

Housing Led Regeneration and Investment Team
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Dear Sirs

PLANNING AND AFFORDABLE HOUSING FOR BUILD TO RENT

Thank you for consulting the Home Builders Federation (HBF) on the above proposals. The Home Builders Federation is the principal representative body of the housebuilding industry in England and Wales. These representations reflect the views arising from discussions with our membership of national and multinational plc's, through regional developers to small, local builders. Our members account for over 80% of all new housing built in England and Wales in any one year and, in 2015/16, the private sector housebuilding industry built over 12,000 affordable housing units in England, accounting for approximately 40% of all new build affordable housing both with and without public grant funding.

The introduction of build to rent and affordable private rented housing is of considerable interest to our members some of whom are actively considering their potential role in this emerging new housing market.

We have addressed the questions posed by the consultation below.

Q 5: Do you consider there are market and regulatory failures impeding the rapid development of the Build to Rent market that merit national policy intervention?

We do not believe that there are market failures in the Build to Rent market. The fact that the build to rent market has different inputs, costs and returns to developers and investors is a normal consideration in any market and is reflected through attitude to risk.

However, there is a regulatory failure as this level of uncertainty and risk is rarely reflected in planning policy or in the consideration of planning applications for build to rent products.

Q 6: Do you agree with the proposal to refer explicitly to Build to Rent in the National Planning Policy Framework?

We agree with this proposal.

Q 7: Do you think that Government should set a policy expectation on Affordable Private Rent in the National Planning Policy Framework, or not? (Please state your reasons).

The provision and cross subsidy of affordable housing through planning policy is well established. By including affordable private rent as a specific tenure designed to meet affordable housing requirements in the private rented sector is considered to be equitable and helpful for the reasons set out in the consultation paper.

Q 8: Will a policy expectation in the National Planning Policy Framework send a sufficiently strong signal to support Affordable Private Rent as the main vehicle for affordable housing in Build to Rent? (Please state your reasons)

Without a strong policy expectation in the NPPF some local planning authorities would continue to express a preference for affordable housing delivered as social rented housing since this more easily meets their statutory housing functions. Therefore it is essential that government sets out a clear policy expectation for affordable private rent being an acceptable form of affordable housing.

Q 9: Do you consider that Affordable Private Rent could play a useful role in the delivery of affordable housing in the area(s) where you live or operate?

As a national body the HBF believes that affordable private rent will play a useful role in the delivery of affordable housing all across the country.

Q 10: Do you consider that the efficiencies arising through on-site provision of Affordable Private Rent can materially improve the viability of Build to Rent, compared to other affordable housing tenures?

Since all affordable housing cross subsidy is a negotiated benefit it is up to the developer and the local authority to come to an agreement over the amount, type and tenure of the affordable housing provision on a site by site basis, thereby reflecting site specific issues and viability. The benefits of approaching such negotiations in a flexible way allows for issues not well understood by the other side, such as the viability assessment of build to rent development or local affordable housing priorities can be discussed openly resulting, hopefully, in a mutually beneficial deal being achieved.

Q 11: Do you consider that there could be unintended consequences of Affordable Private Rent if it is accepted as a form of affordable housing?

No. We believe that emphasising the benefits of affordable private rent as an affordable housing product will allow more, rather than fewer, people to access affordable housing rather than perpetuating the current focus on social rented homes.

Q 12: If your answer to Q11 is yes, would these consequences be mitigated by limiting Affordable Private Rent only to Build to Rent schemes?

We do not believe that affordable private rent should be limited solely to build to rent schemes. Similarly, build to rent schemes should not be limited to providing affordable housing solely as affordable private rent.

Q 13: Do you think it is reasonable for Planning Authorities to specify minimum tenancy lengths in Build to Rent schemes? Please add your reasons, and give examples of such agreements where appropriate.

While we would support an expectation for tenancies in the affordable private rented sector to be three years or more (for those tenants who want one) we do not believe that the length of tenancy is a planning issue. It should not, therefore, be secured through planning obligations. Monitoring and enforcement of tenancies through planning obligations would be overly complicated and cumbersome.

Q 14: Do you agree that Build to Rent tenancies should be for at least three years (with a one month break option for the tenant after the first six months), for all customers in the development who want one?

We applaud the aim of this proposal but, as stated above (Q13) we do not agree that this should be achieved through the planning process. Tenancy agreements should be between tenant and landlord and all parties are adequately protected through other legislation.

Q 15: Does the definition of Build to Rent set out on page 20 capture all of the appropriate elements? (If not, please state why, and what criteria should apply).

As stated above (Q13 and Q14), we do not believe that tenancy length is a necessary consideration as part of the definition of build to rent properties nor that it should be controlled through planning conditions/agreements.

We agree with the government's conclusion that there should not be a nationally set minimum period for homes to remain as private rented housing. However, we do believe that there should be a time limit on the clawback period (see comments re Q21 and Q22).

Q 16: Do you agree that the National Planning Policy Framework should put beyond doubt that Affordable Private Rent qualifies as affordable housing in Build to Rent schemes? (If not, please state why).

The NPPF should be clear that affordable private rent qualifies as affordable housing provision in any type of development.

Q 17: Do you agree with the proposed definition of Affordable Private Rent set out on page 21? (If not, please state why, and what criteria should apply).

We agree with the proposed definition.

Q 18: The Government intends to set the parameters of Affordable Private Rent as:

- a minimum of 20 per cent of the homes to be discounted;
- the discount to be set at minimum of 20 per cent relative to the local market;
- an offer of longer tenancies of three years or more;
- the discount to apply indefinitely (subject to a “claw-back” arrangement if Affordable Private Rent homes are withdrawn).

Taken as a whole, are these parameters: (i) reasonable; (ii) too onerous; (iii) insufficient? Which, if any of them, would you change and why?

We do not agree that there should be a nationally set minimum provision of 20% of the homes being discounted as affordable private rented dwellings. This proportion should be negotiated on a site by site basis based on the viability of the site and the level of identified need for such provision in the local market area.

Similarly, the level of discount offered should reflect local identified need rather than be set as a national minimum level.

We do not believe that tenancy length should be a criteria of affordable private rented housing (see response to Q13 and Q14).

We do not agree that the discount should apply “indefinitely”. There is no reason why affordable housing should be provided “in perpetuity”. Indeed, some other affordable housing products (including starter homes) are, by definition, restricted to remaining affordable for an agreed number of years. We believe that the government should treat affordable private rented dwellings in a similar way and require their remaining affordable for a specified number of years.

By removing the “in perpetuity” requirement from affordable private rented homes the clawback period for alternative affordable housing provision would also be limited but, more importantly, would also be clearly defined in a number of years.

We suggest that the government consults with the industry further on the appropriate period for the restrictions to apply but would suggest that 15 years is appropriate. This is consistent with the approach undertaken by the GLA in London.

Q 19: Should the parameters for Affordable Private Rent appear on the face of the National Planning Policy Framework or within Planning Practice Guidance?

We believe that, in this emerging market it would be more appropriate to set out the parameters for affordable private rented dwellings in Planning Practice

Guidance rather than on the face of the NPPF. This will allow for modifications and refinements to be made more easily since the NPPF is amended less frequently than the Planning Practice Guidance.

Q 20: The Government is minded to leave determination of eligibility and nomination criteria for Affordable Private Rent to negotiation between the developer and the local authority. Do you support this position? Will it affect take-up of the policy? Please give your reasons.

We agree that the determination of eligibility and nomination criteria should be negotiated between the developer and the local authority based on local market needs and circumstances.

If the government makes it clear that this tenure is an acceptable form of affordable housing, particularly appropriate in build to rent development (as suggested in Q7) then take up of the policy should be unaffected.

Q 21: The Government considers there is no need for a fixed minimum covenant period, so long as appropriate claw-back arrangements are provided for. Do you agree?

We agree that clawback provision can adequately control the issues addressed through a fixed minimum covenant period. However, we suggest that there should be a maximum period for a clawback liability for the provision of alternative affordable housing provision (see Q18). Precedent is set for this approach with regard to through other affordable housing products which have a defined affordability period (Starter homes, shared equity, right to buy etc).

Q 22: Do you think Government should (a) prescribe the basis for calculating the amount of claw-back, (b) set a possible basis for calculating the amount of claw-back in guidance, or (c) leave the amount of claw-back to be agreed between the local authority and the applicant?

It is considered that it would be helpful for the government to prescribe the basis of the calculation of claw-back. There is no need for each and every local authority to develop its own methodology for doing this. However, we can envisage the need for some flexibility in the application of such provisions and therefore we would support b) above with the government setting a possible basis for calculation with a clear indication that deviation from the preferred basis would be the exception.

Q 23: Should the Government's Build to Rent and Affordable Private Rent policy be identical across the whole of England or does it need to be set differently between London and the rest of England? If it should be set differently, please use the comments box to tell us how and why the policy should vary in London from the rest of England.

We believe that there is merit in a national scheme for the provision of build to rent rather than having a different scheme in London to the rest of the Country. We suggest the government work closely with the GLA in order to address any anomalies between the proposed schemes in order to come to a mutually satisfactory solution.

Q 24: Would it be helpful for Government to produce model clauses (which would not be mandatory) that could be used in Section 106 agreements to give effect to Affordable Private Rent?

Yes. There is no need for each local authority to devise their own S106 agreements for the provision of affordable private rent housing. This would ensure consistency and certainty for developers and would save resources for both developers and local authorities. Obviously, it would be important for developers, local authorities and the legal profession to be involved in devising such model clauses.

Q 25: Is a transitional period of six months appropriate for the introduction of the policy? (If not, why not?)

We do not agree that there is a need for a transitional period before the government's policy takes effect. The consultation process has alerted local authorities to the proposals which should be implemented as soon as possible. This can be done through including the policy within the publication of the new NPPF and expanded upon through Planning Practice Guidance.

We thank you once again for consulting with the HBF on this key issue and look forward to seeing the Government's response to the issues raised above in due course.

Yours faithfully



Andrew Whitaker
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