

Planning Policy Wales

Technical Advice Note

## 2: PLANNING AND AFFORDABLE HOUSING



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



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This document is one of a series of Technical Advice Notes (TANs) which supplement *Planning Policy Wales* (2002) (as updated by Ministerial Interim Planning Policy Statements).

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## 1.0 Introduction

1.1 This Technical Advice Note (TAN) should be read in conjunction with *Planning Policy Wales*<sup>1</sup> (PPW) which sets out the land use planning policies of the Welsh Assembly Government (the Assembly Government). PPW, Ministerial Interim Planning Policy Statements (MIPPS), TANs and Circulars should be taken into account by local planning authorities in the preparation of development plans. They may be material to decisions on individual planning applications and will be taken into account by the National Assembly for Wales (the Assembly) and Planning Inspectors in the determination of called-in planning applications and appeals.

1.2 Reference documents (listed in the reference column in the margin) provide information that should be read in conjunction with this TAN.

1.3 Planning Guidance (Wales), Technical Advice Note (Wales) 2, *Planning and Affordable Housing*, (Welsh Office) November 1996, is hereby cancelled.

## 2.0 Context

2.1 Chapter 9 of PPW sets out the Assembly Government's land use planning policies in respect of the role of housing in developing sustainable communities throughout Wales. MIPPS 01/2006 provides up-dated planning policies in relation to this TAN and must be read alongside it. *People, Places, Futures - The Wales Spatial Plan*<sup>2</sup> and the *Statutory Code of Practice on Racial Equality in Housing - Wales*<sup>3</sup> must also be taken into account by local planning and housing authorities in developing their affordable housing policies in development plans.

2.2 The Planning and Compulsory Purchase Act 2004 introduced a new system of development plan preparation. Local Development Plans (LDPs) are intended to be more focussed and streamlined<sup>4</sup>. One of the key issues that LDPs will need to address is housing land supply both for market and affordable housing. TAN 1, *Joint Housing Land Availability Studies*<sup>5</sup>, describes the system to be put in place to monitor the provision of affordable housing.

## References

1 *Planning Policy Wales*, Welsh Assembly Government, 2002

2 *People, Places, Futures - The Wales Spatial Plan*, Welsh Assembly Government, 2004

3 *Statutory Code of Practice on Racial Equality in Housing - Wales*, Commission for Racial Equality, 2006 (forthcoming)

4 *LDP Wales*, Welsh Assembly Government, 2005

5 *Technical Advice Note 1, Joint Housing Land Availability Studies*, Welsh Assembly Government, 2006

### 3.0 Purpose

3.1 Land use planning is one of the mechanisms that can be used to provide affordable housing. The purpose of this Technical Advice Note is to provide practical guidance on the role of the planning system in delivering such housing. The guidance defines affordable housing for the purposes of this TAN and provides advice to local planning authorities on how to determine affordability. The need to work collaboratively is stressed, including the requirement for housing and planning authorities to undertake local housing market assessments in participation with key stakeholders.

3.2 The guidance requires local planning authorities to:

- Include an affordable housing target in the development plan which is based on the housing need identified in the local housing market assessment.
- Indicate how the target will be achieved using identified policy approaches.
- Monitor the provision of affordable housing against the target (via the Local Development Plan Annual Monitoring Report) and where necessary take action to ensure that the target is met.<sup>6</sup>

3.3 The guidance also outlines the role of registered social landlords and planning obligations and conditions in securing affordable housing provided through the planning system.

3.4 The process, including the links between the various elements, is set out in the 'Planning and Affordable Housing Policy Map' below.

### 4.0 Affordability (Policy Map Step 1)

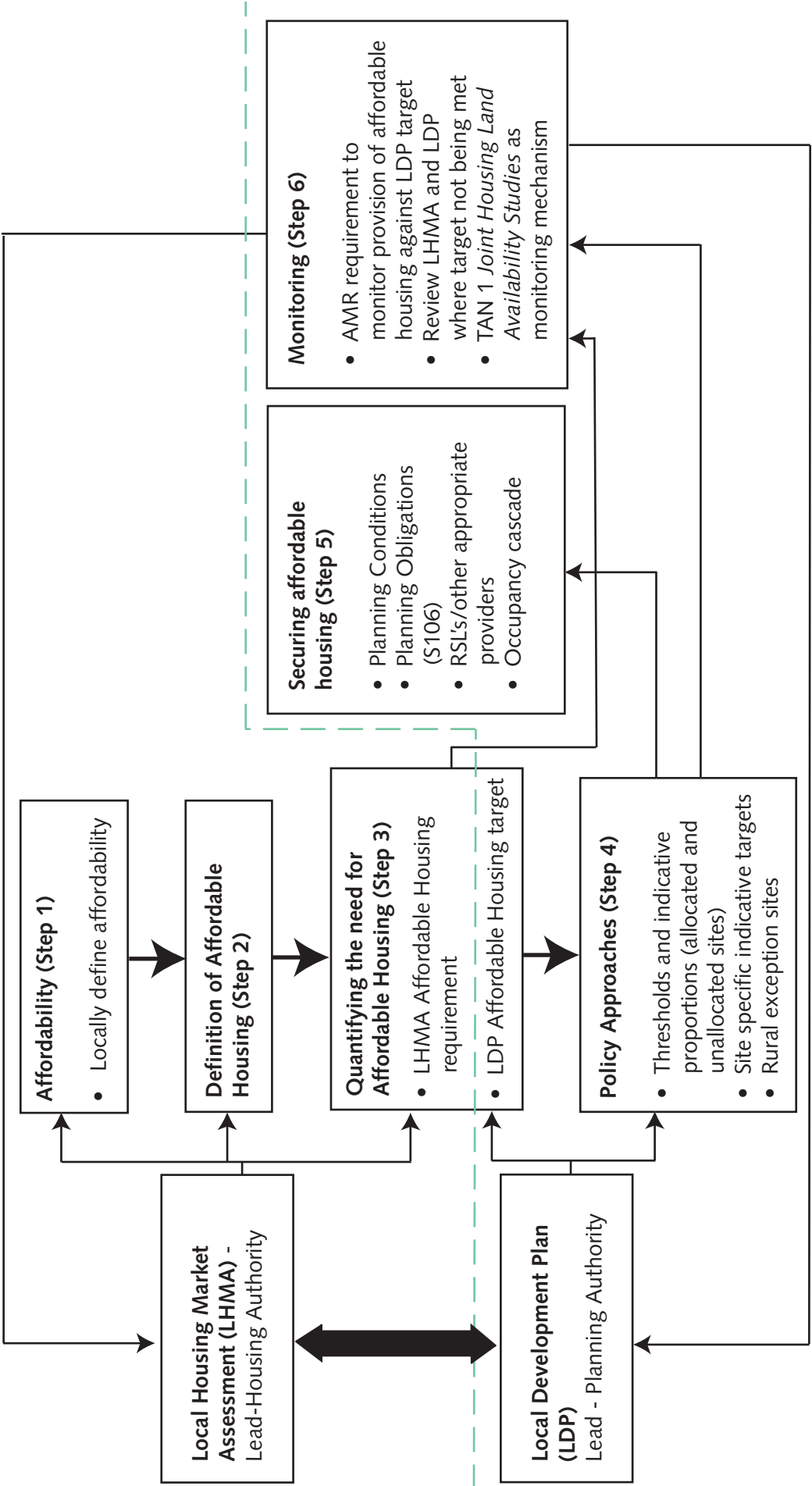
4.1 The concept of affordability is generally defined as the ability of households or potential households to purchase or rent property that satisfies the needs of the household without subsidy (further guidance is provided in the *Local Housing Market Assessment Guide*)<sup>7</sup>. This could be based on an assessment of the ratio of household income or earnings to the price of property to buy or rent available in the open market in the required local housing market area.

## References

<sup>6</sup> See the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 [SI 2005/2889]

<sup>7</sup> *Local Housing Market Assessment Guide*, Welsh Assembly Government, 2006

# Planning and Affordable Housing Policy Map



Local Housing Market Assessment processes above line

Local Development Plan processes below line

4.2 Local authorities should calculate affordability for each of the housing markets that may be operating in their area (and those of neighbouring authorities, if appropriate)<sup>8</sup>. It can then be used, along with other data from the development plan preparation process, to calculate the amount of affordable housing required from new build housing over the plan period.

4.3 'Affordability' is one of the key factors influencing housing demand and need. Information on affordability will therefore be an important factor in developing policies for affordable housing, both for housing strategies and development plans.

## 5.0 Affordable housing and land use planning (Policy Map Step 2)

5.1 The definition of 'affordable housing' for the purpose of the land use planning system as described in this Technical Advice Note is housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers. However, it is recognised that some schemes may provide for staircasing to full ownership and where this is the case there must be secure arrangements in place to ensure the recycling of capital receipts to provide replacement affordable housing. (Also see Glossary at Annex B). Affordable housing includes:

- Social rented housing;
- Intermediate housing.

5.2 Social rented housing is that provided by local authorities and registered social landlords. Intermediate housing is that where prices or rents are above those of social rent but below market housing prices or rents.

5.3 All other types of housing are referred to as "market housing" - that is private housing for sale or rent where the price is set in the open market and their occupation is not subject to control by the local planning authority.

5.4 The strong presumption is that affordable housing will be provided on the application site so that it contributes to the development of socially mixed communities.

## References

8 Further guidance on housing markets is provided in the *Local Housing Market Assessment Guide*



## 6.0 Working together - the roles of local authorities, RSLs and private developers

6.1 Local authorities have key strategic and enabling roles in the provision of affordable housing. **Housing and planning authorities** must work together to create the policy framework for the provision of affordable housing and should adopt a collaborative approach to preparing, co-ordinating and implementing local housing strategies, development plans and Supplementary Planning Guidance (SPG). It is particularly important for links to be made with the community strategy, especially where this identifies a need for affordable housing. Links should also be established with other relevant plans and strategies.

6.2 Housing strategies and development plans set the context and objectives for delivering affordable housing and must be seen to be implemented. SPG can provide detailed information for developers, landowners, RSLs and the public on how the Local Authority's planning policy on affordable housing will be delivered in practice.

6.3 **RSLs and private developers** also have key roles in the provision of affordable housing. They have a good understanding of, and different perspectives on, local housing markets and therefore have an important role in contributing to the assessment of housing requirements and generating the additional resources necessary to provide affordable housing. They are also important for the construction and management of affordable housing.

6.4 The key areas where local planning authorities, housing authorities, RSLs and private developers should work together are:

- establishing housing requirements within the local housing market(s);
- setting targets for the provision of affordable housing through the planning system (both authority-wide and site specific);
- monitoring changing housing requirements;
- updating planning and housing policies and affordable housing targets;
- identifying potential sites for affordable housing (including windfall sites and rural exception sites);

- using planning conditions and planning obligations to secure affordable housing;
- establishing an appropriate mix of housing types and tenures which will contribute to the identified need for affordable housing and to the objective of achieving mixed and sustainable communities;
- constructing and managing affordable housing;
- controlling occupancy to ensure that the affordable housing provided is occupied by people falling within particular categories of need.

## 7.0 Assessing local housing markets

7.1 To deliver the policy objectives set out in PPW (as updated by MIPPs 01/2006<sup>9</sup>) it is vital that local authorities understand their whole housing system so that they can develop sound and robust approaches when preparing development plans and local housing strategies. Local housing market assessments need to cover the whole housing market by considering the requirement for both market and affordable housing. Local authorities' planning and housing functions should combine in partnership with local stakeholders, including private house builders, to produce the assessments<sup>10</sup>. The local housing market assessment should include a continual process of monitoring the changing housing requirements and updating planning and housing policies accordingly. The 'Policy Map' illustrates the relationship between the local housing market assessment and development plan processes.

7.2 Local authorities should undertake Local Housing Market Assessments<sup>11</sup> (LHMAs) to establish the nature and level of housing requirements in their local housing market(s). They provide the joint evidence base for local housing strategies and development plans. A LHMA should assess:

- the number of current and anticipated households by type;
- the current and anticipated household need and demand in terms of affordable and market housing and what this would mean in terms of net housing provision;
- how the distribution of need and demand varies across the plan area, for example between the urban and rural areas; and
- the particular accommodation needs of specific groups, such as homeless households, Black and Minority Ethnic

## References

9 Ministerial Interim Planning Policy Statement 01/2006, Welsh Assembly Government, 2006

10 For more details on the role of local housing partnerships, see *Local Housing Market Assessment Guide*, Welsh Assembly Government, 2006

11 See *Local Housing Market Assessment Guide*

groups, first-time buyers, students, disabled people, older people and Gypsies and Travellers<sup>12</sup>.

7.3 Where local housing markets cross administrative boundaries, assessments may be conducted jointly between local authorities. The results of any joint assessments must, however, be disaggregated to individual local planning authority areas for development plan purposes. In preparing assessments, local authorities should work in partnership with stakeholders, including private sector house builders and, where appropriate, the national park authority. It is important that the relevant data is provided to national park authorities, where they are involved, as soon as it is available. Local authorities should keep the assessment up-to-date once it is completed as new information emerges and market circumstances change.

## 8.0 Local Housing Market Assessments and the Development Plan

8.1 Local planning authorities should ensure that development plan policies are based on an up-to-date assessment of the full range of housing requirements across the plan area over the plan period. LHMA's provide the evidence base supporting policies to deliver affordable and market housing through the planning system. For affordable housing, it is important that authorities have an appreciation of the demand for different dwelling sizes and types of housing (i.e. intermediate and social rented) in relation to supply so that they can negotiate appropriate mixes on new sites.

## 9.0 Setting the affordable housing target (Policy Map Step 3)

9.1 Development plans must include an authority-wide target (expressed as numbers of homes) for affordable housing to be provided through the planning system, based on the housing need identified in the LHMA. They must identify the expected contributions that the policy approaches identified in the development plan will make to meeting this target. The target should take account of the anticipated levels of finance available for affordable housing, including public subsidy, and the level of developer contribution that can realistically be sought.

9.2 Local authorities will also need to consider the relationship between the overall household requirements identified through the LHMA and the broad balance of housing proposed. In particular, whether the size and tenure of affordable housing proposed reflects the housing requirements identified.

## References

12 s225 of the Housing Act 2004

## 10.0 Affordable housing policy approaches (Policy Map Step 4)

10.1 Once the authority-wide target for affordable housing has been established, the development plan must indicate the amount of housing which will be delivered by the policy approaches, which may include:

- Site thresholds (allocated in the development plan and unallocated sites which may come forward);
- Site specific targets (including sites allocated solely for affordable housing);
- Rural exception sites.

10.2 Delivery against the affordable housing target will need to be closely monitored, necessitating an analysis of how the target will be achieved.

### *Thresholds and site specific targets*

10.3 Local planning authorities should include in their development plan either site thresholds or a combination of thresholds and site specific targets:

- **Thresholds** - a site-capacity threshold for residential developments on allocated and unallocated sites. Thresholds may either be set for the plan area or different thresholds (for example different site-capacity thresholds for different parts of the plan area or a range of site-capacity thresholds in conjunction with differential affordable housing contributions) above which an element of affordable housing will be sought.
- **Site specific targets** - an indicative affordable housing target for each residential site or mixed-use site which incorporates a residential component.

10.4 When setting site-capacity thresholds and site specific targets local planning authorities should balance the need for affordable housing against site viability. This may involve making informed assumptions about the levels of finance available for affordable housing and the type of affordable housing to be provided. Local planning authorities should also take into account the impact on the delivery of the affordable housing target and the objective of creating sustainable communities across the plan area and in the individual parts of the plan area.

10.5 Local planning authorities should set site capacity **thresholds** for residential developments above which a proportion of affordable housing will be sought. This applies both to sites specifically allocated in the development plan and unallocated or windfall sites.

10.6 Information from a Joint Housing Land Availability Study<sup>13</sup> could form the basis for determining site-capacity thresholds. This will indicate the proportion of housing completions expected to be provided on different size sites. If, for example, 90% of all housing completions are expected from sites of less than 5 units, then it may be appropriate to seek affordable housing on sites of 3 or more dwellings. However, site viability will be a critical factor to be considered in determining thresholds, particularly on small sites.

10.7 The indicative proportion of affordable housing to be provided on sites that have achieved or surpassed the threshold must be set out in the development plan policy. As with thresholds, the indicative proportion may either be set on an authority-wide basis or on a sub-area basis.

10.8 Local planning authorities may apply their policies on affordable housing to planning applications in respect of sites falling **below** the relevant site-capacity threshold where they can demonstrate that those sites:

- are capable of delivering more housing than proposed (and would be above an appropriate site-capacity threshold); and/or
- form part of a more substantial development (e.g. in the case of an application relating to part of an allocated site) which would in its totality be above an appropriate site-capacity threshold; and/or
- are integral to the development of sustainable communities.

This possibility would need to be stipulated in development plan policy on affordable housing.

10.9 Local planning authorities may include indicative affordable housing **targets for individual sites** included in the development plan. Where evidence has identified a need for affordable housing to contribute to the creation of balanced and sustainable communities, local planning authorities may identify sites for

## References

13 See TAN 1, *Joint Housing Land Availability Studies*, Welsh Assembly Government, 2006

up to 100% affordable housing based on criteria set out in the development plan (for example accessibility to jobs, shops and services, by modes other than the car, and the potential for improving such accessibility). The identification of sites solely for affordable housing is unlikely to be appropriate for an entire local planning authority area to the exclusion of other policy approaches. Such sites are likely to be small in number in relation to the total number of sites available in a local planning authority area and small in scale.

**10.10** The affordability of housing can change over a relatively short period of time. For this reason local planning authorities should treat the affordable housing targets (both thresholds and site specific) as being indicative. In negotiation with developers there should be a strong expectation that the indicative target will be provided. However, where a developer can provide evidence in support of a reduced affordable housing component, for example a local over-supply of affordable housing, it may be appropriate to reduce the amount of affordable housing to be provided on the site. In contrast, where a review of the LHMA has indicated a reduction in the affordability of housing it may be appropriate to increase the proportion of affordable housing on the site.

**10.11** Local planning authorities and applicants for planning permission should work collaboratively in order to establish an appropriate and well-integrated mix of housing types and tenures which will contribute to the identified need for affordable housing, and to the objective of achieving mixed and sustainable communities. Applicants should demonstrate and justify how they have arrived at a particular mix of housing having regard to development plan policies. If, having had regard to all material considerations, the local planning authority considers that the proposal for a site does not contribute sufficiently towards the objective of creating mixed communities, then the local planning authority will need to negotiate a revision of the mix of housing or may refuse the application.

### *Rural Housing*

**10.12** It is important that there is adequate housing provision in rural areas to meet the needs of local people and to contribute to the delivery of sustainable communities. Development plans must set out how planning at the local level will contribute to meeting identified rural affordable housing needs.

Local planning authorities should allocate sufficient land either within or adjoining existing rural communities to enable these local requirements to be met in a manner which contributes to the achievement of sustainable communities. This may include, where justified by evidence, sites solely for affordable housing (see paragraph 10.9).

10.13 Affordable housing provision in rural areas must be supported by a **rural exception site** policy<sup>14</sup>. Rural exception sites should be small (as locally defined in the development plan), solely for affordable housing and on land within or adjoining existing rural settlements which would not otherwise be released for market housing. The affordable housing provided on such sites should meet the needs of local people (see paragraphs 10.16-10.17) in perpetuity and count towards the overall level of housing provision.

10.14 Rural exception sites are not appropriate for market housing. It is unacceptable to include clauses in planning obligations which would enable lenders of private finance to dispose of property on the open market as a last resort if a borrower were to get into financial difficulties. Such clauses should also be unnecessary in the case of loans to RSLs, in part, because of the safeguards to private lenders offered by the Housing Act 1996. Planning obligations should be used to set out a 'cascade' mechanism that will ensure that occupants are always found for affordable housing provided on rural exception sites (see paragraph 12.7).

10.15 In preparing development plans, local authorities should work closely with their local communities, landowners and housing providers to prepare strategies for implementing affordable housing schemes, including on exception sites. In rural areas in particular, it may be necessary to undertake housing needs assessments at the ward or village level<sup>15</sup> to accurately define the need for affordable housing and identify potential affordable housing sites. Local authorities should work with community councils and where they exist, rural housing enablers, to collect this information.

10.16 Local planning authorities must set out in their development plan their definition of '**local need**' for affordable housing in rural areas, within the overall aim of contributing to the delivery of sustainable communities. This can include:

- existing households needing separate accommodation in the area;

## References

14 MIPPS 01/2006 (para. 9.2.22), Welsh Assembly Government, 2006

15 See Appendix D of the *Local Housing Market Assessment Guide*

- people whose work provides essential services and who need to live closer to the local community;
- people with a family connection or long standing links with the local community; and
- people with a job offer in the locality who require affordable housing.

10.17 For some of these categories the area within which needs will be considered 'local' must also be defined in the development plan. This may include:

- the village or group of villages;
- the community council area;
- an electoral ward or group of wards;
- the local authority area.

## 11.0 Design

11.1 As set out in Planning Policy Wales<sup>16</sup>, good design can protect the environment and enhance its quality, help to attract business and investment, promote social inclusion and improve the quality of life. These objectives apply equally to market housing and to affordable housing, the overriding principle being to establish a sense of place and community<sup>17</sup>. For small sites the visual integration of old and new development is of particular importance. Affordable housing should also be indistinguishable from market housing provided on the same site, in terms of external design quality and materials.

## 12.0 Securing affordable housing (Policy Map Step 5)

12.1 Both planning conditions<sup>18</sup> and planning obligations<sup>19</sup> may be used, where justified, to achieve the development and use of land in a way that contributes to meeting the identified need for affordable housing and to achieving mixed and sustainable communities.

12.2 Development plans and/or Supplementary Planning Guidance (SPG) should set out the circumstances where local planning authorities will use planning conditions or planning obligations to ensure that the affordable housing provided is occupied in perpetuity by people falling within particular categories of need. Local planning authorities should not normally impose additional occupancy controls where a registered social

## References

16 *Planning Policy Wales* (section 2.9), Welsh Assembly Government, 2002

17 Technical Advice Note 12, *Design*, Welsh Assembly Government, 2002

18 Welsh Office Circular 35/95, *The use of conditions in planning permissions*, 1995

19 Welsh Office Circular 13/97, *Planning Obligations*, 1997



landlord is to be responsible for the management of the affordable housing, although on rural exceptions sites authorities should satisfy themselves of the adequacy of occupancy controls to ensure that the housing continues to serve its intended purpose in the future, and this may involve the use of conditions and planning obligations.

12.3 When deciding whether to use planning conditions or planning obligations, and in formulating their terms, authorities will need to be aware of the need both for secure arrangements to cover all eventualities and for flexibility to enable or encourage a scheme to proceed. While arrangements should be legally binding and ensure the housing is occupied as intended, they should also take account of the needs of developers and registered social landlords, who may need to raise development finance to ensure the financial viability of the scheme, and who may be obliged to operate within certain time limits. Examples of planning obligations which may be used in different circumstances are set out in Annex A.

12.4 Local planning authorities should not seek to prescribe through planning conditions or planning obligations which partners developers should use to provide the affordable housing, but rather should aim to ensure practical arrangements that will deliver their policy.

12.5 The strong presumption is that affordable housing secured through planning obligations will be provided on the application site so that it contributes to the development of socially mixed communities. Development plans (or SPG) should set out the exceptional circumstances where provision may not need to be on an application site (for example where the management of the affordable housing cannot be effectively secured). In such instances, any off-site provision of affordable housing or a financial contribution in lieu of on-site provision must contribute towards the objective of providing affordable housing. This could be achieved by bringing existing housing back into use for affordable housing or supporting the delivery of affordable housing on another site (either for 100% affordable housing or another site where affordable housing is to be provided).

12.6 Where necessary, planning obligations should include an appropriate fallback mechanism to ensure delivery of affordable housing (as defined by the development plan), through an alternative arrangement (for example a different split between

social rented and intermediate housing or a different proportion of affordable housing).

**12.7 The occupancy cascade** - Where occupancy criteria are included as part of conditions or planning obligations, a 'cascade' mechanism should be included to ensure that occupants will always be found for affordable housing when such housing is vacated. This will safeguard an adequate stream of revenue for those managing the development (thus enabling loans to be raised for the development), whilst ensuring that people in local housing need take priority. This mechanism might set out the geographical areas and/or types of households that would be eligible for such housing. The eligibility criteria could initially be restricted to local residents, people employed locally or people with local connections (the terms would need to be clearly defined by the local planning authority), who are in need of affordable housing. If the housing remained unallocated after a certain time (for rental schemes this might be up to 4-6 weeks, but might be 3 months or more for low cost home ownership schemes) the criteria would gradually widen (for example to include neighbouring local planning authority areas) to ensure that a suitable occupant was found.

### **13.0 Involvement of a registered social landlord**

**13.1** An effective way of achieving control over occupancy is to involve a registered social landlord. An RSL's continuing interest in the property will ensure control over subsequent changes of ownership and occupation. First, registered social landlords are obliged (as part of the National Assembly's Regulatory Code<sup>20</sup> reinforced by the Tenant's Guarantee<sup>21</sup> issued under statute) to have publicly available policies and procedures for allocating tenancies. These should be "open, fair and based on housing need". Second, should disposal of a social landlord's assets become necessary, it will take place under the Assembly Government's control.

**13.2** The Welsh Assembly Government considers that the involvement of a registered social landlord secures sufficient control over future occupancy of affordable housing. The Housing Act 1996 introduced the Right to Acquire to help extend the chance of sustainable home ownership to those tenants who do not already have the right to buy. However, the existence of this right should not be used as a reason to impose additional occupancy controls where a registered social landlord is involved. The Assembly has made an order restricting

## **References**

20 *Regulatory Code for Housing Associations in Wales*, Welsh Assembly Government, 2005

21 *The Guarantee for Housing Association Residents*, Welsh Assembly Government, 2004

the Right to Acquire<sup>22,23</sup> in rural communities with a population of less than 3,000 or with a population density below two persons per hectare.

13.3 Where a local planning authority seeks to place strict occupancy controls, lenders of private finance often require registered social landlords to negotiate for the inclusion of clauses in planning obligations which would enable the lender to dispose of the property on the open market as a last resort, if the registered social landlord were to get into financial difficulties. The need for such clauses can be avoided, in most cases, if the local planning authority leaves the issue of controlling occupancy to the registered social landlord. However, should lenders seek the inclusion of such clauses in planning obligations relating to the provision of affordable housing, local planning authorities will wish to weigh the balance of interests carefully and make their own judgements before agreeing to such clauses. The Assembly Government would take steps to persuade lenders against open market disposal, but could not prevent lenders from doing so if the terms on which they had lent allowed such disposal.

#### 14.0 Monitoring and review of affordable housing policies (Policy Map Step 6)

14.1 Local planning authorities must monitor the housing evidence base and the provision of affordable housing compared with the affordable housing target. This should be undertaken in conjunction with monitoring the local housing market assessment. Key indicators which should be monitored include:

- Mid year population and household estimates
- Labour market changes including local income levels
- Housing completions (market and affordable)
- Housing land supply
- House prices
- Social and private sector rents

14.2 Joint Housing Land Availability (JHLA) studies are the principal source of information on housing completions and the supply of land. Other sources of information on affordable housing include S106 agreements, which are included on the planning register held by each local planning authority. The conclusions of the JHLA study<sup>24</sup> must be incorporated into the development plan Annual Monitoring Report (AMR).

## References

22 The Housing (Right to Acquire and Right to Buy) (Designated Rural Areas and Designated Regions) Order 2003 [SI 2003 No. 54]

23 The Housing (Right to Acquire and Right to Buy) (Designated Rural Areas and Designated Regions) (Amendment) Order 2003 [SI 2003 No. 1147]

24 See TAN 1, *Joint Housing Land Availability Studies*, Welsh Assembly Government, 2006

14.3 Where the AMR<sup>25,26</sup> indicates that the affordability of housing has changed, or the development plan affordable housing target will not be met, the local planning authority should consider whether to review or revise the plan. Appropriate responses may include amending the mix of affordable housing policies or increasing/reducing the level of affordable housing to be secured on allocated and windfall sites.

## References

25 For guidance on the preparation of AMRs see *Local Development Plans Wales*, Welsh Assembly Government, 2005 and *LDP Manual*, Welsh Assembly Government, 2006

26 See *Local Housing Market Assessment Guide* for guidance on the relationship between the LHMA and the AMR

## Possible approaches to the use of planning conditions and planning obligations

The following are examples of possible approaches to the use of planning conditions and planning obligations for local planning authorities to consider when seeking to provide affordable housing. Local planning authorities should also assess whether planning conditions or planning obligations are most appropriate. The preference should be for conditions.

**Example 1** - Where a site is being developed and a proportion of the units are to be transferred by the developer to a RSL to manage (whether or not a transfer of ownership of land is involved), the local planning authority might ask the developer to execute planning obligations or impose conditions which provide that:

- a specified proportion of the general market housing on the site cannot be occupied until the affordable housing element (included in planning application V and shown on plan W), has been built and transferred to a RSL in accordance with the occupancy criteria set out in condition X, plan policy Y, para. Z of this or other planning obligations;
- the affordable housing should only be used for the purposes of providing housing to meet the objectives of a RSL (except where tenants exercise the Right to Acquire under the Housing Act 1996); and
- an appropriate fallback mechanism is included to ensure delivery of affordable housing through an alternative arrangement (e.g. a different split between social rented and intermediate housing [see Glossary at Annex B for definitions] or a different proportion of affordable housing) should the anticipated level of public subsidy not be forthcoming.

**Example 2** - Where a RSL develops and manages the housing, the National Assembly's regulatory control should normally provide sufficient safeguards. However, for rural exception sites the local planning authority might impose conditions or ask the registered social landlord to enter into a planning obligation which should include a 'cascade' mechanism (see para. 12.7) to ensure that occupants are always found for the affordable housing provided.

**Example 3** - Where a site is being developed and the developer/landowner is to provide an element of affordable housing but no social landlord is involved, it might be appropriate for the local planning authority to ask the applicant to execute planning obligations, or it would impose conditions which provide:

- that a specified proportion of the general market housing on the site cannot be occupied until the affordable housing element (included in planning application V and shown on plan W) has been built and allocated in accordance with the occupancy criteria set out in condition X, plan policy Y, para. Z of this or another planning obligation.

- occupancy criteria, preferably with some form of 'cascade' mechanism (see paragraph 12.7) to ensure adequate supply of suitable occupants, with reference made to the appropriate plan policy.

### Notes:

An alternative to examples 1 and 2 above would be where land is transferred from the developer/landowner to a RSL to build the affordable housing with funds which will be available within a reasonable period of time.

Planning obligations should not include requirements to transfer interests in land or the transfer of such interests. Transfers of interests in land should only be achieved under other statutory powers and included in separate instruments from planning obligations.

In appropriate cases it may be possible to impose a condition worded in a negative form on a planning permission, or include a negatively worded requirement in planning obligations, which restricts the use or development of land until the transfer of ownership of land has been carried out.

The provisions in planning obligations will bind successors in title and, except for personal permissions, planning permissions also bind successors in title.

Where the landowner or developer is not the registered social landlord, the local planning authority should ask the landowner or developer to be a party to appropriate instruments (so that the land is not usable for general market housing).

Any transfers of land between registered social landlords would normally take place under the National Assembly for Wales' rules and would not therefore need to be the subject of a separate legal agreement.

Conditions or planning obligations relating to affordable housing should only be sought with registered social landlords on sites where planning policy is seeking an element of affordable housing and not on sites where a housing developer would have been granted a planning permission to develop general market housing without an element of affordable housing, subject to guidance given at paragraph 12.5.

Local planning authorities will need to monitor conformity with occupancy criteria and take appropriate enforcement action. Clear and unambiguous eligibility criteria will be needed if difficulties in determining compliance are to be avoided.

## Glossary

[Text in italics indicates another Glossary entry]

**Affordable Housing** - housing provided to those whose needs are not met by the open market. Affordable housing should:

- meet the needs of eligible households, including availability at low enough cost for them to afford, determined with regard to local incomes and local house prices; and
- include provision for the home to remain affordable for future eligible households, or if a home ceases to be affordable or staircasing to full ownership takes place, any subsidy should generally be recycled to provide replacement affordable housing.

This breaks down into two sub-categories:

- **social rented housing** - provided by local authorities and *registered social landlords* where rent levels have regard to the Assembly Government's *guideline rents* and *benchmark rents*; and
- **intermediate housing** - where prices or rents are above those of social rented housing but below market housing prices or rents. This can include equity sharing schemes (for example *Homebuy*). Intermediate housing differs from low cost market housing, which the Assembly Government does not consider to be affordable housing for the purpose of the land use planning system.

**Benchmark rents** - the 'Regulatory Code for Housing Associations in Wales', published by the Assembly Government, sets out the key expectations of the way in which Housing Associations (see *Registered Social Landlords*) are to operate. Compliance with the Assembly Government's rent benchmark guidance is a key expectation. The rent benchmark system requires Housing Associations to charge rents for key property types which, when averaged, are no greater than the benchmark rent.

**Guideline rents** - determined by the Assembly Government and relate to Local Authorities. They are calculated using statistical information provided by individual Local Authorities.

**Homebuy** - scheme operated by *Registered Social Landlords* under which existing social housing tenants and those on housing waiting lists can purchase a home with an interest-free equity loan.

**Housing demand** - the quantity and type/quality of housing which households wish to buy or rent and are able to afford. It takes account of both preferences and ability to pay.

**Housing market (area)** - geographical areas within which there are clear links between where people both live and work. These areas can be defined by the patterns of household movement. These patterns are influenced by factors such as proximity to family, friends, employment, education and other facilities, and are likely to operate across local planning authority boundaries.

**Housing need** - refers to households lacking their own housing or living in housing which is judged to be inadequate or unsuitable, who are unlikely to be able to meet their needs in the housing market without some financial assistance.

**Housing requirements** - refers to the total amount and type of housing necessary to accommodate a given (or projected) population at appropriate minimum standards. Includes both *housing needs* (as defined above) and housing likely to be demanded in the market.

**Joint Housing Land Availability Study (JHLAS)** - local planning authorities must ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of land for housing, judged against the strategy contained in the development plan. The purpose of these studies is to:

- monitor the provision of *market housing* and *affordable housing*;
- provide an agreed statement of residential land availability for development planning and control purposes; and
- identify the need for action in situations where an insufficient supply is identified.

**Local Development Plan Annual Monitoring Report (AMR)** - local planning authorities are required under the Planning and Compulsory Purchase Act 2004 to make Annual Monitoring Reports to the National Assembly following adoption of their Local Development Plans and to publish them. The AMR should include an assessment of:

- whether policies (such as those on *affordable housing*) and related targets have been met or progress is being made towards meeting them; and



- what aspects, if any, of the development plan need adjusting or replacing because they are not working as intended or are not achieving the objectives of the strategy and/or sustainable development objectives.

**Local Housing Market Assessment** - local planning authorities' assessments of the requirement for both *market housing* and *affordable housing* in their local *housing market area(s)*. These assessments should be carried out in accordance with the Welsh Assembly Government's 'Local Housing Market Assessment Guide', 2006.

**Market housing** - private housing for rent or sale where the price is set in the open market.

**Occupancy cascade** - a mechanism to ensure that occupants who fulfil the occupancy criteria will always be found for *affordable housing* when such housing is vacated. This mechanism might set out the geographical areas and/or types of households that would be eligible for such housing.

**Planning conditions** - conditions on a planning permission which can enable a development proposal to proceed where it would otherwise be necessary to refuse planning permission.

**Planning obligations (or Section 106 Agreements)** - arrangements to overcome obstacles which may otherwise prevent planning permission from being granted. May be used to offset negative consequences of development, to help meet local needs or to secure benefits which would make a development more sustainable.

**Registered Social Landlord (RSLs)** - technical name for social landlords that own or manage social housing and are registered with, and regulated by, the Assembly Government. Most RSLs are Housing Associations (independent, not-for-profit organisations which are able to bid for Social Housing Grant funding).

**Right to Acquire** - a scheme which gives qualifying tenants of *Registered Social Landlords* a right to purchase their homes if they were provided using *Social Housing Grant*, or transferred from a local authority after April 1997. Some types of property are exempt from the scheme including those in designated rural areas.

**Right to Buy** - enables qualifying tenants of local authorities and some *Registered Social Landlords* to buy their homes at a discount on market value. Some types of property are exempt and restrictions to subsequent sales apply in designated rural areas.

**Rural exception site** - small scale housing site, within or adjoining existing rural settlements for the provision of *affordable housing* to meet local needs, which would not otherwise be allocated in the development plan.

**Social Housing Grant** - capital grant provided by the Assembly Government to local authorities to fund *Registered Social Landlords* to fully or partially fund investment in social housing.

**Sustainable communities** - places where people want to live and work, now and in the future. They meet the diverse needs of existing and future residents, are sensitive to their environment and contribute to a high quality of life. They are safe and inclusive, well planned, built and run and offer equality of opportunity and good services for all.