

### **Affordable housing – circumstances where Havering Council will use commuted sum payments to the Council in lieu of on-site provision of affordable housing**

#### **1. Purpose of this advice note**

This advice note sets out important advice regarding the delivery of affordable housing in Havering.

There is a continuing high need for affordable housing in Havering. It is intended that the note will assist in the successful delivery of affordable homes in the borough.

The Council's policy is set out in its Local Development Framework and it will also have regard to the National Planning Policy Framework (NPPF) (2012) and the London Plan (2015).

The Council recognises that more needs to be done if the provision of affordable housing is to be increased and for that reason it has prepared this advice note setting out how it will deal with a specific matter linked to affordable housing. In parallel with the implementation of this guidance note, the Council will continue to seek to secure the provision of more affordable homes through other means as appropriate.

The Council's approach is based on negotiation and it will want to work with prospective developers to agree how to most effectively and efficiently provide affordable housing for the community. The Council considers that early engagement between itself and developers will be key and this document encourages developers to take the opportunity at an early stage to discuss their proposals with Havering. Similarly, the Council encourages developers to make early contact with a Registered Provider of affordable housing so that issues such as design, size and management can be discussed. Early discussions will allow the Council's requirements regarding financial appraisal to be set out.

The advice note will be considered alongside adopted planning policies pending the adoption of the new Havering Local Plan. The Council considers that the preparation of the guidance note fits well with advice in the NPPF about helping developers make successful applications. The note is intended to assist the Council in the successful delivery and management of affordable homes and should strengthen the Council's delivery of its own new build programme for affordable homes. It should help to avoid some of the problems that may arise where affordable homes have been provided within market housing schemes elsewhere and have been poorly integrated and failed to provide successful mixed and balanced communities in line with national planning policy objectives.

In particular, it sets out the Council's approach to the circumstances where it is not appropriate for the affordable housing to be provided either 'on-site' or on an agreed alternative site and, following from this, where the Council considers that a commuted sum payment to the Council in lieu of 'on-site' provision may be appropriate.

It is intended that this note will provide helpful advice to developers by setting out the factors that may justify a commuted sum payment in lieu of 'on-site' provision of affordable housing.

In preparing and using the note, the Council will also have regard to the Housing and Planning Bill (2015) which sets out the Government's commitment to the delivery of more affordable homes.

The note will be the subject of public consultation with a wide range of stakeholders.

## **2. How much affordable housing does Havering need?**

The Council's Housing Need and Demand Assessment (2012) identified that a total of 6,650 households will require an affordable housing option over the then next three years.

## **3. Planning policy context**

### **(a) National planning policy**

The National Planning Policy Framework (NPPF) sets out the Government's planning policies and how these are expected to be applied. It confirms that the purpose of the planning system is to contribute to sustainable development, including supporting strong, vibrant and healthy communities by providing a supply of housing that meets the needs of present and future generations.

It says that local planning authorities should plan to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, with a mix of housing based on current and future demographic trends and the needs of different groups in the community. Local planning authorities are expected to identify the size, type, tenure and range of housing that is required in particular locations.

Where local planning authorities have identified that affordable housing is needed, the NPPF states that they should:

*' ... set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.'*

### **(b) London Plan (March 2015)**

Within an objective of promoting mixed and balanced communities, the latest London Plan (2015) of the current Mayor seeks to provide at least 17,000 more affordable homes per year over the 20-25 year life of the plan (**Policies 3.9 and 3.11**).

The Mayor envisages that 60% of affordable homes should be social and affordable rent and 40% intermediate rent or sale. The priority is to be for affordable family homes. Borough targets should take account of economic viability of land for housing taking account of risks to delivery and informed assessments of public funding and developer contributions (**Policy 3.11**).

The Mayor expects that the maximum reasonable amount of affordable housing should be sought on individual private residential and mixed use schemes and he seeks to maximize affordable housing output and to make the most effective use of available affordable housing resources to achieve this **(Policy 3.12)**.

The Mayor expects affordable housing to be provided on site but he says it can be provided off-site in defined exceptional cases where it can be robustly demonstrated that this is not appropriate in terms of London Plan policies. The Mayor's exceptional circumstances can include 'land swaps', securing a higher level of provision on another site, better addressing priority needs, securing a more balanced community and better sustaining strategically important clusters of economic activities **(Policy 3.12)**.

Where cash in lieu of on-site provision contributions to a borough are accepted then the Mayor expects these to be ring fenced and 'pooled' to secure efficient delivery on identified sites elsewhere or used as part of an agreed programme for provision of affordable housing. The Mayor does not consider it appropriate for cash payments in lieu of on-site provision to be used for purposes other than maximising affordable housing **(Policy 3.12)**.

The Mayor has also brought forward draft Housing Guidance in support of the latest London Plan (May 2015). The introduction highlights that this is a particularly important issue for London and that 'affordability' will remain a particular long term issue for London.

The draft guidance highlights that the London Plan is supported by the NPPF – optimising development on individual sites and maximising affordable provision to meet objectively assessed needs. It re-iterates the focus on on-site provision unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.

The draft guidance suggests that the exceptional circumstances for cash in lieu payments to a borough can include:

- To secure a higher level of provision
- To better address priority needs (especially for family housing)
- To secure a more balanced community
- To better secure strategically important clusters of economic activities

It says that consideration should only be given to off-site provision where an alternative site(s) is / are identified which would enable affordable housing provision more appropriate to the identified needs to be met and where the project is deliverable prior to the on-site market housing being completed.

The guidance says that where off-site provision is considered / proposed, then the number of homes on the second site should be in proportion to the number of private dwellings to be provided on the original site. It also says that to avoid 'incentivising' off-site provision, agreements should be financially neutral.

Finally, because of the strategic importance of maximising affordable housing development in London, the Mayor does not consider it appropriate for boroughs to use cash in lieu of on / off –site affordable housing for any other purposes other than maximising the delivery of affordable housing.

### **(c) Havering Local Development Framework (2008)**

The Local Development Framework sets out the Council's commitment to securing sustainable, attractive, mixed and balanced communities. It looks to ensure that the sizes, types and tenures of new housing meet the need of new and existing households at the local and sub-regional level. It also aims to ensure that in total, borough-wide 50% of all homes from new residential planning permissions are affordable; of which 70% social rented for those on low incomes and 30% for those on intermediate incomes **(Policy CP2)**.

The Council's development management policies say that it will aim to achieve 50% of all new homes built in the borough as affordable. In applying this target the Council will, through negotiation and agreement with the applicant assess the availability of on-site or off-site provision and will take account of factors including site, size, suitability and viability, the need to deliver a successful housing development, availability of public subsidy and other scheme requirements. The Council will seek the maximum reasonable amount of affordable housing having regard to the borough-wide target and a tenure split of 70:30 between social housing and intermediate forms. The policy will apply to all schemes for more than 10 units and on sites exceeding 0.5 hectare irrespective of the number of dwellings **(Policy DC6)**.

The Council is currently preparing a new local plan to replace the Local Development Framework. In due course the local plan will need to take account of the approach in this guidance as well as the requirements of other measures such as the Housing and Planning Bill (2015).

### **4. How the Council expects to deal with affordable housing proposals**

The starting point for all prospective applicants should be to develop a scheme in line with national, Mayoral and Havering policy.

However, in the light of current circumstances, the Council expects to follow a negotiated approach to the delivery of affordable housing. Each scheme will be considered based on the objective of promoting mixed and balanced communities and the particular circumstances of the proposal including viability.

The Council's adopted policies should be taken into account by developers and landowners from the earliest stages in the development process: before prospective development land is sold or purchased, in the initial site and development appraisals and during concept design. Developers and landowners are also expected to consider other required planning obligations and any other costs. Zero housing grant should be assumed.

The Council will strongly resist proposals brought forward that have not made best endeavours to deliver affordable housing in line with its adopted policies. Such circumstances may include situations where a developer says that providing affordable housing in line with adopted policies is not financially viable because an applicant has paid an unreasonably high premium to acquire a site or has chosen to incorporate costly design features.

The National Planning Policy Framework (2012) recognises that early engagement between local authorities, developers and Registered Providers of affordable housing has significant potential to improve the efficiency and effectiveness of the planning application system. It can enable better co-ordination between public and private resources and improved outcomes for the community. The Framework emphasises that local planning authorities should encourage developers to take maximum advantage of the advice services offered by a local planning authority at the pre-application stage.

Accordingly, the Council will wish to work with prospective applicants to agree approaches towards affordable housing delivery. Before making a planning application which is expected to include an affordable housing requirement, applicants should contact the Council to discuss the affordable housing requirements.

Pre-application discussions will assist in clarifying the approach to on-site affordable housing provision, including the amount, type, size and tenure of the affordable housing required. These discussions may also consider whether there are sound planning or other reasons why off-site affordable housing provision on a site to be agreed by the Council or a commuted sum payment to the Council may be acceptable in lieu of on-site affordable housing provision (see below). The Council charges for pre-application discussions and details can be found on the Council's website.

As well as pre-application discussions with the Council, prospective applicants are encouraged to contact Registered Providers of affordable housing. Before making the planning application, applicants will preferably identify the Registered Provider and contact them to discuss the delivery of the affordable housing element of the development, including the Registered Provider's requirements and any potential design, size or management issues. The Council can provide a list of Registered Providers who are active in Havering.

Following discussions, there may be circumstances in which the Council and the developer agree that a commuted sum to the Council (or a combination of on-site affordable housing provision and a commuted sum) offers the best housing outcome. Where the Council considers that on-site affordable housing provision would be appropriate, but the prospective applicant wishes to propose an alternative approach, the onus will be wholly on the prospective applicant to justify to the Council why off-site provision or a commuted sum should be accepted and to demonstrate that there is no financial advantage in not delivering the affordable housing on-site.

Pre-application discussions may also consider financial viability where a prospective applicant considers that there are constraints that would jeopardise or prevent them from delivering the Council's affordable housing requirements. In such circumstances the Council will expect a robust financial viability appraisal to be submitted on an 'open book' basis by prospective developers and paid for by them.

## **5. The scope for commuted sum payments in lieu of on-site provision**

The Council's starting point is that affordable housing will normally need to be provided on-site.

However, if the Council considers that off-site provision would be appropriate because on-site provision is not achievable or it can be demonstrated that off-site provision would secure more affordable housing, the Council will require the developer to identify and secure a donor site to provide the affordable housing not being provided on site. In some circumstances the Council may be able to assist in identifying a suitable site. The Council will have to agree the suitability of any site proposed for off-site provision.

Only when it can be demonstrated to the Council's satisfaction that an alternative site cannot be identified will the payment of a commuted sum to the Council to support the delivery and supply of affordable housing be considered. The Council expects these to be exceptional circumstances.

In such cases, the commuted sum payment will be intended to optimise affordable housing outcomes for local people in line with the importance of increasing affordable housing provision. The Council will consider whether a commuted sum payment to the Council would enable the delivery of better housing outcomes than would have been provided on-site. In considering the case for a commuted sum payment to the Council and how it may be utilised the Council will take in to account recent delivery of affordable housing — type, size, tenure and location — and the precise make-up of housing need.

The Council considers that this approach is consistent with government statements about the need for flexibility in the planning system and recognition of the need to stimulate the development economy to increase the rate of provision of homes and jobs and to ensure sites are not stalled and much needed housing can be delivered.

The acceptance of commuted sums paid to the Council will be purely at the Council's discretion and such commuted sum payments will not be an option available to developers, landowners or their agents simply because that is what they (or the wider community) would prefer. The Council and the developer will agree, preferably through pre-application discussions, whether a commuted sum payment to the Council is appropriate.

Where commuted sum payments are proposed by the applicant without the Council's agreement — for example, because there have been no pre-application discussions — the onus will be on the applicant to justify to the Council why off-site provision or a commuted payment should be accepted.

In all circumstances where provision other than on-site is being considered, applicants will be required to draw on robust evidence to provide a statement that demonstrates:

- why affordable housing cannot be provided on-site, or
- in those cases where on-site provision is possible but does not result in the best housing outcome, how and why identified housing needs would be more effectively met off-site compared to on-site.

In those instances where the Council considers that on-site affordable housing provision would provide a better housing outcome, it is likely that a planning objection would be raised.

## **6. The value of commuted sum payments to the Council**

In those cases where the Council considers that a commuted sum payment to the Council is acceptable, it will be necessary to establish the value of such a payment in lieu of on-site or off-site affordable housing provision. Section 7 considers this in more detail and sets out the financial formula the Council will use.

The commuted sum payment will be expected to be broadly equivalent to the increased value accrued by the additional private development as a consequence of not providing affordable housing. Off-site provision or a financial contribution will not be a less expensive option than on-site provision.

In circumstances where the value of affordable housing is being negotiated, the Council will require the financial information about the development to be provided on an 'open book' basis. The Council will require that viability assessments and any review of the data used in a commuted sum calculation will be paid for by the developer.

The Council will approach such matters as an authority-wide issue and will review priorities for the investment of the funds secured through commuted sum payments in affordable housing in terms of local needs and pipeline schemes at the time.

The Council will use financial commuted payment sums in a number of ways to secure or deliver affordable housing and will require the flexibility to do so to be reflected in its approach and in any necessary Section 106 agreement for the development. The objective will be to provide an additional affordable housing enabling mechanism and commuted sums will be ring-fenced and earmarked to enable the provision of affordable housing within the borough in line with the continuing need for increasing the provision of affordable homes (see Section 2).

The circumstances which might justify off-site provision or payment in lieu to the Council are set out below. Such justification will need to be carefully made as the presumption will remain for on-site provision unless circumstances indicate otherwise.

## **7. Circumstances where a commuted sum payment to the Council may be acceptable**

The potential circumstances where the Council may consider that developer contributions in the form of a commuted sum payment to the Council will be appropriate are set out below. The list is not exhaustive since other circumstances may arise and the list does not imply that the Council will automatically accept a commuted payment if these circumstances arise.

They include circumstances where :

- the inclusion of on-site affordable housing would prejudice the achievement of other important housing, planning or regeneration objectives (including those of the London Mayor) or other Council approved programmes such as the delivery of the Romford and Rainham Frameworks
- the inclusion of on-site affordable housing would financially undermine significant development proposals in the vicinity of the proposal which are critical to economic and / or business growth such as Romford Town Centre

- the need for a development to reflect the overriding character of the surrounding area would result in low density development which may not be suited to maximising affordable housing provision on site
- the inclusion of affordable housing may conflict with other planning policy objectives such as the integrity and sustainability of development that is most suited to the site
- the development is in, or close to, an area where the Council considers there is already a high proportion of affordable housing and to require more would work against the development of a mixed and balanced community
- the location of the development is poorly located relative to public transport, local and community facilities and employment
- a financial contribution would better fund affordable housing development elsewhere in Havering in line with the evidenced housing needs / local requirements
- as a result of factors influencing the site's viability (including other planning obligations), development would result in the creation of homes that will not in practice be affordable (such as development involving higher value sites in higher value areas)
- it would provide funding for specialist forms of affordable housing to enable specific housing needs to be provided more effectively elsewhere
- it would provide a 'top up' fund and make it possible for a higher proportion of affordable homes to be provided elsewhere by contributing towards the forward funding / 'kick-starting' of schemes or by reducing funding gaps within pipeline / current affordable housing schemes
- the scale of development would result in a modest number of affordable housing units and there would be practical difficulties surrounding the delivery, design or on-going management of these and / or a mix of tenures
- the affordable housing units would be expensive to create and maintain / service (such as in a conversion of an existing building or a site involving a heritage asset) and this cannot be satisfactorily overcome or avoided by alternative design, massing or separate new build for the affordable housing
- mixed community objectives / housing priorities will be better met in an alternative location (for example where family sized (3 + bedroom, outdoor space or supported housing ) units are needed

## **8. Establishing the value of a commuted sum payment**

In the circumstances where it is agreed that a commuted sum payment to the Council is appropriate, it will be necessary to establish the value of the payment in lieu of 'on-site' affordable housing. The Council's approach will be to base this calculation on the increased value accrued by additional private development as a consequence of not providing affordable housing. This approach will ensure a cost neutral impact on the developer.

It is proposed that the process to calculate commuted sums will commence with an acceptance by the developer of a policy compliant provision of affordable housing, **or**



as is required for of on-site provision currently, the developer must provide a financial viability assessment in a recognised format demonstrating the levels of affordable housing that can be provided. In the case of the latter the Council will validate and agree with the developer the viability assessment. This is the current position with all residential planning applications meeting the threshold for an affordable housing requirement.

The commuted sum calculation method will then be applied using the formula as set out below:

- (a) The Open Market Value of the Units Designated as Affordable Housing
- Less
- (b) Value of the Affordable Housing
- Less
- (c) Additional Developer Costs
- Equals**
- (d) The Commuted Sum Payment

The “*Open Market Value of the Units Designated as Affordable Housing*” is the value that the ‘Affordable Units’ would sell for if they were sold on the open market as private units. This is to be supported by a valuation or local market comparable research.

When a developer is considering Private Rented Sector accommodation, then it may be appropriate to consider a valuation on the basis of the capitalised value of the market rent. The calculation for this is annual net rent (gross rent less service charge, management, maintenance, voids and bad debts) divided by an appropriate yield to be agreed with the Council.

The “*Value of the Affordable Housing*” is the capitalised value of the net rental stream for Social and Affordable Rent (gross rent less service charge, management, maintenance, voids and bad debts), and the value of the first tranche sale plus the capitalised value of the net rental stream for the shared ownership units.

This should be calculated using a Discounted Cash-flow methodology

The “*Additional Developer Costs*” are reasonable additional costs to be agreed between the Council and developer. This could include additional marketing costs, sales incentives or an increased specification for example. These costs must be clearly justified and set out by the developer and only relate to the additional private units.

A worked example is set out as an Appendix to this note.

## **9. Monitoring**

The Council will record how much money is collected through commuted sum payments, where such payments have been received and where and how they have been spent.

It will publish this information on an annual basis at the end of each financial year.

## Appendix

An example of a commuted sum calculation

This is based on a notional scheme of 40 units

<b>Scheme Description</b>		
Anywhere Development	Units	40
Scheme GDV		14,000,000
Affordable requirement after viability test		40%
Affordable Units (40 * 40%)	Units	16

<b>Commuted Sum Calculation</b>		
<i>(a) Open Market Value of the Units Designated as Affordable Housing</i>		
	No. of Units	16
	Value/unit	350,000
	<b>Total Sales Value</b>	<b>5,600,000</b>
<i>(b) Value of the Affordable Housing</i>		
	Value of Rented Units	1,324,442
	Value of Shared Ownership	1,032,750
	<b>Total Value of Affordable</b>	<b>2,357,192</b>
(c) Additional Developer Costs		<b>560,000</b>
<b>Commuted Sum Payable (a) - (b) - (c)</b>		<b>2,682,808</b>