



WEST LOTHIAN COUNCIL  
Development & Regulatory Services

## AFFORDABLE HOUSING POLICY

Approved by West Lothian Council

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# WEST LoTHIAN COUNCIL : AFFORDABLE HOUSING POLICY

## 1.0 The Need for an Affordable Housing Policy

- 1.1 Decent, affordable housing is amongst the most basic of human requirements. Historically, local authorities were the principal providers of housing to those households excluded from the private housing market through inability to compete. However, West Lothian Council and other social housing providers are no longer able to fully satisfy demand from households unable to compete, mainly as a result of reduction in availability of stock through 'Right to Buy' legislation, the limited funding available for the provision of socially rented accommodation, and restrictions on the council's ability to provide newbuild accommodation.
- 1.2 The West Lothian Local Housing Strategy (WLLHS) outlines the policy context and requirements for affordable housing in West Lothian. This strategy has been prepared within the framework of the Communities Scotland Housing Market Context Statement. It also links the need for affordable housing to the requirements identified in the West Lothian Community Plan 'Shaping the Future', the Finalised West Lothian Local Plan and the Edinburgh & Lothians Structure Plan 2015.
- 1.3 All of the above policy documents refer to the need to ensure that the availability of affordable housing matches the need for such housing. West Lothian Council's Affordable Housing Policy is the key means of securing provision of affordable housing through developer contributions. The policy has been prepared with reference to Scottish Planning Policy 3 – Planning for Housing and Planning Advice Note 74 – Affordable Housing.

## 2.0 Definition

- 2.1 For the purpose of this Policy, the definition of affordable housing is that contained in Scottish Planning Policy 3 – Planning for Housing (SPP3). This definition is :

**Broadly defined as housing of a reasonable quality that is affordable to people on modest incomes.**

- 2.2 Given that this is described as a broad definition, it is supported by a WLLHS and West Lothian Affordable Housing Policy interpretation as follows :

**Housing that is for sale or rent to meet the identifiable needs of people who cannot afford to buy or rent housing generally available on the open market. It includes social rented accommodation, shared ownership forms of accommodation and subsidised housing for sale. Modest income is considered to be relative to the market conditions in the area where the affordable housing is proposed.**

- 2.3 In addition to the definition of affordable housing, the following definition of need is used for both the Local Housing Strategy and the Affordable Housing Policy :

**The term need describes the circumstances where a household is living in housing which falls below an acceptable standard or fails to meet their essential needs in other ways and the household does not have sufficient income to rent or buy even the cheapest housing at prices prevailing in the housing market. The definition also applies to people who are homeless and to those who would like to live independently but who cannot find accommodation at a price they can afford.**

## 3.0 Policy Support

- 3.1 The Scottish Executive, in SPP3, recognises that the planning system can assist in the provision and retention of affordable housing and notes that :

- where a housing needs assessment within a local housing strategy identifies a shortfall of affordable housing, the provision of affordable housing is a material planning consideration;
  - in areas of development pressure and relatively high land values, the development industry may contribute to affordable housing;
  - the need for affordable housing should be justified in relation to the housing market area in which it occurs, but need not relate to the specific requirements of households resident in that area;
  - the development plan should indicate the role that the planning system can play in provision of affordable housing and should provide clarity on scale, location and means of delivery of affordable housing;
  - the planned release of a substantial area of land for housing can provide the opportunity to create a development with a diversity of house types and tenures. Planning authorities should ensure that the local plan contains a policy seeking a range of house types to encourage creation of mixed communities. This should take account of any need for affordable housing identified in the local housing strategy.
- 3.2 The Edinburgh & Lothians Structure Plan 2015, unlike its predecessor, makes no distinction between rented and owner occupied housing requirements. Therefore, the overall housing requirement identified in the plan covers all sectors of the market. There is a recognition that provision needs to be in all sectors and, consequently, even in the absence of an affordable housing requirement, the policies of the structure plan require the provision of social housing within the overall housing requirements. Additionally, the plan includes a specific policy which seeks to ensure appropriate levels of affordable housing. Policy HOU7 states :
- Where identified and justified by a local needs assessment, and any related studies, local plans should include policies requiring the appropriate provision of affordable housing and setting out the planning mechanisms by which this will be achieved. These policies may take the form of supplementary planning guidance in advance of local plan adoption.**
- 3.3 The Finalised West Lothian Local Plan is currently being redrafted and this policy will be incorporated within the re-finalised plan. Until the local plan is adopted, this policy will operate as supplementary planning guidance. Planning permission will be refused for developments deemed not to comply with the policy unless specific circumstances dictate otherwise.
- 3.4 SPP3 (paragraph 3.1 above) notes that additional advice on delivering affordable housing is to be issued. This advice was published on 7 March 2005 in the form of Planning Advice Note 74 – Affordable Housing. The planning advice notes that :

## 4.0 Affordable Housing Requirements

- 4.1 The principal drivers of affordable housing requirements are household growth, the reduction in affordable stock, primarily through 'Right to Buy', and the limited capacity to provide new socially rented accommodation.
- 4.2 West Lothian Council has already sought to address the need for affordable housing through a number of initiatives. These include mixed tenure developments promoted by WESLO / Miller Homes and by Bett Homes / West Lothian Housing Partnership. However, these initiatives, and other provision supported by Communities Scotland development funding have limited levels of resources and have not fully met the need for affordable housing.
- 4.3 The WLLHS includes an assessment of affordable housing requirements and identifies a requirement for 1,300 social rented units for rent over the period 2003/04 – 2007/08. The strategy identifies the need for additional provision in the period 2008/09 – 2012/13, but acknowledges that this longer term requirement may change. The affordable housing requirements are supported by independent research by the University of Glasgow.

- 4.4 The resource plan, within the WLLHS, identifies that 678 affordable units for rent could be provided from developments supported by development funding from Communities Scotland and the council's own capital contribution. This leaves a balance of 622 units for rent for which funding has not been identified. If the affordable housing requirement in West Lothian is to be met in full, additional funding needs to be identified. This funding could take the form of additional public subsidy, contributions from private housebuilders in the form of planning gain, or a combination of both.
- 4.5 In order to meet structure plan requirements, an average completion rate of around 1,150 units per annum needs to be sustained over the initial five year period of the WLLHS. This gives a potential supply of around 5,750 units of which 622 need to be delivered as affordable units for rent using additional public subsidy (over and above that identified to fund the 678 units identified above), or as planning gain. This suggests that 11% of completions during the period of the WLLHS will have to be affordable units for rent delivered from one of the above sources. However, a proportion of the sites in the potential supply already have planning permission and, therefore, will not contribute to the affordable housing requirement. In addition, a number of sites will have abnormal development costs, which may make securing an affordable contribution unlikely. To compensate for these sites coming out of the supply, land capable of delivering 15% of the capacity of eligible sites will require to be transferred to a Registered Social Landlord (RSL) or other social housing provider for the provision of affordable housing for rent.
- 4.6 The affordable housing policy requirement will be applied to all applications for planning permission and to all new allocations coming forward in the re-finalised West Lothian Local Plan. Sites benefiting from planning permission for residential development at the date of approval of this policy will be exempt from the affordable housing requirement. This exemption will also apply in situations where a planning application for a site is renewed, provided that the renewal is not for an increased number of units. Where an increase in numbers is proposed the policy will apply to the difference in number of units applied for. The exemption will not apply in circumstances where planning permission for the site has lapsed. Any alternative contributions detailed in development briefs approved by the council will not be superseded by the affordable housing policy.
- 4.7 The 15% requirement will be applied across West Lothian, as the district is considered to be single housing market area by the structure plan, the Communities Scotland Housing Market Context Statement and the University of Glasgow Research.
- 4.8 The transfer of land capable of delivering 15% of the capacity of a site as affordable housing to an RSL, or a social housing provider will not, in itself, fully meet the affordable housing requirements set out in the WLLHS. A funding gap equivalent to the public subsidy element of providing housing on the site will still exist. The council will continue to explore ways of funding this shortfall. However, in order to minimise the funding gap all land transferred should be fully serviced and ready for building. Where the affordable housing is being provided on site the developer may also be required to build the affordable units on behalf of the housing provider at a cost to be negotiated, if the housing provider requires this.
- 4.9 For the purposes of calculating the land area required for the provision of affordable housing, reference will be made to the housing requirements identified in the WLLHS. A mix of dwelling sizes, appropriate for the currently identified need, will also be expected.

## **5.0 Means of Affordable Housing Provision.**

- 5.1 Scottish Executive guidance highlights the need for balanced communities. In order to assist with achieving this objective, provision of land for affordable housing as part of a mixed tenure development would be expected. However, it is recognised that such provision is not appropriate in all cases. Accordingly, a hierarchy of four forms of private sector contributions will be acceptable. These are as follows :

## **On Site Provision**

- The transfer of fully serviced land capable of accommodating affordable housing equivalent to 15% of the total site capacity to a Registered Social Landlord (RSL) or social housing provider to be nominated, or otherwise agreed, with the Council. The land will be transferred to the RSL, or social housing provider, at a value which minimises any impact on the availability of funding for the provision of affordable housing. All land transferred should benefit from an appropriate planning permission.

5.2 In exceptional circumstances and for sites where there are sound reasons for not transferring part of the development site to an RSL, or other social housing provider, for example poor access to public transport and / or community facilities, the following means of contribution may be acceptable, subject to agreement and approval by the council :

### **Off Site Provision Within The Same Settlement**

- The transfer of an equivalent sized area of land within the same settlement to an RSL, or social housing provider, to be nominated or otherwise agreed with the council, at a value which minimises any impact on the availability of funding for the provision of affordable housing. All land transferred should fully serviced and benefit from an appropriate planning permission. For the avoidance of doubt any off site provision will be in addition to any affordable housing requirement which would occur on the alternative site in its own right.

### **Off Site Provision Elsewhere in West Lothian**

- The transfer of fully serviced land with planning permission elsewhere in West Lothian. In these circumstances, the land transferred should be of an equivalent open market value to land on the development site. For the purposes of calculating equivalent value, the RICS Appraisal and Valuation Manual 5<sup>th</sup> Edition will apply. Irrespective of the value of the land, it should be transferred at a value which minimises any impact on the availability of funding for the provision of affordable housing. All land transferred should fully serviced and benefit from an appropriate planning permission. For the avoidance of doubt any off site provision will be in addition to any affordable housing requirement which would occur on the alternative site in its own right.

5.3 Where it can be evidenced that an RSL or other social housing provider will be unable to commence development of affordable housing within a period of three years, from the date of planning permission being issued, as a result of non availability of public subsidy, the developer will be required to make a financial contribution to the council rather than transfer land to a social housing provider. An annual update of the affordable housing resource plan will be carried out in order to provide an updated position on the availability of subsidy and this will be included within an annual monitoring report. The basis of the financial contribution will be as follows :

### **Commuted Sums**

- A financial contribution equivalent to the difference between the open market value and the value for affordable housing of an equivalent area of fully serviced residential development land, within the same settlement, as the original housing application.

5.4 All affordable housing contributions will be secured by Section 75 agreements prepared at the developers expense.

5.5 On sites where the affordable housing requirement will result in an unacceptably low residual development value as a result of other abnormal development costs, the developer may be permitted to make an affordable housing contribution at a lower rate or the requirement for affordable housing may be removed completely. Exemptions from the requirements of the policy will only be granted where these abnormal development costs could not have been anticipated at the time of land purchase. Where an exemption is being sought, the developer will be required to fully demonstrate to the council that the low return is not a result of an unrealistic purchase price for the land after taking into account the application of the affordable housing policy and any other site specific requirements. This will require disclosure of the full financial appraisal for the development including projected sales income, development costs, land value, overheads and profit. Where a dispute about the reasonableness of the development costs arises, the matter can be

referred to an independent arbitrator at the developers expense. In these circumstances, any financial information will be treated on a confidential basis. For the avoidance of doubt costs associated with the following works will not be considered as abnormal :

- site clearance works;
  - removal of known contamination;
  - provision of access;
  - the use of appropriate materials in conservation areas or other areas of special planning control;
  - works, or the use of particular materials, required to satisfy the terms of an approved development brief; and
  - meeting infrastructure costs including contributions to education provision.
- 5.6 The affordable housing policy will apply to all applications for residential development. However, sites of less than 20 units will be expected to contribute on the basis of commuted sums. Sites of less than five units will not be expected to contribute. Sites for less than five units which are clearly part of a larger development site will not be exempt. If the capacity of the site is subsequently extended above four units the full affordable housing requirement will be applied to the extended site. For the avoidance of doubt this will apply irrespective of the number of units applied for as part of the extended site.
- 5.7 Where land is being transferred to an RSL, or social housing provider, that land should benefit from an appropriate planning permission. The land should be free of any financial burdens relating to implementation of the planning permission including all servicing costs and financial contributions towards infrastructure such as education provision.
- 5.8 Developers will also be expected to work with affordable housing providers in order to minimise the cost of building affordable units on the site, particularly where on site provision is proposed. This may include building the affordable housing units without profit on behalf of the RSL, or social housing provider. The expectation is that any assistance required would be cost neutral to the market housing developer.

## **6.0 Structure Plan Core Development Areas.**

- 6.1 The Edinburgh & Lothians Structure Plan 2015 identifies the need for land in West Lothian for between 7,000 and 12,000 dwellings, over and above the existing identified land supply, in West Lothian over the structure plan period to 2015. This additional housing is to be delivered from within three core development areas based around Winchburgh / East Broxburn / Uphall; Livingston and the Almond Valley; and Armadale.
- 6.2 The scale of development proposed in these areas affords the opportunity to create mixed communities as described in SPP3. While these areas are unlikely to yield a significant number of completions over the initial five year period of the WLLHS, they will contribute significantly in subsequent period of the strategy. Consequently, it is prudent at this stage to identify that 15% of the capacity of housing land within the core development is reserved for transferred to an RSL or social housing provider.
- 6.3 In addition to the 15% land contribution for sites within core development areas, the council will require 10% of house completions on the balance of land within the CDA to be affordable in terms of the definition given in PAN74. This includes shared ownership, shared equity, discounted low cost sale and housing without subsidy. Provision of low cost home ownership options within the CDAs should improve the overall housing choice available in West Lothian, particularly to those on lower incomes. The additional requirement should ensure the provision of mixed communities with a range of house types and tenures as promoted in SPP3. Section 75 agreements will be required to ensure that affordable houses contributing to the additional 10% requirement remain affordable in perpetuity.
- 6.4 It is recognised that contributions to affordable housing requirements is one of a number of financial obligations which will be placed on the private sector in bringing forward development in the core development areas. In most cases, the scale of development will require additional education provision, improvements to road and transport infrastructure together with a range of community and environmental improvements. Many of these

requirements are 'non-negotiable' in that development cannot take place without them. The council has previously indicated its intention to require all of the above improvements from developers and there is an expectation that land values will be negotiated accordingly.

- 6.5 The provisions of paragraph 5.5 above will also apply to developments within core development areas.

## **7.0 The Policy**

**Developers of residential development sites will be required to transfer land capable of delivering 15% of the total site capacity in housing units as affordable housing to the local authority, a Registered Social Landlord or social housing provider to be nominated, or otherwise agreed, by the council. The land will be transferred at a value which minimises any impact on the availability of funding for the provision of affordable housing. All land transferred should benefit from an appropriate planning permission and should be free of any infrastructure burdens which would apply to dwellings subsequently constructed on the site. The developer will be required, where necessary, to work with the RSL, or social housing provider, to minimise any funding gap in the provision of the affordable housing element of the development.**

**For sites where there are sound reasons for not transferring part of the development site, at the discretion of the council, one of the following alternative forms of affordable housing contribution may be agreed :**

- The transfer to an RSL, or social housing provider, to be nominated or otherwise agreed with the council, of an equivalent sized area of land within the same settlement at a value which minimises any impact on the availability of funding for the provision of affordable housing. All land transferred should be fully serviced and benefit from an appropriate planning permission. Any off site provision will be in addition to any affordable housing requirement which would occur on the alternative site in its own right.**
- The transfer of fully serviced land elsewhere in West Lothian. In these circumstances, the land transferred should be of an equivalent value to land on the development site. For the purposes of calculating equivalent value, the RICS Appraisal and Valuation Manual 5<sup>th</sup> Edition will apply. Irrespective of the value of the land, the land should be transferred at a value which minimises any impact on the availability of funding for the provision of affordable housing. All land transferred should be fully serviced and benefit from an appropriate planning permission. Any off site provision will be in addition to any affordable housing requirement which would occur on the alternative site in its own right.**
- A financial contribution equivalent to the difference between open market value and the value for affordable housing of an equivalent area of fully serviced residential development land, within the same settlement, as the original housing application. This provision will automatically apply on all sites with a capacity of less than 20 units.**

**In addition to the 15% contribution for socially rented housing, developments within structure plan core development areas will be expected to make an additional affordable housing contribution equating to a minimum of 10% fully complete affordable houses. These units can be entry level houses for sale by the developer (housing without subsidy), shared equity houses or any other form of provision conforming to the categories of affordable housing identified in Planning Advice Note 74 – Affordable Housing.**

**The contributions detailed above are benchmarks. The only exceptions to the benchmarks will be :**

- Sites where planning permission has been granted prior to the date of committee approval of the policy.**

- **Sites covered by an approved development brief or an adopted local plan designation which does not require the provision of affordable housing or details an alternative rate of provision.**
- **Sites being developed for less than five units. Sites being developed for less than five units which are clearly part of a larger development area will not be exempt.**
- **Sites where meeting the requirements of the affordable housing policy will result in an unacceptably low residual development value as a result of ground conditions or the provision of essential infrastructure associated with developing the site, but only where these abnormal development costs could not have been anticipated at the time of land purchase. The developer will be required to exhibit details of land purchase price and costs of essential development work and values, and convince the council that the low return is not a result of an unrealistic purchase price for the land. Where a dispute about the reasonableness of the development costs arise, the matter can be referred to an independent arbitrator at the developers expense. In these circumstances, any financial information will be treated on a confidential basis.**

**Developers should indicate as part of their planning application how they will deliver the affordable housing element of the development. All affordable housing contributions will be secured by Section 75 agreements prepared by a solicitor nominated by the council and funded by the developer. The Section 75 will also detail the mechanism for ensuring that any shared equity, low cost home ownership or other forms of assisted purchase units remain affordable in perpetuity through burdens placed on the title.**

## **8.0 Review and Updating**

- 8.1 Annual monitoring of contributions to affordable housing requirements will be carried out in conjunction with the annual Housing Land Audit and published as an annual monitoring report. The monitoring report will highlight the council's contribution as well as the private sector contribution. The monitoring report will also include an updated affordable housing resource plan which will identify the availability of public subsidy.
- 8.2 While the affordable housing policy is linked to the requirements of the Edinburgh & Lothian's Structure Plan 2015, the time horizon of the policy will be linked to that of the local housing strategy. The affordable housing policy will be updated as necessary, within the context of the structure and local plan, to reflect changes identified in any updates to the local housing strategy and any shortfalls in provision identified through annual monitoring. It will also be updated as necessary to reflect changes in national policy or guidance.
- 8.3 Where any subsequent review of the affordable housing policy establishes an alternative means of affordable housing provision, there will be no provision for renegotiating agreed, but unimplemented, affordable housing contributions. Any review of the policy will assume contributions from such sites and any failure to deliver these would have a resultant impact on the basis of the policy review.