]
 - l) Public Subsidy

These are briefly explained in turn below.

a) Location of Affordable Homes

- 111** On-site provision of affordable homes is the preferred option of the Borough Council, which is in accordance with NPPF and other planning practice guidance, and on-site provision shall be sought in the first instance in all cases.

b) Alternative Provision

- 112** Off-site provision shall only be considered where there are sound planning reasons that on-site provision is not possible or appropriate. The Borough Council will also wish to be assured that any off-site provision is actually deliverable.
- 113** The provision of financial contributions in lieu of on-site or off-site provision is the Borough Council's least preferred option. As such, it will only be considered in exceptional circumstances. The Borough Council will need to be satisfied that this approach will result in the required provision of affordable housing.

c) Tenure Preference and Tenure-Blind

- 114** On any site where affordable housing is provided the tenure split should reflect the findings of the Strategic Housing Market Assessment or latest Housing Needs Survey in terms of the most appropriate tenure, mix, type and size of new affordable homes. Any assessment of housing need in relation to an individual site will also include:
- Current information of the Borough's Housing Register.
 - Information from Parish/Town Council surveys or appraisals.
 - Evidence on recent availability of affordable housing opportunities throughout the Borough.
 - The number of right-to-buy sales that have taken place in the Borough.
 - Evidence from the Office of National Statistics [e.g. demographic, local economy]
 - Current priorities set out in the Borough's Housing Strategy [2019-2022] and subsequent strategies.
- 115** If planning or other circumstances affect the Developers' ability to provide exactly what is requested, an alternative mix of dwellings will be considered, as long as this meets identified local needs. This approach is informed by, as well as accords with, the latest central Government guidance. The current tenure preference is set out in the table in paragraph 88 in this SPD.

d) S106 Legal Agreements to secure Affordable Housing through Planning Obligations

- 116** Central Government guidance advises that both Planning Conditions and Planning Obligations will be used to ensure that the affordable housing built is occupied only by people that fall within the identified categories of need for affordable housing. The Borough Council recognizes that Planning Conditions and/or Planning Obligations, S106 and nomination agreements should be flexible to enable and encourage the scheme to proceed.

e) Planning Practice Guidance on Obligations

- 117** Where planning obligations are used they should be consistent with current national planning practice guidance on planning obligations. This makes it clear that affordable housing elements

of residential or mixed use developments required by local plan policies on mixed communities and provided through planning obligations should be provided in kind and on-site. Borough Council Officers will expect the Heads of Terms of S106 Agreements to be agreed by the time a planning application is taken to Planning Board. This will ensure the effective delivery, occupancy and future management of the affordable housing. See also Appendix 5.

f) Site Suitability:

1. Abnormal Development Costs and Competing Uses

- 118** Abnormal development costs are those that could not have been reasonably foreseen in advance. Where policy indicates that affordable housing be included, its provision should be a fundamental part of any site appraisal and viability study. Thus, in itself, the provision of affordable housing does not represent an abnormal development cost.
- 119** Within a site viability study, it is recognised that there are likely to be differentials between the development costs of [and the income from] a market home when compared to the costs of providing [and any income from] an affordable home. Any differential in costs will not be treated as an abnormal development cost.
- 120** The Borough Council shall consider any legitimate abnormal development costs associated with development proposals when assessing the proportion of affordable housing sought, but this does not include the impact of standard development costs such as demolition, contamination, landscaping costs, as well as archaeological, ecological and other technical surveys. Further guidance on what will, and will not be considered as “abnormal development costs” is set out in the guidance note at Appendix 7.
- 121 In a circumstance where a Developer wishes to highlight legitimate abnormal development cost concerns as reasoning for reducing the proportion of affordable housing, or for its exclusion altogether, those proposals must be substantiated by comparative scheme feasibility studies that demonstrate viability with:**
- **The exclusion of affordable housing [i.e. all-market scheme]; and**
 - **The inclusion a range of affordable housing [between 0% and 25%].**
- Crucially, none of the costs in the viability appraisal should presume the availability of public grant or subsidy.
- 122** Given that there are different ways in which affordable housing can be provided, **comparative scheme viability studies must consider all possible options. All evidence must be provided in a form that can be assessed independently.**
- 123** Other than abnormal development costs, there may also be instances where affordable housing provision renders a site’s redevelopment for residential purposes less viable than a competing alternative use⁽²²⁾. Where a developer wishes the Borough Council to consider such a situation, financial evidence, to be treated confidentially by the Council, shall be required to support such

22 This requires that legitimate alternative [permitted by planning] uses shall be subject of a viability appraisal at the same time as the testing of the housing scheme’s viability.

a claim. The Borough Council will appoint an independent professional when viability issues are raised of this nature whose will be paid for by the applicant.

2. Other Considerations

- 124** In assessing site suitability, the Borough Council will take into account all relevant planning considerations.

g) Integration of Affordable Housing Units

- 125** In pursuit of tenure-blind developments, affordable homes should be distributed throughout developments and integrated with open-market homes to promote social mix and inclusion on the street scene, rather than being segregated in discrete and often peripheral areas. The Borough Council prefers small clusters of affordable housing units; however the Council will agree the location of the affordable housing units on a site-by-site basis so that they will be in locations across the development. **The external design of the affordable homes should also be compatible with the open-market homes, in terms of elevation detail and materials, to enable them to be integrated visually within the development. Affordable housing proposals should comply with all relevant local planning policies and national guidance and standards.** See also paragraphs 98-101 regarding Sustainable Design and Construction in this SPD.

h) Scheme Quality

- 126** New affordable homes should be built to achieve 'Good' Building for Life standard and embrace carbon-saving technologies. This will improve the quality of the design and construction of these homes and will reduce running costs in line with the requirements for the provision of sustainable development outlined in NPPF [MHCLG, 2019a].

i) Sheltered Housing/Retirement Communities

- 127** The Borough Council acknowledges that innovative models of housing provision for older people have emerged including retirement villages. Key features include high levels of care available, 24hour on-site staffing and extensive facilities. Good practice is contained in a recent JRF research report⁽²³⁾. Such housing can directly or indirectly contribute to meeting affordable and special needs housing. The Borough Council will therefore seek an affordable housing contribution in meeting the 25% affordable housing quota. The economics of provision of the whole scheme, the availability of public subsidies and other site specific factors shall be material to how much housing can be reserved for those with lower incomes or for which nominations can be offered to the housing authority.

j) Timing of Affordable Housing Provision within Development Schemes

- 128** In accordance with the Borough Council's tenure-blind objectives, **the Borough Council wishes to encourage the integration of affordable homes with open-market homes, the former delivery will be phased as the development is completed, but in all circumstances shall not be any later than 70% of the sale of open market units.** This

23 Joseph Rowntree Foundation, 2006, "A Guide to Planning for Continuing Care Retirement Communities".

approach assists social integration and the establishment of mixed communities at an early stage.

k) Social Housing Provision - Use of Registered Providers [RPs]

- 129** The Borough Council considers the involvement of RPs and the Homes England's preferred non-RP Developer partners, to be the preferred practicable suppliers of social housing, due to the long-term security offered to tenants and the maintenance of affordable rents and management services.
- 130** RPs develop a range of different forms of affordable homes both for rent and forms of home ownership, both with and without public subsidy. Whether subsidy is applied or not, RPs are obliged to meet 'Good' Building for Life standards in terms of construction and performance. Therefore, applicants will need to take account of this requirement in the planning and delivery of affordable homes in which RPs are to be partners in provision.
- 131** The Borough Council works with a range of RPs in partnership with neighbouring Local Authorities. These arrangements [i.e. Programme Partnership Agreements] include an agreed mechanism to deliver nominations for those people who are eligible and in need of affordable housing. Such eligibility for accessing all new affordable and intermediate homes in the Borough is determined by the households' acceptance on the Council's Housing Register. Where a developer proposes to meet obligations to supply affordable housing in partnership with a RP, they are strongly advised to contact Rotherham's Affordable Housing Officer at an early stage to discuss the most appropriate arrangements.
- 132** A list of RP partners and non-partners is listed in Appendix 2.

l) Public Subsidy

- 133** Public subsidy [i.e. social housing grant or other public subsidy] to provide affordable housing is limited, and cannot be expected or assumed in any developers' proposals for the provision of affordable housing. Homes England has adopted this position in recognition of the fact that indiscriminate use of public subsidy merely serves to inflate the cost of land.
- 134** As a result, **developers and landowners should calculate the cost of planning contributions to affordable housing on the basis that public subsidy shall not be available.** However, according to changing priorities and need Homes England, from time-to time, does provide public subsidy for proposals involving provision of affordable homes for BME and for older persons. Developers should, in the first instance, liaise with the Borough Council's Affordable Housing Officer to obtain more specific information on this matter.
- 135** Developers should also be aware that the policy of delivering affordable housing without public subsidy was supported by the First Secretary of State in a landmark appeal decision.⁽²⁴⁾ Where a social housing grant is secured, it would be limited to the amount that would be necessary to convert the scheme from financially non-viable to financially viable.⁽²⁵⁾ Social Housing Grant

24 Appeal decision, dated 22nd July 2004, following a Call-in Inquiry, Hinckley and Bosworth Borough Council.

25 For an explanation of viability, see Viability SPD, RMBC, 2020 and The Affordable Housing Refresh Study, RMBC, 2019.

will always be dependent upon certain building, design and energy efficiency standards being achieved.

- 136 Failure to provide any information to justify any viability issues or alternatively to provide the required amount and type of affordable housing at an affordable cost, shall justify the refusal of planning permission.** Applicants are strongly advised to contact the Council's Affordable Housing Officer and read the Borough Council's Development Viability SPD [RMBC, 2021].

Monitoring and Review

- 137** The Borough Council will monitor the supply and delivery of affordable housing units in the Borough. This will be in relation to its Local Plan policies and other Council initiatives set out in its 2019-2022 Housing Strategy. The Council is obligated to provide details of affordable Housing delivery to National Government. To achieve this, an obligation will be placed on Developers within the S106 agreements to submit details of affordable housing delivery to the Council as and when requested.
- 138** It will also monitor the housing requirements through future housing needs surveys and strategic housing market assessments.
- 139** The Borough Council will also monitor and report on the delivery of the Section 106 Obligations and requirements to ensure that the terms are met and that any commuted payments have been utilized within the specified period.
- 140** The Borough Council will also monitor and report on the delivery of its Community Infrastructure Levy receipts and spending to ensure that their terms are met.
- 141** Other indicators that the Borough Council shall consider monitoring encompass:
- Local house price and rent data indexed against local income levels.
 - Progress in reducing the number of vacant properties.
 - Progress in reducing waiting lists, homelessness and those in temporary accommodation.
 - Change in the number of social housing units in the Borough of Rotherham.
 - Progress in improving the quality of the housing stock [e.g. energy efficiency, unfitness, disrepair].

Bibliography

BCIS [2019] Average Build Prices and Tender Price Index, Building Cost Information Services: RICS Colenutt, R., Cochrane, A. & Field, M [2015] "The Rise and Rise of Viability Assessment", Town and Country Planning, 84 [10], pp.453-458

Crosby, N. [2019] Development Viability Assessment and the provision of affordable housing, University of Reading

The Environmental Information Regulations 2004, UK Statutory Instruments No. I 3391 Freedom of Information Act 2000

FAME [2019] Financial Ratios, Financial Analysis Made Easy: Bureau van Dijk

Grayston, A. [2016] "Slipping through the viability loophole", Shelter.

Havard, T. [2014] Financial Feasibility Studies for Property Development: Theory and Practice, Routledge.

London Borough Development Viability Protocol [2017], prepared by the London Borough Viability Group

MHCLG [2019a] National Planning Policy Framework, HMSO, February 2019
<https://www.gov.uk/government/collections/planning-practice-guidance>; also see for changes to NPPF relating to open space, sports and recreation facilities, public rights of way and local green space <https://www.gov.uk/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space>

MHCLG [2019b] Planning Practice Guidance for Viability, Ministry of Housing, Communities & Local Government, May and September, 2019

MHCLG [2018] Land Value Estimates for Policy Appraisal, Ministry of Housing, Communities & Local Government, May.

NAO [2019] Help to Buy: Equity Loan Scheme – progress review, Report of the Comptroller and Auditor General, National Audit Office, HC 2216, Session 2017-2019, 13th June 2019.

Planning and Compulsory Purchase Act 2004

Ratcliffe, J, Stubbs, M. & Keeping, M [2009] Urban Planning and Real Estate Development, London: Routledge Press [3rd Edition].

RICS [2020] Financial Viability Assessment Guidance, The Royal Institution of Chartered Surveyors, [draft, January 2020]

RMBC [202] Development Viability Supplementary Planning Document, Rotherham Metropolitan Borough Council

RMBC [2019] Affordable Housing Refresh Study, Rotherham Metropolitan Borough Council, July RMBC [2018] Sites and Policies Local Plan, Rotherham Metropolitan Borough Council, June

RMBC [2016a] Community Infrastructure Levy, Instalment Policy, Rotherham Metropolitan Borough Council, December

RMBC [2016b] Community Infrastructure Levy, Charging Schedule, Rotherham Metropolitan Borough Council, December

RMBC [2014] Core Strategy, Rotherham Metropolitan Borough Council, September

SHU [2019] Sheffield and Rotherham Strategic Housing Market Assessment 2018, Centre for Regional Economic and Social Research, Sheffield Hallam University, February 2019 version.

SU [2015] Sheffield and Rotherham Strategic Housing Market Assessment 2014, Sheffield University

Contacts

If you have any questions regarding this Supplementary Planning Document please contact Planning Policy:

Submit an enquiry to Planning Policy online:

<https://www.rotherham.gov.uk/xfp/form/535>

Email: planning.policy@rotherham.gov.uk

Telephone: 01709 823869

Website: <https://www.rotherham.gov.uk/localplan>

Post: Planning Policy Team, Planning, Regeneration and Transport, Regeneration & Environment Services, Rotherham Metropolitan Borough Council, Riverside House, Main Street, Rotherham, S60 1AE

For planning application and pre-application advice, please contact Development Management:

Submit an enquiry to Development Management online:

<https://www.rotherham.gov.uk/xfp/form/216>

Email: development.management@rotherham.gov.uk

Telephone: 01709 823835

Website: <https://www.rotherham.gov.uk/planning>

Post: Development Management, Planning, Regeneration and Transport, Regeneration & Environment Services, Rotherham Metropolitan Borough Council, Riverside House, Main Street, Rotherham, S60 1AE

Appendix 1: Glossary

Types of Affordable Housing⁽²⁶⁾

Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and Registered Providers [as defined in section 80 of the Housing and Regeneration Act 2008], for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with Homes England.

Affordable rented housing is let by local authorities or Registered Providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent [including service charges, where applicable].

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include starter homes, shared equity (i.e. shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing. Homes that do not meet the above definition of affordable housing, such as "low cost market" housing, may not be considered as affordable housing for planning purposes.

Affordability

Affordability of housing is generally reported using the ratio of lower quartile house price to lower quartile earnings. This is the government's favoured indicator for affordability, as affordability is most likely to be an issue for people such as first time buyers, whose wages are lower.

The higher the ratio, the less affordable housing becomes; it is in effect how many times a person's salary would be needed to buy a home.

Data sources that are typically used to determine affordability are the Annual Survey of Hours and Earnings [ASHE, ONS] and HM Land Registry.

26 The Borough Council are aware that other affordable housing products [e.g. First Homes] may be developed and thus shall respond accordingly.

Registered Providers [RP]

Registered Providers (RPs) are independent housing organisations registered with Homes England under the 1996 Housing Act. Most are housing associations, but there are also trusts, co-operatives and companies.

Existing or Current Use Value [EUV/CUV]

This is the market value that specifically reflects the current use of the property only and disregards any prospect of development other than for continuation/expansion of the current use [www.rics.org.uk]. Each use class [in planning terms] thus generates its own derived value according to local market conditions. On an equivalent basis, situation [i.e. location] rather than site [i.e. the physical capacity of the site] determines EUV or CUV.

Land Value

Prior to any transaction/exchange, this is ultimately a guess-estimate. But what a site might be worth must take explicit cognisance of and be informed by (local) market conditions and evidence, site specific attributes, and local planning policies and requirements [see National Planning Policy Framework, MHCLG, 2019a]. Indeed, at the point of a viability review, the agreed land value in the original appraisal should be used, unless the site has been acquired since and evidence is provided of the purchase price. Yet, any purchase price used shall be benchmarked against both market values and sale prices of “comparable” sites in the locality. Any significant overbid for the site at the point of review shall be disregarded.

Where market value is used, it should have regard to the Local Plan policies and all other material planning considerations, including planning and affordable housing obligations and disregarding that which is contrary to the Local Plan, whilst providing the “minimum requirement to incentivise a reasonable landowner” to enable the development to be deliverable. As both purchase price and market value address landowner profit, the latter should not otherwise be included in the appraisals.

Crucially, the Council’s approach will be to use a site’s existing use value [EUV] plus an appropriate premium to evaluate a site’s viability position.

Land Price: “offers” and “transactions”

“Offer” prices are expressions of worth or value; they are expressions of expectation and not a product of a transaction or an exchange. On the other hand, prices relate to actual transactions, where the seller and buyer through negotiation and bargaining come to agree a price where exchange [and hence a transaction] can occur. Depending upon market conditions and position on the property cycle, offer prices tend to be higher than transaction prices: in a depressed market these can be 8% to 10% difference; in a rising market, the difference is likely to be much smaller; and in times of extreme competition for land, the difference not only disappears, but a price war can occur to secure ownership rights in the land/property markets.

Local Housing Allowance [LHA]

LHA is the housing benefit for tenants of privately rented accommodation. LHA is a flat rate allowance towards rent costs, calculated based on the circumstances of the tenant [such as family size] and the broad area they live in.

If a household's rent is less than the 'Valuation Office determined' LHA for the type of property, their claim will be assessed on their rental liability, not the LHA amount. If their rent is more than the LHA they will normally have to pay the extra themselves.

Residual Land Value [RLV]

This is the land bid budget available to a developer or a prospective owner. It is the residual left over after "all" costs [i.e. build costs, fees, finance, planning obligations, CIL payments and provision of affordable housing] and profits are subtracted from the gross development value. Thus, it reveals the Developer's maximum budget available to buy the land. See Ratcliffe, J, Stubbs, M. & Keeping, M. [2009] Urban Planning and Real Estate Development, Routledge [3rd Edition], especially Chapter 13.

Rural Exception Housing or Sites

Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding.

Housing Register

Rotherham Metropolitan Borough Council housing register of persons who qualify to be allocated housing accommodation under the 1996 Housing Act.

Supplementary Planning Document [SPD]

These planning documents provide further information and guidance on the implementation of policies in the development plan. Prepared with public consultation, although they do not form part of the development plan and are not subject to independent examination.

Viability/Viable

The test for viability is that the evidence indicates that the current cost of building out the entire site (at today's prices) is at a level that would enable the developer to sell all the market units on the site (in today's market) at a rate of build out evidenced by the developer, and make a competitive return to a willing developer and a willing landowner. In other words, a scheme is said to be viable if the developer has enough money to BUY the land, build out the scheme and achieve its target/hurdle rate of capital profit. Critically, the test of viability does not seek to confirm the land price paid by the developer. Thus the viability test simply seeks to find the site's value/worth at the time of the valuation [i.e. now at the point/date of contestability or Appeal] and not the price paid by the developer at some other time.

Appendix 2: List of Registered Providers in Rotherham

List of Registered Providers [RP] Partners and Non-Partners Operating in Rotherham

ROTHERHAM COUNCIL RP PARTNERS

1. South Yorkshire Housing Association, 43-47 Wellington Street, Sheffield S1 4HF; Telephone: 0114 290 8354; Contact Natalie Newman – email: n.newman@syha.co.uk
2. Together Housing Group, Harrison Street, Wakefield, WF1 1PS; Telephone: 01924 206990; Contact: Graham Wingfield – email: Graham.Wingfield@togetherhousing.co.uk
3. The Guinness Partnership, 20 Westfield Terrace, Sheffield, S1 4GH; Telephone: 0114 228 8456; Contact: Tim Morton –email: Tim.Morton@guinness.org.uk
4. Johnnie Johnson Housing, Head Office, Astra House, Spinners Lane, Poynton, Cheshire, SK12 1GA; Telephone: 01625 870117; Contact: James Bromfield – email: James.Bromfield@JJHousing.co.uk
5. Arches Housing Limited, 122 Burngreave Road, Sheffield, S3 9DE; Telephone: 0114 228 810; Contact Christine Boucher – email: chrib@archeshousing.co.uk
6. Great Places Housing Group, Southern Gate 729 Princess Road, Manchester, M20 2LT; Telephone: 0161 447 5077; Contact Peter Lyas – email: peter.Lyas@greatplaces.org.uk

NON-PARTNER RPs OPERATING IN ROTHERHAM

1. Wakefield District Homes; Contact: David Boyes-Watson, Telephone: 01977 724648 - Email: dboyes-watson@wdh.co.uk
2. Stonewater; Contact: Martin Fox, Telephone: 01422 313782 – Email: martin.fox@stonewater.org.uk
3. ACIS Housing; Contact: Ruth Barnett, Development Coordinator Acis Group, Telephone: 01427 675767 – Email: ruth.barnett@acisgroup.co.uk
4. Yorkshire Housing; Contact: Sian Grindley, Telephone: 0113 825 6116 – email: sian.grindley@yorkshirehousing.co.uk
5. Equity Housing Group; Contact: Scott Grayson, Business Development Manager; Telephone: 0330 123 4460 – Email: scottg@equityhousing.co.uk
6. Action Housing; Contact David Palmer, Head of Housing & Asset Development; Telephone: 01709 821251 [ex. 202] – Email: David.Palmer@action.org.uk

Appendix 3: Worked Example of Commuted Sum in Lieu of On-Site Affordable Housing

Example of the Commuted Sum payable in lieu of on-site Affordable Housing provision in Rotherham Metropolitan Borough Council.

Planning Application for 16 apartments

	Total	Market	Affordable
Number of Dwellings	16	12	4
Size of Dwellings [gross m2/unit]	60	60	60
Total Floor space [gross m2]	960	720	240
RMBC AH Policy requirement	25.00%	75.00%	25.00%

	Total [£/unit]	£/m2
Market Value of Dwellings [£]	£124,950	£2,082.50

Commuted Sum Payable	% of Market Value	£/unit	£/m2	Total to be paid
Rate applied	40.00%	£49,980.00	£833.00	
Total Commuted Sum Payable				£199,920.0

Applicants are advised to contact the Council's Affordable Housing Officer, who shall provide further advice and guidance.

Appendix 4: Rotherham Metropolitan Borough Council's Key Negotiation Principles: Planning Obligations, including Affordable Housing

Key Negotiation Principles

1. The need for a planning obligation and the Borough's likely requirements should be identified and relayed to a potential developer at the earliest possible stage. Normally, this would be at the pre- application stage [or very shortly after a planning application has been submitted if it has not been discussed in advance]. Exceptionally, the need for a planning obligation may be identified later in the process, e.g. following the identification of some obstacle to the granting of consent or where a significant issue arises following public consultation on the planning application.
2. The Borough Council can only insist on contributions that are necessary but it can accept contributions that are desirable providing they serve a demonstrable planning purpose.
3. Different contributions must not be sought from different developers and Council Officers must follow the same approach when dealing with developers of Council-owned sites as they would with developers of privately-owned sites.
4. Obligations that are not essential cannot be used to justify proposals that would otherwise be unacceptable [i.e. **can't make a "bad" application "good"**].
5. In an appeal situation, the Secretary of State has indicated that he will only support obligations which are **necessary**, even though it can be lawful for a planning authority to receive obligations which are only **desirable**.
6. The Borough Council is required to notify the Secretary of State of certain categories of "departure applications" and where the Borough Council itself has an interest in the application it is required to notify the Secretary of State of its own applications. The Council's legal team will need to advise whether a S106 planning agreement from which the Borough Council benefits constitute an "interest", thereby triggering the fuller notification requirement.
7. Planning obligations can only be required where the Borough Council considers that specific improvements are necessary to the granting of planning permission.
8. The Borough Council can legitimately receive [and hence negotiate] benefits which go beyond Local Plan policy and NPPF advice and guidance so long as a clear distinction is maintained between what is essential and what is desirable.
9. Where there is concern that the viability of a scheme is becoming critical, Council Officers shall ask the applicant to adopt an open book valuation, whereby independent consultant or District Valuer advice is obtained in order to test viability and ensure reasonableness. Where this cannot be negotiated, the Council's Planning/Affordable Housing Officer will commission the necessary information and seek reimbursement of costs from applicants. Otherwise, planning permission will be refused.
10. Written confirmation that the applicant has agreed to the matters to be included in the planning obligation should be obtained from the applicant as soon as it secured.

Source: Extract from Interim Planning Statement, Affordable Housing, 2010, RMBC

Appendix 5: Heads of Terms - Model Legal Agreement

In delivering affordable housing, reference should be made to Planning Obligations: Practice Guidance and Model Planning Obligation (Section 106) Agreement [2006], which can be accessed from: www.communities.gov.uk. In particular, see Annex A to the Model Agreement: Affordable Housing Drafting Notes.

With regard to Rotherham's approach, Heads of Terms must be agreed at an early stage and certainly prior to consideration of a planning application by the Borough Council's Planning Board. The following details will be required for the drafting of the legal agreement:

- Name of the owner and evidence of title to the application site
- Name and contact details of any mortgagee, who shall be required to enter into the agreement

The owner shall be required to covenant in the agreement:

- To construct on site the required percentage or number of affordable housing units of a particular size/type and to an appropriate standard, in accordance with the Council's policy outlined in this document.
- Not to occupy more than a given percentage of market housing units until the affordable housing units have been transferred to a Registered Provider [RP] or other body approved by the Council.
- The transfer price to the RP shall be reflected in rent levels or shared lease prices obtainable by the RP, based on local incomes and local house prices.
- That all affordable housing units shall be used in perpetuity for the provision of affordable housing subject to safeguards for a mortgagee in possession either of the RP or of an individual purchaser.
- That the affordable housing units shall not be disposed of other than by an assured tenancy or a shared ownership lease or other approved form of tenure, again subject to safeguards for mortgagees.
- That the affordable housing units shall not be occupied other than by persons meeting the specified eligibility criteria.

The legal agreement shall contain appropriate safeguards for the owner, in the event that a PRP or other approved body cannot be found to take a transfer of the affordable housing units.

A fee will be payable to cover the cost of the preparation, completion and registration of the legal agreement, which will be registered on the Register of Local Land Charges.

Appendix 6: Affordable Housing Delivery in Rotherham 2011-2019.

Affordable Housing Delivery in Rotherham 2011-2019

Based on individual planning applications covering the period 2010 to July 2019, it has been possible to track and record the extent to which RMBC's affordable housing policy requirement is being met.

Rotherham's Affordable Housing Policy

It is important to note that the planning authority's affordable housing policy has undergone some changes, based on refreshed data on viability and in response to changes in national policy. In the decade 2000 to 2010, the affordable housing policy pursued a two-tier approach. In Rotherham's Housing Market Renewal areas the affordable housing requirement was set at 7.5% and in the rest of Rotherham the policy was set at 15% of a scheme's total number of dwellings. After viability appraisal studies had been conducted in 2010 and 2011, the evidence supported a change in the affordable housing policy and after public consultation the planning authority raised the affordable policy requirement to 25% for sites of 15 or more dwellings. For smaller sites [of fewer than 15 units] the planning authority sought commuted sums equivalent to £10,000 per unit which were to be spent to deliver off-site affordable housing. As a result of changes in national policy, the affordable housing policy for smaller sites [of 10 units or fewer] was abolished and this is the national policy position presently.

Planning Applications and Pace of Delivery

Of all the planning applications examined, forty two were granted with a requirement to deliver affordable housing. Of these, fifteen separate applications relate to Waverley; and two other permissions relate to another large residential development scheme at Sawn Moor [which was built out by Barratt/David Wilson Homes and Persimmon between 2013 and 2017]. The remaining permissions are individual schemes. The table below summarises the above permissions according to the number of dwellings being delivered.

Table 5 Planning Permissions Delivering Affordable Housing

Total Number of Dwellings	Number of Permissions	Total Number of Dwellings	Number of Permissions
1-14	1	126-200	6
15-30	7	2301-300	3
31-50	6	301-400	1
51-75	5	Total	42
76-125	13		
126-200	6	Total Number of Dwellings	4,046

Of the 4,046 dwellings that have been granted planning permission, 617 are affordable housing units; which crudely represents a 15.24% percentage. However, not all of these dwellings have been built out yet. Indeed, data shows that of the original 655 affordable housing units to be delivered, 356 have been built and the remainder [i.e. 263] are scheduled to be built out in the future; it is difficult to be specific as delivery is dependent upon the pace of delivery of market homes.

The pace of delivery is a key factor in residential development, and this obviously has a strong effect on the delivery of the affordable housing units. Broadly, delivery depends on a number of factors including:

- Nationally, the state of the general economy;
- Locally, the position in the local housing market cycle;
- The scale and complexity of any proposed residential development; and
- The specific constraints/opportunities arising from the site and its situation.

Examining the planning applications where affordable housing is legitimately sought by the planning authority, it is clear that the larger sites are built out in phases, often over four or more years. Some of these sites have been built out more quickly because market confidence has been high and rising. Some sites have been built at a slower rate simply because of market context and this is well exemplified by the record of delivery at Waverley; in more recent years at Waverley the pace of delivery has been much improved.

Affordable Housing Delivery

Of the 655 affordable housing units, 388 units have been delivered over the period 2011 to the end of 2019. The annual rate of delivery of the affordable units is revealed below:

Table 6 Delivery of Affordable Housing 2011 - 2019

Year	2011	2012	2013	2014	2015
AH Units	16	15	56	26	64
Year	2016	2017	2018	2019	Total
AH Units	45	10	13	112	356

The remaining affordable units [i.e. 263 units] are planned to be delivered in the coming years alongside their market homes.

A key issue involves whether these numbers indicate that the planning authority's affordable housing policy is being met. The data below shows the policy position:

Table 7 Compliance With Affordable Housing Policy

AH Policy Compliance	Number of Qualifying Schemes	Comments
Higher than policy	3	e.g. With aid of HCA grant; agreed different AH housing mixes that generate additional AH units.
Policy compliant	29	i.e. 25%
Compliant, but with alternative housing mix	2	e.g. Bungalows taken on a 1: 2 ratio
Compliant, but with compensatory Commuted Sums	4	
Compliant, but with compensatory Overage payments	1	
Lower, as a result of claiming Vacant Building Credit	3	
Total	42	

Of the 42 agreements to deliver affordable housing, no fewer than 36 of these delivered the planning authority's affordable housing policy requirement either directly through delivery on site, by accepting a different housing mix, or commuted sums which were deemed to provide equivalent compensation for a number of actual units that would normally be delivered on-site. It is worth noting that the AH policy could not be delivered because Vacant Building Credits have been claimed on 3 sites, which reduced the provision of affordable housing on these sites. Interestingly, there are three other sites where a higher proportion of affordable housing has been achieved [one because of public subsidy, the other 2 because of agreements with the developers to deliver a different mix of affordable units].

There are **eight other residential schemes** where presently their planning status is uncertain. Specifically:

- **Four schemes are not proceeding; three** of these were judged to be **unviable; and another scheme** is unlikely to proceed **as the applicant has been declared bankrupt;**
- **One** is proceeding, though rather slowly, however a **commuted sum** has been agreed instead of on- site provision; and
- There are **three other applications where their planning status remains undetermined,** though there are **agreements in principle to deliver the affordable housing policy requirements** [i.e. 25%].

If the **three above schemes do proceed**, these will deliver 482 dwellings, of which 120 will be affordable, meaning that the planning authority's policy of seeking 25% affordable housing [or equivalent] on these sites is also being met.

Concluding Remark

Overall, the planning authority has been **shown to be delivering its affordable housing policy requirement over the last decade**. Any deviations from the policy requirement were justified by specific site matters, whether this relates to a lack of viability or where the planning authority has negotiated a different housing mix or an off-site commuted sum that had been judged to be equivalent in planning policy terms. **It also reveals that the planning authority has been flexible** and respectful of market conditions and site specific matters that can affect both viability and the ability of a site to deliver its quotient of affordable housing in accordance with local plan policy.

Prepared by Professor Stephen Walker on behalf of Rotherham Planning Authority

9th December 2019

Appendix 7: Abnormal Development Costs Guidance

This guidance note sets out what will, and will not be considered as “abnormal development costs” by Rotherham Metropolitan Borough Council.

The following guidance is based upon the assumption that a developer has carried out “due diligence” in the acquisition of the proposed development site and has satisfied themselves of matters associated with the site history and previous uses. This is usually done by means of an “environmental audit” and limited site investigation to identify any liabilities and development constraints before purchase of the site.

The local planning authority’s adopted Local Plan includes a large number of newly allocated green field sites, but there remain a high number of “brownfield sites” suitable for development. Whichever type of site is being considered for development, their specific attributes shall be reflected in the valuation and ultimate purchase price of the site in accordance with current national guidance and its subsequent updates [NPPF, MHCLG, 2019 and NPPG on Viability, MHCLG, 2019b].

The following development costs will not normally be considered as “abnormal”:

- ✗ Demolition of existing buildings and clearance of the site.
- ✗ Removal or treatment of underground obstructions, cellars, basements and storage tanks.
- ✗ The location and treatment of abandoned mineshafts identified on Coal Authority search enquiries.
- ✗ Diversion of existing services, sewers, culverted watercourses and overhead power lines.
- ✗ Extinguishment of highway rights and grubbing out of any existing highway infrastructure that may affect the development.
- ✗ Re-profiling of a sloping site.
- ✗ Provision of retaining walls and retaining structures on a sloping site.
- ✗ The provision of land drainage unless associated with leachate control measures from a former landfill or encapsulation location.
- ✗ Additional foundation and drain protection measures to safeguard buildings from the presence of trees.
- ✗ The eradication /treatment of Japanese knotweed or other invasive plant species.
- ✗ Any anticipated costs for on-site or off-site mitigation measures sought and secured through Section 106 legal agreements [typically called planning obligations], including the delivery of affordable housing.

The following may be considered as “abnormal” development costs:

- ✓ Probe drilling and pressure grouting of cavities and voids associated with former mine workings and geological faulting beneath the footprints of buildings within 50metres of the ground surface.
- ✓ The removal of, or on-site treatment of combustible/carbonaceous fills from beneath the footprints of proposed buildings.
- ✓ The on-site treatment of highly contaminated materials by specialist techniques such as, encapsulation/entombment or bio-remediation.

- ✓ The provision of a capillary break layer to prevent recontamination of near surface soils as a result of re-charging of potentially contaminated ground water.
- ✓ The provision of an engineered cap layer to protect end users/ building fabric from contaminants.
- ✓ Protection measures to foundations/drainage systems to safeguard against very aggressive ground conditions, i.e., sacrificial materials, protective coatings and treatments.
- ✓ Provision of active gas protection measures and certain aspects of passive gas protection measures to safeguard occupants of proposed buildings from elevated levels of ground gas, i.e., gas proof membranes, sub-floor ventilation blankets and ventilation provisions.

It should be noted that the above is not meant to be an exhaustive list and the Developer should recognise and accept that each site will have its own constraints and the Council shall look at the merits of each site carefully.

In the event that a developer considers that abnormal development costs will be incurred, it will be the responsibility of the applicant to demonstrate how the costs have been derived. A site investigation report, remediation statement, detailed foundation drawings and calculations of how the abnormal costs have been derived must be submitted with the application.

The costings should take account of extra-over costs only. The Council shall expect that applicants provide a comparison breakdown of costs for the same development with normally anticipated "brownfield" specification to compare with the costings for the "abnormal" specification that is proposed.

References

HCA [2015] Guidance on dereliction, demolition and remediation cost, Homes and Communities Agency [now Homes England], March

HCA [2014] Development Appraisal Toolkit, User manual, version4, Homes and Communities Agency [now Homes England], November.

RICS [2021] Assessing viability in planning under the National Planning Policy Framework 2019 for England: Guidance Note, Royal Institution of Chartered Surveyors, [1st edition], March.

RICS [2008] Valuation Information Paper No. 12 Valuation of development land, Royal Institution of Chartered Surveyors, March.

Prepared by Professor Stephen Walker on behalf of Rotherham Metropolitan Borough Council.