



Guidance for local authorities on incentivising landowners to bring forward additional land for rural affordable housing on rural exception sites



Guidance for local authorities on incentivising landowners to bring forward additional land for rural affordable housing on rural exception sites

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000
Website: www.communities.gov.uk

© Crown Copyright, 2009

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU

e-mail: licensing@opsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
Tel: 0300 123 1124
Fax: 0300 123 1125
Email: product@communities.gsi.gov.uk
Online via the Communities and Local Government website: www.communities.gov.uk

November 2009

Product Code: 09AHD06167

ISBN: 978 1 4098 2041 3

Contents

Scope of the consultation	4
Summary	6
Introduction and background	7
Referrals by a landowner	10
Landowners retaining an interest in the land	16
Case studies	20
Annex A	25
Annex B	27

Scope of the consultation

Topic of this consultation	This consultation sets out proposals to incentivise landowners to bring forward additional land for rural affordable housing.
Scope of the consultation	This consultation proposes mechanisms by which landowners could, via a referrals system, enable employees or family members who meet housing needs criteria and local connection tests to have tenancies for homes constructed on their land sold as a rural exception site and/or to retain a legal interest in their land.
Geographical scope	This applies to land that is identified as a rural exception site (defined in PPS3: <i>Housing</i>)
Impact assessment	A draft impact assessment has been prepared and will be reviewed in the light of responses to this consultation prior to publication of final guidance. ¹

Basic information

To	<ul style="list-style-type: none"> • local authorities with rural exception sites • housing associations in rural areas • landowners in rural areas; employers in rural areas
Body responsible for the consultation	Communities and Local Government
Duration	This is a 12 week consultation, beginning on 26 November and finishing on 18 February 2010
Enquiries	Affordable Housing Division 030 3444 3794 Taylorpwg@communities.gsi.gov.uk

¹ See Annex A for definition of Rural Exception Sites in PPS3: *Housing*

How to respond	<p>Respond in writing to the questions set out in the consultation document by email to:</p> <p>Taylorpwg@communities.gsi.gov.uk</p> <p>Or by post:</p> <p>Helen Kelly Affordable Housing Division Zone 1/G10 Eland House Bressenden Place London SW1E 5DU</p>
Additional ways to become involved	
After the consultation	March 2010 – Consultation response and Guidance published
Compliance with the Code of Practice on Consultation	www.cabinetoffice.gsi.gov.uk

Background

Getting to this stage	<p>Matthew Taylor's report <i>Living Working Countryside</i> (http://www.communities.gov.uk/publications/planningandbuilding/livingworkingcountryside) included two recommendations which this consultation exercise addresses. The Government's response to the report committed to setting up a practitioners' working group which would examine the recommendations and bring forward draft guidance to help bring forward additional sites for rural affordable housing.</p>
Previous engagement	<p>All were welcome to become part of the virtual group which had access to all papers and minutes of the practitioners' working group meetings. They were invited to comment on proposals as they were being developed.</p>

Summary

This consultation sets out draft guidance on how local authorities can, working closely with housing associations and communities, encourage landowners to bring forward additional land for affordable housing by offering referral rights to the tenancy of a percentage of the properties and/or the right to retain an interest in the land.

This draft guidance has been developed by a practitioners' working group, which was established to examine two of the recommendations made by Matthew Taylor in his report to the Government. We are very grateful to the members of the group, and to the organisations that they represent, for the time and energy they committed to this work.

Key proposals include:

- landowners being allowed to nominate family members or employees through a referrals system for a percentage of the affordable homes provided on their land, where the properties are either grant funded by the Homes and Communities Agency or funded solely by a housing association
- landowners potentially having full referral rights where they also fund the delivery of housing on their own land, provided that the houses remain affordable in perpetuity
- all family members or employees referred would have to meet housing needs criteria and local connections tests
- the referrals system would be run by the managing housing association with published criteria to ensure transparency; the remaining properties would be allocated through the housing association's standard allocations policy
- the landowner would be able to retain the freehold interest in the land. Affordable housing would be provided on the land and the housing association would pay either a one off upfront payment for the lease, or an annual ground rent charge

These proposals would apply to rural exception sites as defined in PPS3: *Housing*.

A draft impact assessment has been prepared and will be reviewed to reflect the responses to this consultation.

Introduction and background

1. The Government's approach to housing supply is very clear: we believe that everyone should have the opportunity of a decent home at a price they can afford, in a community where they want to live.² The long term gap between supply and demand for housing has led to a long term affordability problem; with the result that many people who would like to gain access to the housing market are unable to do so. The Government's 2007 housing green paper *Homes for the future: more affordable, more sustainable*³ recognised the challenge for local and regional delivery bodies to engage with rural people and communities to better identify rural affordable housing needs and work in partnership to deliver homes where they are needed. There are clear issues of affordability in rural areas where in 2008 the ratio of lower quartile house price to lower quartile household incomes was 7.4, compared to 5.5 in urban areas.⁴
2. The Prime Minister invited Matthew Taylor to produce a report on rural affordable housing and the rural economy, entitled *Living Working Countryside*.⁵ The report sets out the clear need for the delivery of affordable housing and one of the blockages to this was the provision of land. He concluded, and the Government shares this view, that allowing rural exception sites to be used for market housing would be counter productive. However, he identified, as part of a series of recommendations, two which would incentivise landowners to bring forward land for rural affordable housing. These are:

Recommendation 17:

The Government and the Housing Corporation/Homes and Communities Agency should explore options to help bring forward significantly more affordable homes to meet local need through schemes which allow landowners to nominate someone such as a family member or employee (who meet the local connections and housing need criteria for initial occupation), providing the property is subject to the same Section 106 criteria as the developments of other affordable homes to be affordable in perpetuity, to meet local needs.

Recommendation 18:

The Government and the Housing Corporation / Homes and Communities Agency should look at how schemes in which landowners retain some interest/income can be part of the range of solutions to secure increased release of land for affordable housing in perpetuity – providing the terms (for example, rate of ground rent etc.) are acceptable to the local community to be housed, and do not undermine affordability.

² Planning Policy Statement 3 (paragraph 9)

³ www.communities.gov.uk/publications/housing/homesforfuture

⁴ *Recession Impacts on the Economies and Communities of Rural England: Report 9* by the Commission for Rural Communities

⁵ Matthew Taylor's report to Government "Living Working Countryside" – <http://www.communities.gov.uk/publications/planningandbuilding/livingworkingcountryside>

3. The report referred to a review conducted by the Royal Institution of Chartered Surveyors (RICS) on views of landowners on the release of land for affordable housing in rural communities. A third of landowners said that they would be willing to bring forward sites for the provision of affordable housing, but this figure would increase if a range of concerns cited by landowners could be addressed or clarified. The report's recommendations are part of a response to these.
4. The Government's response to Matthew Taylor's report⁶ committed to establishing a practitioners' working group to look at these recommendations and bring forward advice for local authorities in autumn 2009. This guidance sets out the recommendations of the group (see annex B for the group's membership)
5. The Government's response explains that local authorities need to be active housing enablers, to be proactive in identifying suitable sites for development, even in very small villages, and that "*doing nothing is not initially an option*". The need for local authorities to work with local landowners in identifying suitable land on exception sites is crucial, and to understand their expectations in bringing forward this land. Many land transactions will continue to be straight-forward commercial arrangements. However the Government realises that some landowners, whilst wanting to play a constructive part in ensuring the sustainability of the rural communities to which they belong, want to ensure that they will also benefit from their willingness to share their land for the good of that community. This may be sought by assisting a family member to gain access to affordable housing locally, or by the right to retain an interest in that land; through referral rights for a number of those properties; or through a combination of both of these. Where such an approach is adopted it is important that local authorities ensure that processes prescribed for allocating properties are transparent and accountable.
6. It is vital that landowners and communities understand the need for affordable housing for local people, and the vital role that it will play in sustaining their community locally, as community appreciation and support are very important to the long term success of any scheme. There are a number of vehicles for communities to express their views on their future; such as the sustainable community strategy, the local development framework, parish plans and housing strategies prepared by housing authorities, either locally or sub-regionally. At parish level, evidence provided through the housing market assessment and local housing needs surveys are often a powerful way to demonstrate the need for affordable housing that already exists within the community. Local authority housing registers and, increasingly evidence obtained through the operation of choice based lettings schemes are also being used to evidence need. Local authorities should take the lead in addressing the issue of a community's housing needs, working closely with their local communities to improve understanding and acceptance, perhaps through their strategic housing land availability assessments and rurally appropriate economic

⁶ The Government's response to *Living Working Countryside*
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1184991.pdf>

viability assessments. This, coupled with working closely with landowners to identify appropriate sites, is vital to delivering affordable housing where it is needed.

7. Local authorities will be aware that the most straightforward route to providing additional affordable rural housing remains using allocated sites in villages where, subject to threshold requirements and viability testing, these will form part of a mixed tenure development. They may also want to consider the role that Community Land Trusts (CLTs) can play in meeting local housing need. CLTs enable communities to acquire land and assets, and provide both social rented and low cost home ownership properties as affordable in perpetuity. Most CLT models do this by separating the ownership of the land and homes provided on the land, retaining the value of the land and assets in perpetuity, on behalf of the wider community.
(<http://www.communities.gov.uk/publications/housing/communitylandtrust>)
8. This guidance is primarily aimed at local authorities to assist them in bringing forward sites for rural affordable housing. However, it will also be important for those who own land, whether they are large landowners, employers who have freehold land interests or those with smaller land holdings and are looking to enhance their community by bringing forward land for affordable housing, but want to retain some interest in that land. It will also be of interest for housing associations which will be key partners in projects using this guidance.

Referrals by landowners

9. Some landowners (including businesses) may be more willing to bring forward land for identifiable housing needs if they are able to nominate family members or employees to a percentage of the properties proposed. This would enable family members to remain in, or return to, the community, which they may not otherwise be able to do because of affordability issues; or allow landowners to retain or recruit workers, where they would otherwise find it difficult to do because of a lack of affordable housing in the area (see paragraph 3 above for evidence from the RICS survey).
10. This section provides guidance on how landowners, bringing forward their own land for affordable housing:
 - could have the right to nominate tenants through a referrals system for a percentage of the affordable homes where the properties are either funded through grant by the Homes and Communities Agency, or funded by a housing association, or a combination of the two
 - could have full referral rights where they also fund the delivery of housing themselves provided that the houses remain affordable in perpetuity through a Section 106 agreement

And that such referral rights:

- could be allocated through a referrals system run through the managing housing association; the remaining properties would be allocated through the housing association's usual allocations route
11. These proposals will allow additional affordable housing to be brought forward which would not have been otherwise. This benefit to the community, with the assurance that all homes will be for people with a local connection and in housing need, is vital to addressing the very real issues of housing need in rural areas.

Referral rights

12. We propose that where a landowner has provided the land, but the funding for the building is delivered through grant or by a housing association, for reasons of equity there is a need to limit the number or proportion of homes which could be let to referrals from the landowner. Because most, if not all, of these developments will be small, this guidance does not seek to set a precise national percentage on the number of referrals the landowner can make. It is proposed that as a guideline, a landowner should have the ability to make referrals for around a maximum of 33 per cent of the number of homes in the development. However, it is vital that the actual percentage should be negotiated according to particular local circumstances, and be part of a published referrals criteria.

13. However, where a landlord is bearing the cost of developing the site, the local authority should consider that it may be appropriate to allow the landlord nomination rights in respect of all the properties, provided the authority can be satisfied that the housing will remain affordable in perpetuity, and allocated to persons with a local connection and in housing need. This requirement could be enforced through provisions in the Section 106 agreement (Town and Country Planning Act 1990).

Use of a referrals system

14. This guidance proposes the use of 'referral' systems as opposed to 'nominees'.
15. It is vital that any referrals system is consistent and transparent and that potential referrals who are employees or members of the family of the landowner meet the statutory definition of local connection in the Housing Act 1996 and any other policy requirements set out in the adopted local plan/local development framework in the relevant area and are in housing need. In most (if not all) rural areas, in prioritising applicants, account will also be taken of whether people can demonstrate a local connection to the area, through residency, family connection or employment. This is usually incorporated in adopted local plan/local development framework policies and a similar definition used in Section 106 agreements.
16. A 'cascade' system should be used to assess the landowner's referrals, along the lines of those used in Section 106 agreements and rural exception sites. It would be expected that the first 'tier' of referrals from the landowner should be for family members or employees who have a genuine reason to remain in or to move to the area; for example for work or to give or receive care from another family member. This would ensure that people with a strong local connection, as well as a connection to the landowner, would be considered first. The second 'tier' should be for others who could demonstrate local connections. However it is important to retain flexibility within this approach in order to respond appropriately to local circumstances, in particular if the landowner is unable to find a suitable person to meet the first tier of referrals criteria so that the managing landowner or the housing association can refer someone else to occupy the home which would otherwise remain empty. The landowner would then be entitled to a referral to the next property that became vacant to ensure that the percentage he was entitled to remained the same.
17. Many housing associations operate referral arrangements which typically exist between the association and statutory agencies, voluntary organisations or other third sector bodies. The external agency refers an individual to the housing association and provides information about their housing needs. Landowner referrals could work in this way, though the local authority will want to be confident that similar arrangements were in place if the landowner is managing the homes.

18. When being referred, the applicant would need to provide full details of their current housing situation, why they are in housing need, how they meet the local connection criteria and what support they might need to maintain their tenancy. The local authority will want to ensure that satisfactory arrangements are in place to ensure individual applicant's eligibility. Specific groups or types of people should not be discriminated against or favoured in these arrangements unless, in line with relevant equalities legislation, it can be shown that a reasonable objective is being met, for example, if the entire development is designed for occupation by older people.
19. Under the referrals arrangement it is not necessary for the nominee in the most housing need to be offered a home but they must qualify as requiring affordable housing in the local community.
20. It is important that the housing association, managing landowner or local authority puts in place checks to ensure that the 'referrals' system is not open to abuse and both the criteria applied and the operation of the scheme is open and transparent to all, by publishing the criteria and maintaining on-going checks for those referred.
21. Where a housing association is managing the homes the right of the landowner to make referrals would not necessarily guarantee that those referred will be allocated a home. Blanket exclusions should not apply, but housing associations should be able to take previous behaviour into account, for example serious anti-social behaviour or rent arrears.
22. Housing associations will need to put clear protocols in place for managing disputes. Once a referred person has been granted a tenancy with the housing association, this creates a relationship of landlord and tenant, and the landowner will have no direct right to intervene in the housing association's management of the tenancy. For example, if the housing association takes action to evict a tenant who was a landowner referral, the landowner will have no right to intervene in this decision or in any subsequent proceedings, or use this as a means of changing the terms of their agreement regarding the regulation of the property. The landowner should be given the opportunity to refer a person to the next tenancy that arises to ensure that the proportion of properties subject to a referral remains constant. Where an employee has been granted a tenancy, but the employment ceases, the tenancy will continue as the legal agreement is with the landlord, not the landowner.
23. The period during which the landowner should retain referral rights will be a matter for local negotiation. This guidance proposes a minimum of twenty years. Such rights would rest with the land for the specified period. Therefore, if the landowner sells the land the referral rights would pass with the land to the new owner.
24. Under this scheme tenants nominated under 'referrals' would have an assured tenancy with the managing landowner or the housing association to whom they would pay their rent. Consideration should therefore be given to whether or not tenants will enjoy a statutory right to acquire the dwelling. Although originally a

Right to Acquire arose only if the freeholder of the dwelling was a housing association or public sector landlord, this right was extended under the provisions of the 2004 Housing Act to include dwellings provided by non Registered Social Landlords which are funded wholly or in part by grants made by the former Housing Corporation (now the HCA). However in most cases landlords will have a right of first refusal to buy back homes which are sold under the Right to Acquire if the purchaser decides to sell within 10 years of the date of transfer of the property. However a right to acquire will not apply in most rural areas and this offers further protection against future loss of the unit.⁷ The landowner will need to be aware of this when deciding whether or not to bring forward land and the local authority can advise whether or not the land sits within one of the exempted areas.

25. Referral rights could also apply to low cost home ownership schemes for affordable housing. The Government implemented new powers in the Housing and Regeneration Act 2008 on 7 September 2009 to designate over thirteen thousand small rural settlements across England as protected (mirroring those protected under Right to Acquire). Shared ownership homes provided in these 'protected' areas will have to be retained by either restricting the share which shared owners can buy to 80 per cent or by allowing owners to acquire 100 per cent while ensuring that the housing association or other provider buys back the property to retain it for onward sale to future shared owners. Outside protected areas, provisions in the shared ownership lease can require purchasers who have staircased up to 100 per cent to offer the property back to the housing association provider first, before selling on the open market. This is known as a first right of refusal.
26. This system would be regulated by a planning obligation made by the landowner with the planning authority and the housing association under a Section 106 agreement. It is therefore important that the planning authority identifies the partner housing association (if appropriate) at the outset of any negotiations regarding the development of the site. Local planning authorities should liaise with local housing authorities closely when considering proposals and in drafting and negotiating planning obligations.
27. The remainder of the homes under a grant funded scheme would continue to be allocated on the usual basis
28. Presently, landowners are prevented in law from imposing permanent restrictions on future dealings with their land (known as the rule against perpetuities). The provisions of the Town and Country Planning Act 1990 allow a planning obligation to impose any restriction or requirement either indefinitely or for such period or periods as may be specified. As interests derived under or by virtue of any statute are not subject to the rule, it is considered that a Section 106 agreement is not subject to the rule against perpetuities. However, the situation is not so clear cut in the case of rights to nominate or refer persons for tenancies as it appears these are treated as a form of pre-emption right and

⁷ Small rural settlements have been designated for protection against right to acquire purposes (under Section 17 of the Housing Act 1996) by SI 1997/620-25 inclusive and 1999/1307

these have been held to be types of option. This means they would probably fall within s.9 (2) of the Perpetuities and Accumulations Act 1964 and, as such, the perpetuity period applicable would be 21 years and not the general 80 year period.

29. *The Perpetuities and Accumulations Act received Royal Assent on 12 November 2009. When this is enacted it will restrict the rule against perpetuities to its original function of prohibiting landowners from tying up their land in family settlements for extremely long periods. It would also introduce a new perpetuity period of 125 years (replacing the 80 years specified in the Act of 1964). These changes to the law would enable nomination and referral rights to be granted for much longer periods. This will be reflected in the published final guidance.*

Consultation question 1: Is it helpful to have a guide to the maximum proportion of homes provided through this route? Is 33 per cent an appropriate level? (paragraph 12)

Consultation question 2: Are 100 per cent referrals appropriate for landowners who fund the development as well as providing the land? (paragraph 13)

Consultation question 3: Is it appropriate for local authorities to cede control over nominations to landowners and/or housing associations, provided housing need and local connection criteria are being met? (paragraph 14)

Consultation question 4: Do you consider that the draft guidance strikes the right balance between local connection and housing need in setting out how landlord referrals should be handled and prioritised, including the cascade mechanism? (paragraph 16)

Consultation question 5: Although the draft guidance recommends that the referral mechanism should be subject to the requirements of a Section 106 agreement, do you consider that any other controls or monitoring procedures should be put in place to ensure transparency and fairness (e.g. through publishing the criteria)? (paragraph 16)

Consultation question 6: Are any verification checks carried out by the local authority likely to have a material resource implications for local authorities? (paragraph 18)

Consultation question 7: Should the landowner be entitled to a referral to the next property, if an employee who has been given the tenancy through a referral ceases to be employed but remains in the original property? (paragraph 22)

Consultation question 8: Should such rights be personal to the landowner. Accordingly, if the landowner sells the land, the referral rights would not pass with the land to the new owner. Or should these rights rest with the land (i.e. as with the Section 106 agreement) and be passed with the land if the landowner decides to sell? (paragraph 23)

Consultation question 9: Should landowner referral rights be restricted to homes provided for rent or should they also be available for low cost home ownership sale? (paragraph 25)

Consultation question 10: What should the Section 106 agreement incorporate? For instance should it, as well as eligibility criteria, detail the mechanisms by which the homes are allocated, for example how applications should be prioritised? (paragraph 26)

Landowners retaining an interest in the land

30. Landowners may be willing to release land for affordable housing if they are able to retain an interest in the land, whilst generating some community benefit.
31. This section provides guidance on how landowners, bringing forward their own land for affordable housing:
 - could enable the landowner to retain the freehold interest in the land, whereby affordable housing is provided on the land and the housing association pays either a one off upfront payment for the lease, or an annual ground rent charge
32. The principle of retaining an interest in the land is that it would enable landowners to retain the value of the land in the longer term, whilst offering a social good in the shorter term and longer term in the form of the affordable housing. It is anticipated that this would be of more interest to larger, established landowners who have a longer term strategy for the development and maintenance of the estate, of which this would be one element.
33. However, smaller landowners and local businesses seeking to play a part in their community may legitimately wish to engage, and as such an open minded approach is needed to maximise potential community benefits. Again, the outcome of any agreement would be subject to local negotiation. But the following issues should be borne in mind, especially if the negotiation is to ensure that the units are affordable to rent and meet the Homes and Communities Agency's requirements for viability.
34. The simplest and most straight forward way that this can be achieved is through a landowner agreeing with a housing provider to release discounted land for others at the same time securing a home for ongoing family use. Such private arrangements fall beyond the terms of planning gain and of course only apply where the family house is itself an affordable dwelling secured in perpetuity for local people. Local planning authorities are encouraged to apply PPS3 advice to facilitate the bringing forward of single plot exception sites, particularly where through community engagement wider benefits results from the dialogue (see case study 3)
35. If the landowner wishes to retain the freehold interest in the land they can grant a tenancy or lease of the land to the body taking responsibility for managing the dwellings to be provided on the land. This could be undertaken with or without nomination rights agreed as part of the negotiated package. This body would usually be a housing association. Alternatively, a landowner could contract directly with the proposed occupier of the affordable housing by granting him a

tenancy or lease. However, in these circumstances, the landowner would be responsible as landlord for maintaining and managing the property which may involve him in additional expense. Examples exist where substantial landowners have built and managed affordable stock directly deferring only to the local housing and planning authorities in terms of ensuring affordable or intermediate rents appropriate to the scheme apply and are adequately regulated in perpetuity.

36. There appears to be some increasing interest in pursuing such schemes by small rural enterprises to meet the housing needs of their workers, and a creative approach is encouraged to bring forward a range of affordable housing products where they are most needed. For reasons of broad consistency and administrative convenience, this guidance proposes that whilst all opportunities should be explored, a preferable solution would be for a landowner to grant a long lease to a housing association. Leases would normally need to be granted for at least 60 years for them to be financially viable for a housing association, given the terms of their financing arrangements. However, the length of the lease is a matter for negotiation between the parties and it should be borne in mind that whilst this is an alternative to a straight land sale, the objective remains the provision of affordable housing. As the landowner would still retain the freehold interest he would regain control of the property/properties at the end of the term, though the land would remain the subject of the outstanding planning obligations in relation to the affordable housing. The obligations would continue to be enforceable unless both parties agreed to discharge or modify the provisions of the Section 106 agreement or where the landowner has made a successful application to achieve the same result. This arrangement would need to be carefully communicated to the community at large so they understood the long term benefits to them.
37. The tenancy agreement or lease would define the respective responsibilities of both parties, and it would also include restrictions on occupation to ensure that the property is only occupied by a qualifying person, ie one with local connections and in housing need. Where the landowner retains management responsibility for the property, and is the tenant's landlord, a long lease will require that the landlord's consent to any subsequent assignment by the tenant and if the property is regulated by a tenancy agreement this will restrict subletting of the property by the tenant. (Most long leases require that the landlord's consent is obtained to any subsequent assignment of the lease.) These requirements may also act as an additional check to ensure that the property remains affordable and is occupied by a qualifying person.
38. Where a housing association holds the lease (ie as the head lessee), it would, in turn, let the property to a qualifying person. Under this arrangement the landowner would not have direct responsibility for managing the property, but could retain some controls such as the right to approve any assignment of the head lease and to be consulted about any process for setting or reviewing the criteria for the nomination of those who would take an underlease or a tenancy from the head lessee.

39. The overarching process should be regulated by a Section 106 agreement and/or as part of a building or development agreement made between the landowner and a developer (which could be the housing association) where the landowner is contracting directly with a third party to construct the development. The provisions of a Section 106 agreement should bind land either permanently or for a specific period, as agreed between the parties. It is important to note that use of the land will continue to be affected by a Section 106 agreement after other legal agreements such as a lease have expired, unless the provisions for the Section 106 agreement are time limited or are subsequently discharged or modified either by agreement or upon approval of the landowner's application to do so.
40. One matter that needs to be discussed early between parties is the Leasehold Reform Act 1967, as amended by the Housing and Regeneration Act 2008, which gives long leaseholders of a house (in this case the housing association) the right to acquire the freehold or an extended lease provided the lessee has been the tenant for at least two years. However, the Housing and Regeneration Act 2008 now ensures that new shared ownership properties in more than 13,000 protected rural settlements will remain in shared ownership for future buyers. In protected areas, staircasing will be restricted to a maximum 80 per cent share, so shared owners will not be able to acquire the freehold; or if home-owners are able to acquire 100 per cent of their home there will be restrictions in place to ensure the provider, for example a housing association, buys the property back rather than allowing it to be offered for sale on the open market. The protected areas are those areas already exempt from the Right to Acquire scheme. Land owners bringing land forward for affordable housing in these areas have greater assurance that all such properties will be retained. Outside protected areas, provisions in the shared ownership lease can require purchasers who have staircased up to 100 per cent to offer the property back to the housing association provider first, before selling on the open market; this is known as a first right of refusal.
41. Negotiations will be key in deciding the basis for the balance between the initial cost of the tenancy and the longer term ground rent. The need to obtain value for money to the public purse is crucial, but has to be balanced by the need to incentivise landowners to bring forward land in this way. Two of the case studies attached provide useful examples of how local negotiations have resulted in different outcomes, with which both parties are content. However, they should be viewed as no more than as a guide for constructive negotiations and not as templates.
42. Affordable housing, as defined in PPS3: *Housing*, requires it to remain affordable for future eligible households i.e. it is intended that the housing should be affordable indefinitely. This is normally achieved through the use of Section 106 agreements. As explained above (paragraph 28), planning obligations are not subject to the rule against perpetuities.

Consultation question 11: If landowners are to retain the freehold interest, and grant a lease to a housing association or other body for the development of affordable housing, do you envisage any problems caused by this arrangement? (paragraph 35)

Consultation question 12: What are your views on what the minimum term of the lease should be? (paragraph 36)

Consultation question 13: Do you consider that the draft guidance strikes the right balance between ensuring value for money for public expenditure on housing, and the need to provide effective incentives for landowners to release land for affordable housing?

Consultation question 14: Does the draft impact assessment reflect the benefits and costs to local authorities, housing associations and landowners? Are there other costs and benefits that can be included?

Case studies

Case study 1: Chirbury Shropshire

Erection of five (affordable) dwellings on land adjacent to Chirbury Village Hall, Chirbury, Shropshire by Powis Estates.

The site is situated within a non-development settlement where affordable housing is permitted in the adopted local plan. Planning permission secured in 2006 with the affordable housing matters secured by use of a planning condition: *“The development shall not be begun until a scheme for the provision of the affordable housing development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme. The scheme shall include:*

- i) The numbers, type and location of the site of the affordable housing provision to be made;
- ii) The timing of the construction of the affordable housing;
- iii) The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing; and
- iv) The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy shall be enforced.”

(The use of a planning condition referring to a scheme to be submitted is used in this case to expedite the planning process and requires the scheme to be set out in a Section 106 agreement).

The South Shropshire Housing Association (SSHA) acted as agent to the scheme, submitting the planning application and acting as interface with the local planning authority. The land owner Powis Estates wished to retain both an interest in the land and a leasehold interest in the land and property. These matters played no part in the planning process and were left to housing enabling staff with the council to negotiate alongside the SSHA development team and the land agent.

After four years of negotiations, development commenced on site in May 2009. SSHA have a 60 year lease on the land and pay a ground rent of £5,000 based on £1,000 per plot, subject to annual inflation at RPI. The SSHA build, manage and maintain the housing stock and at the end of this period the property is surrendered to the Powis estates, but remaining affordable due to the planning permission and Section 106 agreement. Full grant funding was provided by the HCA on this scheme and the lease arrangements were not an issue. Paul Sutton of the SSHA indicated that an 80 year lease on the land would have been preferable from their perspective.

In terms of ongoing letting arrangements the SSHA manage the relationship between nomination and the affordable scheme through the allocations arrangements and choice based lettings operated by Shropshire Housing Group on behalf of the council. The clause in the nomination agreement governs the local lettings plans. It states: *“The tenant (SSHA) shall be entitled to underlet part of the property (the site) by letting each one of the affordable houses for rent to suitable persons in accordance with the provisions of the Affordable Housing Scheme provided always that the Landlord (Powis Estates) has the right to nominate the tenants of nominated plots.”*

Case study 2: Danby North Yorkshire

Erection of six affordable houses at Dale End in the village of Danby, North Yorkshire, by Sanctuary Housing.

The site is situated in a village within the National Park where Sanctuary Housing have a track record of delivery with the same land owner, the Dawnay Estate. The houses occupied by local people in April were officially opened on the 12 June 2009 by Lord Downe of Dawnay Estates.

The scheme involved the services of the Rural Housing Enabler operating locally. Planning permission was the subject of a Section 106 agreement describing the houses as being affordable in perpetuity. The land owner originally wished to retain both a leasehold interest and to have nomination rights, but in respect of nomination the landowner's interest is only expressed via the local Danby parish council. A 125 year lease was agreed with no annual ground rent, but an initial one off payment of £30,000 representing £5,000 per plot – stipulated by the HCA regionally – was payable. Ian Simpson of Sanctuary Housing was keen to emphasise that the Section 106 agreement ensures that even when the houses are handed back they will remain available as affordable housing for local people. Full HCA grant was secured in the 2006-08 bid round and the lease arrangement was not an issue.

The land agent was ultimately satisfied with the involvement of the parish council in ongoing lettings but indicated that should the Estate be involved in a similar scheme again, then they would wish to push for local lettings including some nomination rights for Estate employees, but had hitherto been advised that this was not possible.

Case study 3: Anchor, Shropshire

The local planning authority was approached by a landowner in this remote village for an affordable house for his son, having failed already to secure an agricultural worker's dwelling based on business need alone. The site and individual complied with the policy in the South Shropshire local plan for single plot self build exception site developments for affordable housing, however as the landowner was one of the principal landowners in the village he was asked whether he would be willing to release further plots for other local families. As chairman of the local parish council, and interested in helping to breathe life back into the village, he agreed.

Planning permission was granted, and the house is now occupied by the landowner's son and young family. Two plots of land were subsequently transferred to the ownership of the council and through word of mouth locally sold at a value of £10,000 per plot to two local families who have subsequently applied for and obtained planning permission for their dwellings. Whilst these have yet to be built the case highlights how a single plot, due to a willing and interested owner has created real opportunities for others to be housed in their community.

Case study 4: Englefield, Theale, West Berkshire

Erection of four estate workers' cottages on a rural exception site. These properties are for social rent on an assured tenancy.

Englefield Estate has responsibility for the allocations and the eligibility was on that the tenants must be in housing need, with a connection by residency, either through family association or employment.

It was agreed that if no one eligible came forward within 12 weeks of a void occurring, the estate may offer the property to anyone outside the district who has been first approved by the council as in need. 'Need' not defined, though this can include those on the council register and those who are statutorily homeless.

Case study 5: Mortimer West End, Basingstoke and Deane

Erection of eight affordable dwellings for local needs on a rural exception site. These properties are on a social rent on either an assured or other tenancy agreed by the council.

Englefield Estate has responsibility for allocations, with the council verifying prospective tenants to ensure that eligibility criteria are met. Tenants must be unable to afford private accommodation; have a local connection by residency or family association; or provide an important local service/be employed by the parish.

If the Estate ceases to own then the dwelling will be managed in accordance with the objectives of a housing association and its waiting list allocations system. With consent, there can be a cascade beyond the original local connection parishes.

Case study 6: Stratfield Saye, Basingstoke and Deane

Erection of eight dwellings on a rural exception site by the Duke of Wellington's Estate and Hampshire Voluntary Housing Society (HVHS). These dwellings will be for social rent, on an assured tenancy or other tenancy as agreed with the council.

The allocations will be made through a private arrangement between HVHS and the Estate to nominate on alternative vacancies. The verification of prospective tenants would be made by the council to ensure that eligibility criteria are met. For HVHS allocations, nominations are sought from the council.

There are no firm guidelines on how the Estate should prioritise its allocations, provided households are eligible. However, in practice they do consult with HVHS about levels of need and have offered properties to the council at times if they feel their applicants may be in less need than council register applicants. Neither of the two most recent allocations by the estate went to estate workers, nor would they necessarily prioritise them. The eligibility criteria is that they must be unable to afford private accommodation; have a local connection by residency or family association; or provide an important local service/be employed in the parish.

The properties have been provided and managed by HVHS. With consent there can be a cascade beyond the original local connection parishes. Turnover has been very low, only two in six years.

Case study 7: Tatchbury Mount, New Forest

The erection of eight flats on a rural exception site for social rent by the West Hampshire NHS Trust and Raglan Housing Association.

The allocations are being made by a lettings panel including the NHS Trust, the housing association and the New Forest District Council. Key workers are eligible, as defined in the agreement, cascading to housing register applicants who are in housing need. The housing association will bear the cost of voids.

Annex A

Definitions

From Planning Policy Guidance Note 3: *Housing*⁷

Rural exception sites

In providing for affordable housing in rural communities, where opportunities for delivering affordable housing tend to be more limited, the aim should be to deliver high quality housing that contributes to the creation and maintenance of sustainable rural communities in market towns and villages. This requires planning at local and regional level adopting a positive and pro-active approach which is informed by evidence, with clear targets for the delivery of rural affordable housing.

Where viable and practical, local planning authorities should consider allocating and releasing sites solely for affordable housing, including using a rural exception site policy. This enables small sites to be used, specifically for affordable housing in small rural settlements⁸ that would not normally be used for housing because, for example, they are subject to policies of restraint.

Rural exception sites should only be used for affordable housing in perpetuity. A rural exception site policy should 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, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities.

Affordable housing

Affordable housing includes social rented and intermediate housing, provided to specified eligible households, whose needs are not met by the market. Affordable housing should

Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.

Includes provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.

⁷ PPS 3: <http://www.communities.gov.uk/publications/planningandbuilding/pps3housing>

⁸ Small rural settlements have been designated for enfranchisement and right to acquire purposes (under Section 17 of the *Housing Act 1996*) by SI 1997/620-25 inclusive and 1999/1307.

Social rented housing

“Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime. The proposals set out in the Three Year Review of Rent Restructuring (July 2004) were implemented as policy in April 2006. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant.”

Intermediate affordable housing

“Housing at prices and rents above those of social rent, but below market price or rents, and which meet the criteria set out above. These can include shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent.”

Annex B

Membership of practitioners' working group

<i>Members</i>	
Fenella Collins	Country Land and Business Association
Judith Derbyshire	Cumbria Rural Housing Trust
Simon Maggs	Winchester City Council/HARAH
Chris France	English National Parks Authorities Association
Sue Chalkley	Hastoe Housing Association
Matt Dodd	Homes and Communities Agency
Cllr Stan Collins	LGA Rural Commission
Cameron Watt	National Housing Federation
Diane Dumashie	Royal Institution of Chartered Surveyors
Val Dilcock	Royal Town Planning Institute
Jake Berriman	Shropshire Council
Trevor Cherrett	Town and Country Planning Association
Catherine Grannum	Tenant Services Authority

In addition a virtual practitioners' working group was established. This was open to all and provided access to all papers and minutes of meetings. Their input was invited and used by the practitioners' working group at meetings.

Virtual group

<i>Members</i>	
Arlene Kersley	Action with Rural Communities
Sylvia Brown	Action with Rural Communities
Martin Hawkins	Action with Rural Communities
Graham Russell	Commission for Rural Communities
John Coleman	Commission for Rural Communities
Jo Lavis	Rural Housing Solutions
Margaret Clarke	Rural Advisor to Business in the Community
Marcia Cunningham	Government Office for Yorkshire and Humber
Neil Sinden	Campaign for Rural Communities
Robert Hopwood	Bidwells Property Consultants
Steve Forrest	ERN Housing and Planning
Stephen Hall	Department for the Environment, Food and Rural Affairs
Kathleen Kelliher	Department for the Environment, Food and Rural Affairs
Tom Woof	Development Planning Solutions Ltd
Richard Mugglestone	Midlands Rural Housing
John Varley	Clinton Devon Estates
Sarah Walker	Bromford Group

ISBN: 978 1 4098 2041 3

ISBN 978-1-4098-2041-3



9 7 8 1 4 0 9 8 2 0 4 1 3 >