

Shelter briefing: Draft National Planning Policy Framework

Summary:

In March 2018 the Government published a new draft National Planning Policy Framework (NPPF) for consultation. This document is the centre of planning policy across England, and the new draft provides a clear opportunity to ensure the planning system delivers more of the homes this country needs.

The current model for delivering affordable homes, heavily based on provision by private developers as part of their wider schemes, is not delivering the number that it could, or should, be doing. The use of viability assessments to argue away developer contributions to community benefits has become endemic across the country. Allowing affordable homes to slip through the viability loophole deprives communities of much needed affordable housing, and reduces support for housebuilding.

The public statements accompanying the new draft NPPF and National Planning Practice Guidance (NPPG) show that the government clearly intends to close the viability loophole. However, the measures currently proposed will not end the overuse of viability assessments, nor stop them depriving local communities of the affordable homes they need.

During the consultation period we are calling for changes to the draft NPPF and NPPG text to ensure that the reality of the policy matches the government's intentions.

- Councils must be allowed to set strong affordable housing policies across their housing markets, to send a clear signal to the market. To achieve this, the NPPF should require councils to ensure the viability of their development plan as a whole – not the viability of individual sites, or small groups of sites. Without this vital provision, affordable housing policies will become a race to the bottom, and affordable housing delivery will fall.
- Central government should set clear limits to landowner premiums under EUV+, to void replicating the current distorted profit levels that the new rules seek to address.
- Central government should set clear limits on how far viability can be used to reduce affordable housing levels in response to falls in expected sales values, so that review mechanisms are not used by developers to manage their normal market risks. The NPPF should clarify that councils can also use review mechanisms to *increase* affordable homes across a range of site types, if a development turns out to be more profitable than expected.
- Central government must follow through on its commitment to make the use of viability assessments a transparent process, and clearly define those limited instances in which they might remain confidential.

The delivery of affordable homes

In England we aren't building enough homes, and particularly enough affordable homes. Last year the government increased its annual housebuilding target to 300,000 per year, however in 2016/17 in England just 183,570 new homes were built¹, of which just 41,530 were affordable.²

Shelter welcomes the government ambition to increase housebuilding, and recognises that the numbers of new homes have increased in recent years. But it is clear that there is still much to do, particularly when it comes to increasing the supply of affordable homes, which should constitute 50% of overall housing supply. Part of the challenge is how we deliver affordable homes: currently we expect private developers to be delivering a large portion of these in the form of Section 106 contributions. Unfortunately, this system is failing to deliver the number of homes that it could, and should, be doing:

- Between 2007-08 and 2011-12, even as the housing market suffered its worst downturn in a generation, S106 delivered an average of 27,000 affordable homes per year.
- Between 2012-13 and 2015-16, following the introduction of the NPPF, S106 delivered an average of only 17,000 affordable homes per year.

Clearly the system is no longer delivering the numbers of affordable homes expected. Since changes to the planning system in 2012, the use of viability assessments to reduce the numbers of affordable homes provided under S106 agreements has become widespread.³ But the scale of the problem remains largely hidden. Shelter research has found that in 8 rural local planning authorities over just one year 938 potential affordable homes were lost on sites where a viability assessment was used by the developer – that's a 48% cut in affordable homes compared to what local policies say should have been provided.

We have called for changes to the viability system to make it fair, limited and transparent. Moves towards greater transparency in the draft NPPF and NPPG are welcome. Now we need to make sure the new system truly delivers on the government's ambition to drive up affordable housing.

Background: improving the provision of affordable homes

The current viability assessment process is antagonistic and significantly weighted towards private developers – rather than local communities and their needs. We want to see this rebalanced both to ensure a higher provision of affordable housing and to increase community support for housebuilding.

The problem is that some developers have been upping their bids for land by assuming that they won't provide affordable homes, then using the high cost of land as evidence for why they can't provide affordable homes in their viability assessments – a circular logic that has 'planned out' affordable homes and inflated land values.

Furthermore, when a developer does take this route, the local community and councillors are kept in the dark, as there is almost no transparency around viability assessments. With the details kept secret (apart from in a small number of local authorities), local people are left with no explanation for why a developer has reneged on promises to deliver much needed affordable housing or community benefits.

The redrafting of the NPPF is a critical opportunity to change, to make the system is fairer, more limited and more transparent.

- Land values used in viability assessments should reflect more closely the existing use value of land (plus a clear premium for the landowner), rather than simply what the developer paid for the land. Land values should be low enough to allow affordable homes to be built, and therefore ensure viability assessments are only used in genuinely exceptional circumstances, and not to manage developers' normal market risks.

¹ Statistic given is for new build completions. Total net additions to the overall housing stock numbered 217,350.

² DCLG live tables on affordable housing.

³ Viability Assessments are a financial analysis of a specific development, often used by developers to demonstrate insufficient profit margins and therefore argue that providing affordable housing or other community benefits will be unviable. <http://blog.shelter.org.uk/2017/11/the-high-cost-of-viability-assessments-2500-affordable-homes-lost-in-just-one-year/>

- Viability assessments should not be the norm, but should be limited to exceptional circumstances that genuinely could not have been predicted when the developer purchased the land (e.g. abnormally high remediation costs that could not have been picked up in earlier surveys)
- Transparency should be paramount, with viability assessments conducted as ‘open-book’ and subject to public scrutiny.

The future: improving the draft NPPF

The new draft viability guidance aims to crack down on the misuse of viability assessments, and the Government is crystal clear that it wants developers and land traders to account for local policies like affordable housing when agreeing the price of land. The new draft must deliver on this intention by making the system fair, limited and transparent.

Fair

Designing a fairer viability system is principally about how the benefits of new housing are shared between landowners, developers and communities. The government’s intention to create a fairer system is clear in the current draft, but the way the rules are written is likely to mean no more affordable homes get through than in the current system.

- **The way land values will be worked out will now be a version of ‘Existing Use Value plus’ (EUV+).** Viability assessments will need to work out the Existing Use Value of the land – what it is worth in its current state – and add a premium onto this to make sure landowners have an incentive to sell. **However, we have concerns about how the premium will be calculated.**

The landowner’s ‘premium’ will be worked out using evidence from recent land transactions and how much profit landowners made from these – so the new system will replicate the inflated landowner profits of the old system, leaving less for affordable housing.

- **For developers, the new system specifies a 20% profit level for most schemes.** This will replicate problems with the old system’s guarantee of ‘competitive returns’, which translated into a fixed return independent of market conditions, development risk or performance. This provides strong protections for landowner and developer profits and leaves affordable housing as ‘the residual’ to be argued away where these profits can’t be guaranteed – even if that is due to risky business planning or overpaying for land.

Shelter recommends:

- Central government should prescribe limits to landowner premiums under EUV+ to ensure current distorted profit levels are not replicated. This is essential to deliver more affordable housing.
- The final NPPF should remove the protection for 20% developer profit. It should be expected that councils decide what level of profit reflects the real risk of development on sites in their area.

Limited

It is clear that the government intends the viability system to become more limited.

- **The new system aims to test viability more rigorously, and earlier on in the process,** when local plans are written and agreed, to provide more certainty over what is expected. As a result of this there should be less need for viability to be tested again when individual sites go through the planning process. However, this is likely to simply move the problems with the current system to an earlier stage of the process. This will make it impossible for councils to set affordable housing policies for broad housing market areas which can serve as market signals and influence land values.
- **The new guidance suggests a bigger role for review mechanisms through which affordable housing contributions are re-tested after planning permission is granted,** and potentially after building has started. Worryingly, there is greater emphasis on using these reviews to argue **down**

affordable housing, after there a Section 106 agreement has been made. At the same time, the scope for using review mechanisms to increase affordable housing (if a development turns out to be more profitable than expected) appears to be limited to large, multi-phase developments.

- The guidance also states that councils must be ‘sufficiently flexible to prevent planned development being stalled in the context of significant changes in costs and values that occur after a plan is adopted’ and suggests that review mechanisms should aim to ‘provide more certainty through economic cycles’.

This will mean that **councils are expected to continue to vary the level of affordable housing on developments to help housing developers manage market risk** – if they face making lower than expected profits. We need to determine just how ‘significant’ the changes would have to be before cutting affordable housing becomes acceptable

Shelter recommends:

- Councils’ must be allowed to set affordable housing policies across broad housing markets and sub-markets. To achieve this, they should have a duty to ensure the viability of their development plan as a whole – not on individual sites, or small groups of sites. Without this, affordable housing policies will become a race to the bottom, and affordable housing delivery will fall.
- The list of ‘exceptional circumstances in which viability assessments can be used must be set out by central government, including a strict limit on when they can be used in response to falls in expected sales values. For example, the ability for review mechanisms to be used in this way could be triggered by central government in response to housing market falls.
- The new NPPF must empower councils to use review mechanisms to increase affordable housing provision where a scheme has turned out to be more profitable than expected.

Transparent

The government has evidently heard the arguments around transparency, and its consultation document on developer contributions couldn’t be clearer on this point: ‘the expectation is that **all viability assessments will be conducted on an open-book basis** and published except under limited circumstances.’ Those ‘limited’ circumstances are part of the NPPF consultation, and the government intends to issue guidance to set these in stone.

This change will mean that councils and communities asked to accept lower levels of affordable housing will know why changes are being made and be able to hold developers to account.

Shelter recommends:

- The Government must follow-through on its commitment for viability assessments to be a transparent process and set clear limits to the instances when they may remain confidential.

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