

# **Planning obligations regarding 'off-site' and 'payment in lieu' provision for affordable housing**

**Interim guidance notes**



**September 2006**

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### **1.0 INTRODUCTION**

1.1 The provision of housing, particularly affordable housing, is a significant issue in Hillingdon and London-wide. The London Plan para 3.31 states that "pressure on house prices has intensified with growth in the number of households and the incomes of prospective purchasers." However there are many households with low to moderate incomes, including many key workers like teachers and nurses, who cannot afford to meet their housing needs by purchasing market housing. In addition, supply in market, intermediate and social housing sectors have failed to keep up with demand.

1.2 Affordable housing is necessary for the creation of sustainable, livable and mixed communities. In London, the requirement for affordable housing (both social rent and intermediate provision) has been estimated by the GLA housing requirements study as 23,300 additional homes a year (London Plan – Housing SPG, 2005, para. 13.2). In the borough, it is estimated that around 3,564 affordable housing units would be required per year up to 2010 if all affordable housing needs in the borough are to be met (Hillingdon Housing Needs Survey Update, 2005).

1.3 The planning policy framework within the adopted Hillingdon Unitary Development Plan and the draft Local Development Framework seeks to ensure that there is an adequate supply of housing and that all sectors can make a valuable contribution to meeting different housing requirements. A requirement that a proportion of affordable housing is provided within developments above a particular threshold is crucial to maintaining and increasing the supply of affordable housing. Affordable housing provision should therefore normally be provided as an integral part of residential development, with its provision 'off site' only being considered in exceptional circumstances.

1.5 Whilst details of 'on-site' provision in the borough is provided in the adopted Affordable Housing SPD (2006), it does not address the provision of affordable housing through planning obligations using the 'off site' or 'payment in lieu' approaches. These matters are intended to be included in the emerging Planning Obligations SPD to be adopted in 2007. In the interim, this Note provides guidance in using the 'off site' or 'payment in lieu' approaches in implementing the delivery of affordable housing. This approach is consistent with PPG3, Circular 06/98, the London Plan 2004 and the GLA's Housing SPD (2005).

1.6 This guidance note should be used to implement UDP policy Pt 1.17 and policy H11 which relate to the provision of affordable housing and should be read in conjunction with the Affordable Housing SPD 2006.

## 2.0 POLICY BACKGROUND TO 'OFF- SITE' AND 'PAYMENT IN LIEU' APPROACHES

2.1 The key relevant policy references are as follows:

- **PPS1 – Delivering Sustainable development**
- **PPG 3 - Housing** – paragraphs 9, 15
- **Circular 06/98 – Planning and Affordable Housing**
- **Circular 05/05 – Planning Obligations**
- **London Plan Policy 3A.8** (Negotiating affordable housing in individual private residential and mixed-use schemes)
- **London Plan - Housing SPG** (para 18.17) provides further guidance in the interpretation of the London Plan 3A.8.
- **UDP Policy – PT1 1.17** (To seek to ensure the highest acceptable number of new dwellings are provided in the form of affordable housing)
- **UDP Policy - PT1.39** - To seek where appropriate, planning obligations to achieve benefits to the community related to the scale and type of development proposed.
- **UDP Policy H11 – Access to Housing** (\*Note threshold changes in 2006 SPD)
- **Affordable Housing SPD** – May 2006
- **SPG Planning Obligations** - Planning Obligations Strategy 2003
- **HDAS Live/Work Accommodation SPD** - 2006

### Central Government Guidance

#### Planning Policy Statement 1 (Delivering Sustainable Development)

2.1 PPS1 states that sustainable development is the core principle underpinning planning and that in order to achieve this, development should support existing communities and contribute to the creation of safe, sustainable, liveable and mixed communities.

#### Planning Policy Guidance 3 (Housing)

2.2 PPG3 states that local authorities should secure an appropriate mix of dwelling size, type and affordability in new developments. Draft PPS3 revises the current PPG3, and reduces the thresholds above which affordable housing is to be sought to at least 15 dwellings and sites of 0.5ha.

#### Circular 06/98 - Planning and Affordable Housing

2.3 Circular 06/98 sets out guidance for LPAs to seek an element of affordable housing on suitable sites.

#### Circular 05/2005 – Planning Obligations.

2.4 Circular 05/05 establishes guidance for seeking planning obligations as part of the development control process. It states that planning obligations are intended to make acceptable development that would otherwise be unacceptable in planning terms, where conditions are not possible. One of the examples given is that planning obligations might be used to *prescribe* the nature of a development e.g. by requiring that a given proportion of housing is affordable.

2.5 In considering 'off-site' provision or 'payment in lieu', attention is also drawn to the Circular 05/05 statement "*Obligations must also be so directly related to proposed developments that the development ought not to be permitted without them – for example, there should be a functional or geographic link between the development and the item being provided as part of the developer's contribution.*"

- 2.6 A planning obligation must meet all of the Secretary of State's five tests:
- relevant to planning
  - necessary to make the proposed development acceptable in planning terms
  - directly related to the proposed development
  - fairly and reasonably related in scale and kind to the proposed development, and
  - reasonable in all other respects.

## London Plan

2.7 London Plan Policy 3A.7 states that UDP's should set out affordable housing targets, taking account of the Mayor's strategic target for affordable housing of 50%, of which 70% should be social and 30 % intermediate.

2.8 London Plan Policy 3A.8 states that "*boroughs should seek the maximum reasonable amount of affordable housing on individual private residential and mixed use schemes, having regard to their affordable housing targets adopted in line with policy 3A.7, the need to encourage rather than restrain residential development and the individual circumstances of the site. Targets should be applied flexibly taking into account individual site costs, the availability of public subsidy and other scheme requirements.*"

2.9 Further guidance to the implementation of Policy 3A.8 is found in the London Plan's - Housing Supplementary Planning Guidance 2005. Para. 18.17 states that affordable housing provision should normally be provided as an integral part of a residential development and it gives examples of **exceptional circumstances and the framework** where Council may be prepared to consider off site provision of affordable housing.

2.10 "*Examples of exceptional circumstances where off-site provision may be considered include sites where there are existing concentrations of particular types of social housing and there are demonstrable benefits to be gained by providing new units in a different location, such as to create more socially mixed communities, or to provide a particular type of housing, such as family housing. Consideration should normally only be given to off-site provision where an alternative site or sites have been 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 development being completed. Agreements for off-site provision should be financially neutral in terms of the benefit to the applicant relative to on-site provision requirements. Boroughs should publish their policy on contributions for off-site provision, which demonstrate both the criteria above have been applied and that contributions can be utilised within a short timescale to provide a more appropriate output than could be achieved through on site provision. S106 agreements in relation*

*to off site provision must comply with appropriate national planning guidance including Circular 5/2005”.*

## **London Borough of Hillingdon’s Unitary Development Plan**

2.11 UDP Part One Policy Pt 1.17 aims “*To seek to ensure the highest acceptable number of new dwellings are provided in the form of affordable housing*”. This aim to secure the highest proportion of affordable housing is reflected in policy H11. However, the council has recently lowered the affordable housing threshold from 25 units to 15 and from 1 ha to 0.5ha in its adopted Affordable Housing SPD, in conformity with London Plan and draft government guidance.

### **Affordable Housing SPD:**

2.12 Hillingdon’s Affordable Housing SPD (2006) provides the Council’s approach to affordable housing. It states that affordable housing is required on all sites of at least 0.5 ha in size or capable of accommodating at least 15 dwelling units. Affordable housing requirements will be sought in the form of habitable rooms per hectare (hrh). Furthermore it states that the council seeks to negotiate the maximum reasonable provision of affordable housing on a site by site basis and will seek a 50% affordable housing provision on the basis of 70% social rent housing and 30% intermediate housing from all residential and mixed use development with an element of housing. A financial viability appraisal should support all planning applications proposing an affordable housing component lower than 50%.

2.13 The SPD states that in exceptional circumstances where ‘on site’ provision of affordable housing will not be viable or there may be community benefits by not providing affordable housing ‘on site’, the preferred alternative will be to provide affordable housing on alternative sites. Alternative sites should be identified and located in the vicinity of the development site (paragraph 7.28).

### **HDAS Live/Work Accommodation 2006**

2.14 This document sets out requirements for affordable housing which may be required through a live/work scheme.

## **3.0 CONSIDERATIONS IN ‘OFF SITE’ OR ‘PAYMENT IN LIEU’ APPROACHES**

3.1 The starting point for the provision of affordable housing is that it should be provided ‘**on site**’ in accordance with the central, regional and local planning guidance, on the basis of 50% affordable housing provision, with a tenure split of 70% social rented and 30% intermediate housing.

3.2 A financial viability appraisal should support all planning applications proposing an affordable housing component lower than 50% or a different tenure split.

3.3 If the proposal meets the test of ‘**exceptional circumstances**’ as outlined in the London Plan guidance, then ‘off site’ provision may be considered. Only in rare circumstances will ‘payment in lieu’ be considered when ‘off site’ provision does not meet the planning guidance above. The provision of ‘off site’ or ‘payment in lieu’ will be required to be consistent with the requirements of central government, London

Plan and local planning guidance, and in particular the provisions of Circular 05/05 and the requirements of Hillingdon’s Affordable Housing SPD 2006.

**4.0 ‘OFF SITE’ PROVISION**

4.1 In determining the provision of ‘off site’ affordable housing, proportionally the ratio should be the same as if it had been provided on site. This is consistent with Hillingdon’s Affordable Housing SPD, which seeks to ensure 50% of all new housing is affordable in line with the London Plan’s overall requirement of 50% affordable housing London wide.

4.2 The formula to calculate ‘off site’ affordable housing yield from the planning application site where 100% market housing is proposed ‘on site’ is as follows:

$$\left[ 100 \left( \frac{a}{100 - b} \right) \right] - [a] = c$$

where:  
a = total capacity of the application site in terms of market housing  
b = indicative affordable housing target as %.  
(This will usually be 50% but may alter as a result of any financial appraisal)  
c = number of affordable units to be provided off-site

For example, on a site capacity of 40 market housing units, where 50% affordable housing provision is required:

$$\left[ 100 \left( \frac{40}{100 - 50} \right) \right] - [40] = c$$

(100 x 0.8) – (40) = 40  
40 = c

**Source: London Borough of Havering**

4.3 In addition to calculating the ‘off site’ affordable housing yield from the planning application site, an assessment will also be required of the ‘receiving’ site, if this is over 0.5ha or has a capacity of 15 units or more because the site will also generate a requirement for affordable housing. **This is additional to that generated by the application site.** For example, an application site with 100% market housing with a capacity of 25 units (assuming unit types are satisfactory) would generate a requirement of an additional 25 units off site as affordable housing (i.e. to meet the 50:50 ratio). If the (second) receiving site has a capacity of 60, generating a requirement of 30 affordable housing units additional to the 25 from the application site. Therefore, the total affordable housing requirement to be accommodated on the second site would be 55 (leaving 5 market units).

#### 4.4 The following is a checklist for 'off site' provision:

- The application site and receiving site should be identified.
- The proposal should meet the test of exceptional circumstances, in accordance with relevant Central Government, GLA and local guidance. The aim should be to create sustainable communities in accordance with PPS1, alternatively it should be on site.
- The receiving site must meet the tests of Circular 05/05 and other policy guidance
- The views of the council's Housing and Social Services Group should be sought on the suitability of the proposal to meet the provisions of the London Plan's Housing SPG and identified local housing needs.
- The applicant should provide an assessment of demonstrable benefits to the provision of new units in a different location (in accordance with the London Plan's – Housing SPG)
- The affordable housing provision from the application site should be determined.
- The applicant should provide a detailed financial appraisal of the application site if seeking to reduce the affordable housing percentage generated from the application site
- To ensure that deliberate under-provision has not occurred, assess the site density against the Sustainable Residential Quality (SRQ) density matrix in the London Plan (Table 4B.1).
- The affordable housing yield of the receiving site, based on a requirement of 50% must be considered.
- Final requirements for off-site affordable housing may be proposed in number of habitable rooms as the circumstances of the receiving site and housing need will be required to be considered.
- Development of the receiving site should occur at the same time as the application site with availability for occupancy at the same time.
- Affordability in perpetuity should be established where appropriate on the 'receiving site'.

## 5.0 PAYMENT IN LIEU APPROACH

5.1 In accordance with government and London Plan Guidance, affordable housing should normally be provided as an integral part of residential development. In exceptional circumstances this may be provided 'off site' in accordance with the procedures above. In very few cases, 'off site' provision may not be suitable or consistent with planning guidance and the final option, 'payment in lieu' may be considered in exceptional cases, where supported by the Council's Housing and Social Services Group and consistent with policy.

5.2 The circumstances in which this approach would be applied are exceptional and each case will be treated on its merits. The outcome of 'payment in lieu' will be the same as that for 'off site' provision, i.e. to provide affordable housing, more appropriate to meeting needs than could be provided 'on site' consistent with central

government, London Plan and local planning guidance. In determining payment, consideration will be given to factors such as likely new build costs and acquisition of land.

### **Formula for ascertaining number of units**

5.3 In order to ascertain the number of units to establish the basis for the 'payment in lieu', proportionally the ratio should be the same as if it had been provided 'on site'. The procedure and formula as outlined in Section 4 ('off site' provision) should be used to determine this. Final contributions are likely to be required in terms of habitable rooms to be provided.

### **Formula for calculating payment in lieu contribution**

5.4 The formula to calculate the 'payment in lieu' contribution is as follows:

**Payment in lieu contribution = C x (the open market value of the unit/s from the application site which approval is being sought minus the average price paid by an RSL for similar unrestricted unit/s in the locality).**

**To calculate C (the number of off-site units) see the formula at 4.2**

5.5 This calculation is intended to enable affordable housing to be provided which is appropriate to the original development. For example if this sum were given to an RSL it would enable it to go to the open market and purchase a similar unit at a price which it could afford. To assist in any such calculation, the council's Housing and Social Services Group will supply local average total scheme costs and social housing grant figures for both rented and shared ownership properties.

### **Checklist for payment in lieu approach provision.**

5.6 The following is a checklist for a 'payment in lieu' contribution:

- The proposal should meet the test of exceptional circumstances.
- Consultation should be undertaken with the council's Housing and Social Services Group and concurrence that the 'on site' and 'off site' provision options are not appropriate in consideration of policy guidance.
- The proposal should meet the tests of Circular 05/05 and other policy guidance
- That the affordable housing provision from the application site is determined and total 'payment in lieu' agreed.
- Identification of timeframe for payment and expenditure of monies from application site and time to be spent.
- Affordability in perpetuity should be established where appropriate on the receiving site.