

Affordable Housing Protocol

November 2021

1. Aims and scope of the protocol

- 1.1. The aim of this protocol is to lay out in detail our position on Affordable Housing Delivery in the interim period before a new Local Plan is adopted. This protocol will be used for Development Management decision making.

2. Local and national policy context

- 2.1. Tonbridge and Malling Borough Council's affordable housing policy is set out in CP17 of the Core Strategy (2007), which forms part of the Council's adopted development plan. This represents the starting position of the Council on affordable housing delivery.
- 2.2. To support the implementation of CP17, the Council produced an Affordable Housing Supplementary Planning Document (SPD) in 2008. This is a material consideration that the Council has regard to when seeking affordable housing provision.
- 2.3. The Government's policy and definition of affordable housing is set out in the National Planning Policy Framework (NPPF) which is supported by planning practice guidance. These are current material considerations which the Council has regard to when taking decisions on planning proposals involving affordable housing.
- 2.4. The Council has formally withdrawn the draft Local Plan that was submitted for examination in January 2019 and is reviewing and refining the development strategy that draft Plan was based on. However, at present, that Plan and its evidence base cannot be relied upon as evidence in the making of any applications to the Council as it has not been tested.
- 2.5. The refreshed Plan will include an up-to-date policies on affordable housing. This process will respond to national policy and practice guidance, be informed by local evidence, for example housing affordability, and take account of whole plan viability work.

3. Our evidence base

- 3.1. CP17 in the TMBC Core Strategy has been assessed against the 2021 NPPF and is considered to remain in overall consistency. This policy will therefore continue to be afforded full weight in decision making.
- 3.2. Supporting evidence to determine housing affordability can be access via the ONS All data related to Housing affordability in England and Wales: 2020 – Office for National Statistics (ons.gov.uk).
- 3.3. A Housing Needs survey is currently underway across the borough and the results will be published in early 2022, from which time the Council expects applicants to have due regard to this data in their affordable housing proposals.
- 3.4. A snapshot report on our Housing Register data from September 2021 is attached to this protocol at Appendix 1 in order to provide up to date local information regarding the bed size need profile. This snapshot will be updated every six months.

4. Tenure types

- 4.1. The (NPPF)¹ defines affordable housing. The categories of affordable housing tenure are:
 - Affordable housing for rent – this includes Social Rent and Affordable Rent
 - Starter homes – as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections
 - Discounted market sales housing – housing sold at a discount of at least 20% below local market value

¹ See NPPF, Annex 2: Glossary for full definitions.

- Other affordable routes to home ownership – including shared ownership, relevant equity loans, other low-cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent).
- First Homes – The Government has included First Homes in this definition². First Homes are discounted (a minimum of 30%) market sale units that are sold to first-time buyers. First Homes are considered to meet the definition of ‘affordable housing’, being a form of discounted market sales housing. The Government has set a requirement that a minimum of 25% of all affordable housing units secured through developer contributions should be First Homes.

4.2. Affordable Home Ownership - in addition, the Government requires planning decisions involving major development (10 or more units in total or sites of 0.5 hectares or more in area) to expect at least 10% of the total number of homes to be available for affordable home ownership³. The provision of First Homes can count towards meeting the Government’s expectation that at least 10% of the total number of homes on major development (10 units or more or sites of 0.5 hectares or more in area) are available for affordable home ownership⁴.

4.3. At the time decisions are taken on planning applications, the Council will have regard to the current definition of affordable housing set by the Government in national policy and practice guidance when implementing policy CP17 in the adopted Core Strategy.

4.4. CP17 sets out a 40% affordable housing requirement, with a 70/30 split between affordable housing for rent and other affordable housing tenures. This should be considered the starting point for all applications.

4.5. With the introduction of First Homes, it is important that applicants are aware how the Council will deliver the expectations of the Government in respect of First Homes and affordable home ownership alongside the requirements of policy CP17. A detailed explanation of First Homes considerations is attached to this protocol at Appendix 2.

4.6. In CP17, the definition ‘social rented housing’ is utilised. For the avoidance of doubt, this shall be deemed to include social rent and affordable rent for the lifetime of this protocol. Of the remaining affordable housing requirement after the First Homes policy has been applied, social rented housing will be delivered in the same percentage as set out in CP17 in the Core Strategy, i.e., 70% of the remaining requirement.

4.7. The residual affordable housing requirement, after First Homes and social rent have been addressed (see above), will be met with the provision of intermediate housing, as defined in CP17 and the supporting text to this policy. Intermediate housing includes affordable rent, shared-ownership, shared equity, or discounted market sales housing.

5. Engagement at pre-application stage

5.1. In all instances, the Council strongly encourages prospective applications to enter into early pre-application discussions on proposals for development. Where those development proposals involve provision of affordable housing, prospective applicants should also engage with the Council’s Housing Strategy and Enabling Manager to discuss the specifics surrounding suitable affordable housing requirements. The discussions should include the following:

- Amount, type, size, tenure of affordable housing to be provided.
- Design and location of the affordable housing units within the wider development.
- Identification of possible registered providers and potential funding opportunities.

² See details in the Government’s Planning Practice Guidance: [First Homes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/first-homes)

³ See para.65 in the NPPF (July 2021)

⁴ See NPPF (July 2021), para.65

- Agree with the Council the Heads of Terms of the s.106 Agreement that will be required to ensure the delivery of the affordable housing

5.2. Wherever possible, these pre-application discussions should include a Registered Provider.

6. Submission requirements

6.1. An affordable housing statement should specify what is being proposed in relation to affordable housing and should provide a justification for the amount and type proposed and the location within the site.

6.2. A typical affordable housing statement should include details of the following:

the total number of all proposed residential units

- details of the affordable provision as a percentage of the overall number of residential units
- details of the tenure mix of the affordable units, (eg. market housing, affordable rent, intermediate / shared housing etc) and the percentage split
- details of affordable units, numbers of bedrooms and property types across all tenures to demonstrate a representative mix of unit types and size (for the avoidance of doubt, any significant differences between the bed size mix in private and affordable tenures will not be considered acceptable unless supported by evidence)
- details of the affordable unit space standards (with a need to meet at least national minimum space standards) and floor areas in sqm
- scaled plans showing the location of affordable units within the site (for the avoidance of doubt, TMBC seeks to approve well designed schemes with appropriate siting of various tenures and will not accept significant locational differences between private and affordable tenures without supporting evidence as to why this is necessary to make the development viable)
- details of any Registered Providers acting as development partners (or market testing information from a number of RPs indicating their views on the proposals)
- the different levels or types of affordability or tenure proposed for different units. This should be clearly and fully explained in line with the adopted development plan position
- explanation as to how the affordable housing units will be managed

6.3. The Council accepts that in the case of outline submissions, some of the detailed information above may be unknown. If this is the case, the Statement should confirm that a legal agreement will be entered into in order to accord with the adopted policy position. Further information on our outline application validation requirements is available via the TMBC website.

7. Where less than policy compliant levels are proposed on site

7.1. The Council recognises that the impact of any planning obligations, when coupled with other policy requirements, may affect the viability of some development proposals. In such exceptional circumstances, the Council will consider whether the benefits of the proposed development would outweigh the disadvantages of a more limited planning obligation, or no planning obligation at all. This will only be possible, however, where the developer provides evidence of the likely impact of the proposed planning obligation(s) on the viability of their development. Within this context, if a reduced percentage of affordable housing is being offered, the Affordable Housing Statement must explain why. If the reason for no provision, or for provision below the Council's adopted policy position, is viability then a detailed financial viability assessment must be provided as part of the Affordable Housing Statement.

- 7.2. This financial viability assessment should include as a minimum the information listed at Appendix 3.
- 7.3. Where such cases are put forward, the Council will engage an external consultant to review the submitted evidence. In all instances, the Council will expect the applicant to cover the costs in appointing such a consultant. The overall cost will be dependent on the specifics and complexities of individual cases. **This information will form part of the validation requirements for an application and as such, the application will not be considered until this information has been provided. The payment for this service will be required up front.**
8. S106 provisions for AH
- 8.1. TMBC has prepared model planning obligations relating to the delivery of affordable housing to seek to ensure wherever possible that tenure and bed size mix parameters are set at outline stage and these will be the starting point for all s106 negotiations relating to affordable housing. TMBC is mindful that in some instances, particularly with very large schemes, not all detail will be available at outline application stage. However, we will expect that the evidence base laid out at section 3 of this protocol is utilised to inform affordable housing proposals both at outline and RM application stages and the draft s106 clauses are designed to ensure that is the case.
- 8.2. In relation to First Homes, TMBC will adopt the model clauses provided by Homes England.
9. Off-site delivery
- 9.1. In exceptional circumstances (as detailed in CP17, 6.3.29 of the LDF), TMBC may approve off-site delivery of affordable housing.
10. How the Council will deliver using commuted sums
- 10.1. Should on-site and off-site delivery be ruled out as options, a commuted sum may be deemed acceptable. The initial calculation for a commuted sum will be subject to discussion between viability consultants as part of the process laid out at section 7.
- 10.2. Projects involving use of S106 contributions go through the Council's usual approval to spend process which includes approval by legal and finance officers, as well as approval at corporate director and lead member level. Projects are then submitted to Cabinet for approval.
- 10.3. Financial contributions will be 'ring-fenced' for use towards meeting the Council's affordable housing objectives as follows:
- Provision of new affordable housing in the Borough, including additional housing provision on developments, new standalone schemes (including specialist provision) and purchase of existing properties
 - Purchase on Council owned accommodation, including for use as temporary accommodation
 - Initiatives to improve and make better use of the existing social housing stock
 - Supporting the development of small sites and rural exception sites which deliver affordable housing that meets identified local housing need
- 10.4. Financial contributions will be used across the Borough.

Appendix 1: Housing Register data

Housing Register data 30 September 2021

| Month | Live applications by bedroom need | | | | Total |
|--------|-----------------------------------|-----|-----|-----|-------|
| | 1 | 2 | 3 | 4+ | |
| Sep-21 | 625 | 347 | 207 | 100 | 1279 |
| % | 49 | 27 | 16 | 8 | 100 |

which is below the 4.5x threshold that has been applied. The outcome is a product that would be accessible to typical first-time buyers in Tonbridge & Malling. **As a result, the Council will require all First Homes provided to be discounted by 40% of the market value.**

- e) **First Homes Qualifying Criteria** – In addition to the discount, there are other qualifying criteria that need to be met. These are outlined in more detail in the Written Ministerial Statement published on 24 May 2021. They are:
- After the discount has been applied, the first sale must be at a price no higher than £250,000
 - A purchaser (or, if a joint purchase, all the purchasers) of a First Home should be a first-time buyer as defined in paragraph 6 of schedule 6ZA of the Finance Act 2003 for the purposes of Stamp Duty Relief for first-time buyers
 - Purchasers of First Homes, whether individuals, couples or group purchasers, should have a combined annual household income not exceeding £80,000 in the tax year immediately preceding the year of purchase
 - A purchaser of a First Home should have a mortgage or home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% of the discounted purchase price.

These national standard criteria will also apply at all future sales of a First Home.

In addition to these national standard criteria, the Council will expect the following local eligibility criteria to be met:

- f) A purchaser of a First Home will need to meet the Council's local connection criteria, as outlined on page 2 of the Housing Allocations Scheme. These local eligibility criteria will also apply at all future sales of a First Home.
- g) **Securing First Homes** – The Council will secure the requirement for First Homes through section 106 planning obligations. Model conditions have been made available from Homes England and in the first instance, these will be utilised. In accordance with paragraph 63 of the NPPF, affordable housing is expected to be delivered on-site unless off-site provision or an appropriate financial contribution in lieu can be robustly justified, and the agreed approach contributes to the objective of creating mixed and balanced communities. Where commuted sums for affordable housing are secured instead of on-site units, a minimum of 25% of these contributions will be used to secure First Homes. This could be achieved, for example, by acquiring additional First Homes from market development, paying the developer a sum to offset the discount from market price, and securing the tenure through section 106 planning obligations. Where a mixture of cash contributions towards affordable housing and on-site units are secured, 25% of the overall value of affordable housing contributions will be applied to First Homes.
- h) In accordance with national planning practice guidance⁹, the new First Homes policy requirement does not apply for the following:
- sites with full or outline planning permissions already in place or determined (or where a right to appeal against non-determination has arisen) before 28 December 2021; and
 - applications for full or outline planning permission where there has been significant pre-application engagement which are determined before 28 March 2022.

⁹ First Homes - GOV.UK (www.gov.uk), para. 020 Reference ID: 70-020-20210524

Appendix 3 – required minimum content for applicant’s viability appraisal

a) Residual Land Value:

Gross Development Value supported by:

- i. Comparable market evidence for the Market Housing / Commercial floorspace confirming address of comparable, sale price, date of sale, analysis of comparable and how applied to proposed development.
- ii. Accommodation schedule confirming
- iii. Unit type, tenure, Gross Internal Area and as relevant Net Internal Area and/or Net Sales Area of the units.
- iv. Unit values for Market Housing and Affordable Housing and offers from Registered Provider if available
- v. Ground Rents as appropriate
- vi. Unit values for any non-residential element (rent and yield or capital values comparables)
- vii. Assumptions made in relation to Affordable Housing units and values

Cost Plan based upon BCIS data confirming:

- i. Base build cost of the proposed development;
- ii. Contingency
- iii. Professional fees
- iv. Abnormal development costs including for example:
- v. Contamination remediation
- vi. Adverse ground conditions and specialist foundation types
- vii. Archaeology
- viii. Access and site servicing
- ix. Ecology

Development Programme confirming periods for:

- i. Pre-commencement
- ii. Build
- iii. Sales (overlap)
- iv. Affordable Housing phased payment assumptions

Section 106 and CIL assumptions including for example:

- i. CIL assumptions
- ii. SANGS and SAMM

- iii. Site specific Section 106 contributions

Other variables including for example:

- i. Agent and legal fees on purchase and sale
 - ii. Marketing costs
 - iii. Finance costs
 - iv. Developer's profit assumptions (Market Housing, Affordable Housing, commercial parts etc)
- b) Residual Land Value to be supported by evidence from comparable development land sales.
 - c) Confirmation of the price paid for the property or the price expected to be paid for the property on the grant of planning permission together with confirmation of the contractual terms relevant to the determination of the purchase price within any contingent sale agreement or option agreement including minimum price and overage provisions.
 - d) Benchmark Land Value
 - i. Confirmation of existing use
 - ii. Confirmation of Existing Use Value supported by comparable market and supported by an accommodation schedule confirming Gross Internal Area and as relevant Net Internal Area and/or Net Sales Area and unit values
 - iii. Confirmation of premium adopted and justification for the premium

or

 - i. Confirmation of Alternative Use and planning permission for the Alternative Use
 - ii. Confirmation of Alternative Use Value supported by relevant information (see Residual Land Value above).
 - e) Confirmation that the mandatory requirements of the RICS Professional Statement Financial viability in planning: conduct and reporting 1st Edition May 2019 have been satisfied.
 - f) Confirmation that the assessment of the Residual Land Value has been prepared in accordance with RICS Guidance Note Valuation of development property 1st Edition October 2019.