

Harrogate Borough Council: Guidance Note on Changes to Affordable Housing and Planning Obligations (May 2017)

1.0 Background

- 1.1 Following the order of the Court of Appeal dated 13 May 2016, which gave legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014, the Government amended the NPPG on 19 May to reintroduce the circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development.
- 1.2 The changes made impact upon the application of existing affordable housing policy within Harrogate District and the commuted sums Supplementary Planning Documents for the provision of open space and village halls. This note seeks to clarify the current position in light of those changes.

2.0 Affordable Housing Policy

Existing Affordable Housing Policy

- 2.1 The existing policy position in relation to affordable housing within Harrogate District is set out within Policy H5 of the Harrogate District Local Plan (adopted 2001, Selective Alteration 2004, Saved Policies 2007). Policy H5 states that the Council will negotiate for the provision of an element of Affordable Housing on suitable new developments as follows:
 - A) In Harrogate Knaresborough and Ripon on housing developments of 15 or more dwellings gross or sites of 0.5 of a hectare or more, irrespective of the number of dwellings.
 - B) In all other locations, satisfying Policies H6, GB5, GN7 or C16 and Policy HX, on housing developments of 3 or more dwellings gross or sites of 0.1 of a hectare or more, irrespective of the number of dwellings.

Changes to National Policy

- 2.2 The government's changes to national policy in respect of planning obligations set out specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought, as follows:
 - Contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floor space of no more than 1000sqm (gross internal area).
 - In designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development. This applies to rural areas described under section 157(1) of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty and other designated rural areas (please refer to definition at paragraph 2.4 below).
 - Affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home

- The restrictions on seeking planning obligations contributions do not apply to development on Rural Exception Sites.

Additionally local planning authorities should not seek section 106 affordable housing contributions, including any tariff-based contributions to general infrastructure pots, from developments of Starter Homes. Local planning authorities will still be able to seek other section 106 contributions to mitigate the impact of development to make it acceptable in planning terms, including addressing any necessary infrastructure.

- Vacant Building Credit – National policy provides an incentive for brownfield development on sites containing vacant buildings. On such sites, the guidance states that where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floor space of relevant vacant buildings when the local authority calculates any affordable housing contributions which will be sought. Affordable housing contributions may be required for any increase in floor space.

The guidance goes on to state that:

Where there is an overall increase in floor space in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A 'credit' should then be applied which is the equivalent of the gross floor space of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation. This will apply in calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided.

The existing floor space of a vacant building should be credited against the floor space of the new development. For example, where a building with a gross floor space of 8,000 square metre building is demolished as part of a proposed development with a gross floor space of 10,000 square metres, any affordable housing contribution should be a fifth of what would normally be sought.

The vacant building credit applies where the building has not been abandoned.

The policy is intended to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings. In considering how the vacant building credit should apply to a particular development, local planning authorities should have regard to the intention of national policy.

In doing so, it may be appropriate for authorities to consider:

- Whether the building has been made vacant for the sole purpose of redevelopment.
- Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.
- Some planning obligations may still be required to make a development acceptable in planning terms. For sites where a threshold applies, planning obligations should not be sought to contribute to affordable housing or to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area. Authorities can still seek obligations for site specific infrastructure – such as improving road access and the provision of adequate street lighting – where this is appropriate, to make a site acceptable in planning terms. They may also seek contributions to fund measures with the purpose of facilitating development that would otherwise be unable to proceed because of regulatory or EU Directive requirements.

2.3 The full changes to National Planning Guidance can be viewed at the following location:
<https://www.gov.uk/guidance/planning-obligations>

Designated Rural Areas within Harrogate District

2.4 The designated rural areas within Harrogate District are set out within Statutory Document no. 2681, which came into force in 2004: <http://www.legislation.gov.uk/uksi/2004/2681/schedule/made>. We have prepared a map of these areas, which can be viewed at Appendix A.

3.0 Implications for Harrogate District

3.1 Within Harrogate District the above changes to national policy impact upon the application of adopted Policy H5.

- Part A of Policy H5 still applies, as amended – applications for 15 or more dwellings gross, or sites of 0.5 of a hectare where 11 – 14 units are proposed, or sites of 0.5ha where more than 1000sm gross internal area (GIA) development is proposed, in Harrogate, Knaresborough and Ripon will be required to provide affordable housing on site.
- Part B of Policy H5 no longer applies as adopted. This has the following implications:
 - In locations outside of Harrogate, Knaresborough and Ripon which fall outside of the Designated Rural Areas, affordable housing contributions will not be sought from developments of 10 units or less, and which have a maximum combined gross floor space of no more than 1000sqm.
 - In locations outside of Harrogate, Knaresborough and Ripon which fall within the Designated Rural Areas no affordable housing will be sought from developments which are 5 units or less and have a maximum combined gross floor space of no more than 1000sqm. Where between 6 and 10 units are proposed (or where between 1 and 5 units are proposed and the gross floor space exceeds 1000sqm), a commuted sum in the form of a cash payment will be required, payable after completion of units within the development.

3.2 In order to aid understanding of these changes to policy, we have prepared the following list of worked examples:

1. Designated rural sites: 1-5 dwellings and less than 1000sm, no affordable housing.
2. Designated rural sites: 1-5 dwellings but more than 1000sm, 40% affordable housing by commuted sum payable after completion of units within the development.
3. Designated rural sites: 6-10 dwellings and less than 1000sm, 40% affordable housing by commuted sum payable after completion of units within the development.
4. Designated rural sites: 6-10 dwellings and more than 1000sm, 40% affordable housing by commuted sum payable after completion of units within the development.
5. Designated/non-designated rural sites: more than 10 dwellings, 40% affordable housing on site.
6. Non-designated rural areas: less than 11 dwellings and less than 1000sm, no affordable housing.
7. Non-designated rural areas: less than 11 dwellings but more than 1000sm, 40% affordable housing on site.
8. Urban areas (Harrogate, Knaresborough and Ripon): 1-14 dwellings and less than 0.5ha, no affordable housing.
9. Urban areas (Harrogate, Knaresborough and Ripon): 15+ dwellings or 0.5ha and above, 40% affordable housing on site.

- 3.3 Where any development includes existing buildings within the red line boundary, net off existing gross floor space; the affordable housing is only applicable to the net increase in floor space¹.
- 3.4 All affordable housing (on site or by commuted sum) is subject to viability.

Sub-division of sites and efficient use of land

- 3.5 To avoid sites being subdivided to below the relevant threshold size, Policy H5/new national policy will apply on the basis of the composite or naturally defined larger area. Planning applications for development which forms part of a more substantial proposed development, on the same or adjoining land will be treated as an application for the whole development. This also applies if the development is proposed in phases, with later phases having to fulfil affordable housing requirements from previous phases, if this has not been adequately provided for.
- 3.7 In line with national planning policy, the Council is seeking to increase the supply of housing whilst ensuring a high quality of design. Paragraph 58 of the National Planning Policy Framework seeks to achieve this through a number of measures including the requirement to ensure that developments optimise the potential of sites to accommodate development. In line with this, proposals for new housing development should seek to ensure that scheme layouts utilise land efficiently.

Are there any implications for ‘other tariff style planning obligations’ currently sought within the district?

- 3.8 As highlighted above within section 2, the recent changes to the NPPG include restrictions on the use of ‘other tariff style planning obligations’. The restrictions on tariff style contributions referred to in the NPPG apply to all contributions to pooled funding pots intended to fund the provision of general infrastructure in the wider area. As such these restrictions apply to the council’s commuted sums Supplementary Planning Documents for the provision of open space and village halls.
- 3.9 Therefore, the following exemptions to the requirements will apply:
- Contributions will not be sought from developments of 10-units or less, and which have a maximum combined gross floor space of no more than 1000sqm (gross internal area) in urban areas (Harrogate, Knaresborough and Ripon) and non-designated rural areas.
 - In designated rural areas, contributions will not be sought from developments of 5-units or less.
 - In designated rural areas, on developments of between 6 and 10-units, contributions will be commuted until after completion of units within the development (see paragraph 4.8).

4.0 Procedures for submitting planning applications

Commuted Sums

- 4.1 The methodology for calculating commuted sums is as follows:

Value of market house per square metre less the value of an affordable house per square metre = commuted sum per square metre. This is applied to 40% of the net increase in dwellings in accordance with the Council’s target.

The Council expects that the average affordable dwelling is a 2 bedroom house of 70 square metres with a transfer price of £1100psm. Therefore the total commuted sum payable will be the commuted sum per square metre multiplied by 70sm multiplied by the appropriate number of affordable homes.

¹ See 4.4 below

For example:

A development of six market houses of 100sm (affordable target = 2.4).

Sales are averaging £275,000 therefore the value of market house per square metre = £2750.

Commuted sum payable per square metre = £1650 (£2750 - £1100).

£1650 x 70sm = £115,500.

2.4 x £115,500 = £277,200 (commuted sum payable).

Vacant building credit

Vacant Building Definition

4.2 The Council will not normally regard a building as vacant where the following four factors apply:

1. Its use is authorised by a planning permission granted only for a limited period.
2. It is a building into which people do not normally go, or into which people go only intermittently for the purpose of maintaining or inspecting machinery (for example, an electricity sub-station);
3. All or part of it is occupied; and
4. It has been occupied for more than six months within the period of three years ending on the application date.

Calculating Affordable Housing where a Vacant Building Credit applies

4.3 Where there is an overall increase in floor space in the proposed development, the amount of affordable housing contribution is 40%, subject to viability. However, a 'credit' is then applied which is the equivalent of the gross floor space of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation.

4.4 The methodology for calculating affordable housing where a vacant building credit applies is as follows:

- Applicants are asked to submit current and proposed floor space details. Affordable housing applies to any net increase in floor space.
- The 40% target for affordable housing will be reduced by the percentage of existing floor space relative to that of the proposed scheme as a whole. For example, where a building with a gross floor space of 8,000 square metres (sm) is demolished, as part of a proposed development with a gross floor space of 10,000 sm, the existing floor space is equivalent to 80% of the proposed floor space. This means that the affordable housing contribution is reduced to 20% of what would normally be sought.

Worked example:

A scheme of 90 houses with a total Gross Internal Area (GIA) of 10,000sm, existing empty and redundant buildings with a total GIA of 8,000sm; Affordable Housing Target of 40% (36 homes) is reduced to 7.2 homes (36 x 20% = 7.2).

- Where a commuted sum is payable (see 3.2 above), the commuted sum per square metre is calculated in the same way as above.
- Where affordable housing is to be delivered on site, the appropriate proportion of the net increase in floor area is translated into the appropriate number of affordable units having regard to the development proposals and the Council's preferred mix. Where this is not a whole number, a commuted sum may be payable in addition.

4.5 Where a commuted sum is payable, the following condition will usually be applied:

No more than 20% of the dwellings shall be occupied before a scheme for the provision of affordable housing has been submitted to and approved in writing by the Local Planning Authority. The scheme shall comprise the formula for the amount and timing of payment of the commuted sum and its phasing in relation to the occupancy of the market housing.

4.6 Commuted sums will usually be calculated at the point where payment is about to be made, i.e. prior to occupation of no more than 20% of market units where at least 5 dwellings are proposed. The trigger point for payment of commuted sums may be subject to negotiation with the applicant.

4.7 In exceptional circumstances, the commuted sum could be calculated and paid in advance of the start on-site if requested by the applicant. This approach would need the express agreement of both the council and the applicant.

4.8 With regards to commuted sums for the off-site enhancement of open space and village halls, payment will be due on completion of the first dwelling (as opposed to the previous practice of requiring payment on commencement).

Outline applications

4.7 As it may not often be clear from an outline application how many dwellings will be built on site (or the proposed sizes of those dwellings) a standard condition will be applied to all applications where affordable housing may be required, allowing the issue to be addressed at the Reserved Matters stage. The condition will be as follows:

The development shall not begin until a scheme for the provision of affordable housing has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme. Affordable housing shall meet the definition of affordable housing in the NPPF or any future guidance that replaces it. In the case of offsite provision the scheme shall detail the means by which the provision is to be facilitated. In the case of onsite provision the scheme shall include:

I the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than X% of housing units;

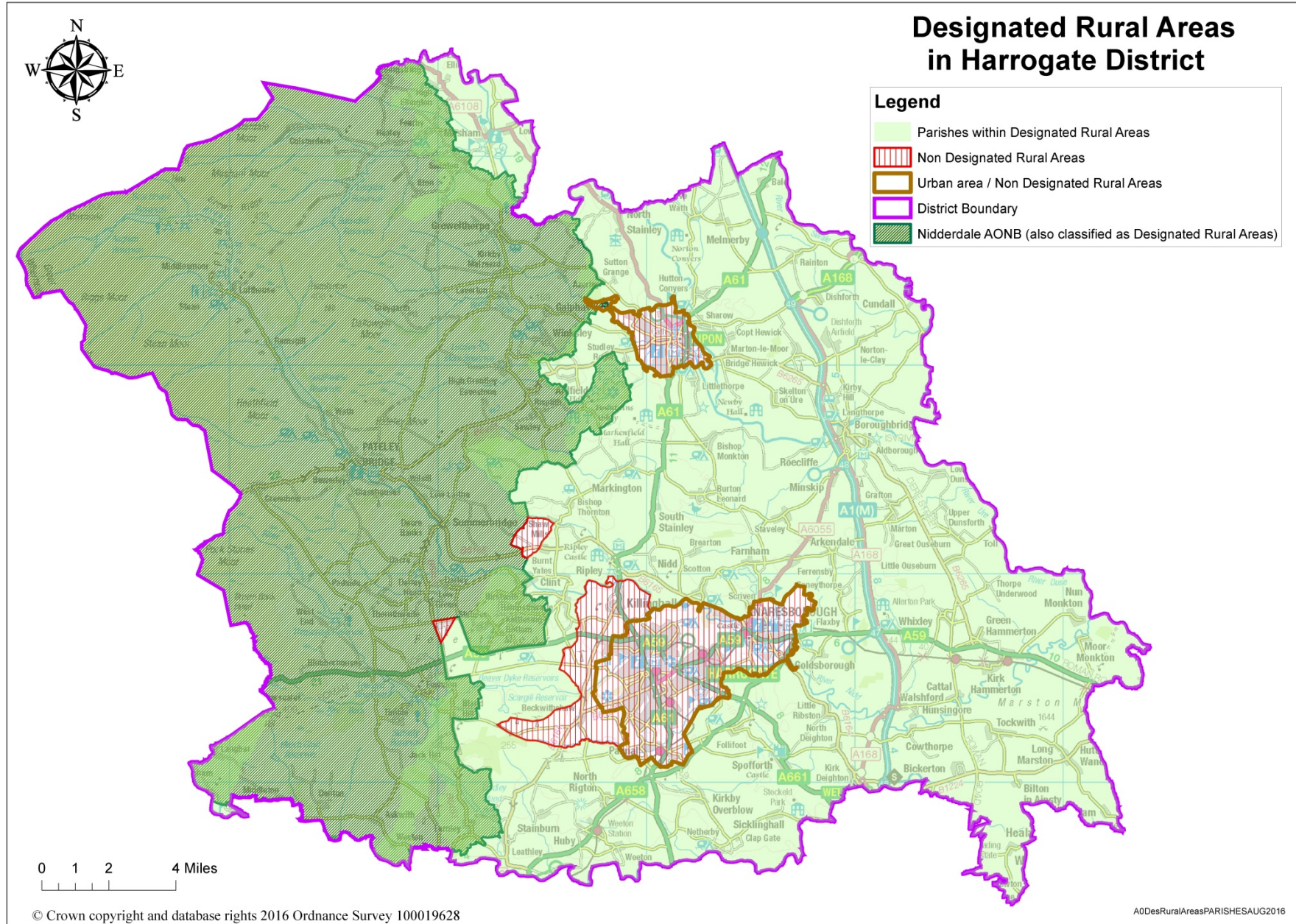
II the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

III the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing] (if no Registered Provider involved);

IV the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

V the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced

Appendix A: Plan illustrating Designated/Non Designated Rural Areas



Appendix B: Additional Worked Examples

The following examples illustrate the application of Policy H5, in light of the recent policy changes:

Example 1:

Site located in Harrogate, Ripon or Knaresborough

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Total number of units	15	13	13	9
Site area (ha)	0.45	0.45	0.55	0.55
Current position	Affordable housing sought on site at 40%	No affordable housing sought	Affordable housing sought on site (at 40%)	No affordable housing, unless the total scheme GIA exceeds 1,000 sqm (if so, provision on site)

Example 2:

Site located in Designated Rural Area

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Total number of units	5	6	10	11
Total gross floor space (sqm)	425	510	1,200	990
Current position	No affordable housing sought	Commuted sum in the form of cash payment sought (at 40%)	Commuted sum in the form of cash payment sought (at 40%)	Affordable housing sought on site (at 40%)

Example 3:

Site located in Non-designated Rural Area

	Scenario 1	Scenario 2	Scenario 3
Total number of units	10	11	9
Total gross floor space (sqm)	850	935	1080
Current position	No affordable housing sought	Affordable housing sought on site (at 40%)	Affordable housing sought on site (at 40%)