

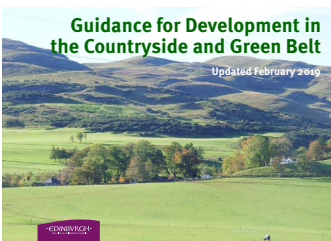
Affordable Housing

Updated May 2021



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Who is this guidance for?

This guidance applies to all new residential development throughout Edinburgh which is subject to Policy Hou 6 in the Edinburgh Local Development Plan.

What does this guidance do?

This guidance sets out the Council's approach to using the above policy. The Local Development Plan (LDP) can be viewed online at:

www.edinburgh.gov.uk/localdevelopmentplan

This guidance was issued as a standalone document on October 2017, and incorporates updates to its Practice Note approved on May 2021.

Affordable Housing

General Principle - Planning permission for residential development, including conversions, consisting of 12 or more units should include provision for affordable housing amounting to 25% of the total number of units proposed. For proposals of 20 or more dwellings, the provision should normally be on-site. Whenever practical, the affordable housing should be integrated with the market housing. The detail of how developers will be expected to deliver this is provided below:

Affordable Housing Approach

Affordable housing is defined in the practice note in the Appendix. In all cases planning applications should clearly set out proposed mechanisms for contributing to local affordable housing need.

Where a proposal is fewer than 12 units but is clearly part of a phased development of a larger site which would be subject to an affordable housing requirement, an affordable element will be required at an appropriate stage in the development of the site as a whole.

On-Site/ Off-Site Provision

The affordable element should normally be provided on-site. However, provision may be acceptable on an alternative site where the total number of dwellings is below 20, or where all of the following criteria apply:

- There are exceptional reasons to avoid on-site provision, such as the site being poorly located for affordable provision, where conversions do not lend themselves to affordable provision, or there are other advantages to the Council in accepting off-site provision such as achieving more, higher quality or better-located affordable units elsewhere; and
- An agreed mechanism for delivering the requisite number of affordable units (e.g. through an agreement with a Registered Social Landlord (RSL) at an alternative location elsewhere within the same area of the city is in place; and
- The proposed alternative site makes an equally satisfactory contribution to meeting unmet local housing needs as the principal development site.

Commuted Sums

The payment of commuted sums in lieu of on-site provision will only be acceptable where the total number of dwellings is below 20, or all of the following criteria are met:

- There are exceptional reasons to avoid on-site provision, such as the site being poorly located for affordable provision, where conversions do not lend themselves to affordable provision, where it is evidenced to be unviable or unfeasible or where there are other advantages to the Council in accepting a commuted sum such as achieving more, higher quality or better-located affordable units elsewhere; and

- The Council is confident that that the commuted payments can be spent on providing affordable units within the same area of the city within ten years of the payment being made; and
- The proposal is for less than 50 dwellings or is for a conversion.

Housing Mix

The proportion of housing suitable for families with children included within the affordable element should match the proportion of such housing on the wider site and a representative mix of house types and sizes should be provided.

Integration

Social rented housing should be situated close to local amenities, services and public transport. It should be tenure blind and well integrated with housing for sale. Large groupings of the same tenure type should be avoided.

Therefore no more than 0.5 ha of social rented housing should generally be located together.

Further information on the detailed implementation of the Council's affordable housing policy is set out in the Appendix. Among other things, this sets out the priority clients for affordable housing and the calculation of commuted sums.

Appendix : Affordable Housing Practice Note

This practice note is not planning guidance but it provides further information explaining how the policy and guidance is implemented. It should be read in conjunction with the policy and guidance and the Scottish Government circular Planning Advice Note (PAN) 2/2010 on Affordable Housing.

Contents:

- 1) Requirements, aims & objectives of the Affordable Housing Policy (AHP)
- 2) On-site affordable housing provision
- 3) Types of affordable housing tenure
- 4) Three flexibilities within the policy – Commuted Sums, Off-site land and Unsubsidised affordable housing tenures
- 5) Five considerations: tenure blind requirement, availability of public subsidy, viability, land valuations & AHP for major developments
- 6) Priority clients
- 7) Contact Details

SECTION 1 - Requirements, aims and objectives of the AHP

- The main requirement of the AHP is that applicants are required to provide land to the Council or a third party of the Council's choice, (normally a Registered Social Landlord / RSL).
- This land ought to be sufficient to provide 25% of the residential units contained within the application.

- By convention in Edinburgh, such land transfers will be transacted for no monetary or other consideration.
- Land is secured in a Section 75 legal agreement. Edinburgh has a Model Legal Agreement which outlines the standard terms, conditions and trigger points for this land transfer.
- It is the Council's stated preference that the affordable housing contribution should be made on-site, in whole or in part. This is in the interests of meeting identified affordable housing needs and developing mixed, sustainable communities in the city.
- Without the affordable housing policy, there would be a significant restriction on the amount of land that was available for RSLs to deliver affordable housing.
- Housing Need and Demand Assessments continue to identify a very large need for affordable housing, and social rented housing provides for those in highest priority need.
- Off-site provision will only be considered as a last resort.
- Applicants should engage with CEC at earliest stage to identify the affordable housing provision and approach to delivery.
- Applicants should also engage with RSLs at an early stage and prior to submitting a planning application. The affordable housing provider may have specific requirements in relation to the

design and specification of homes. Wherever possible, affordable housing should comply with the Scottish Government's Housing for Varying Needs criteria, particularly where subsidy is to be secured.

Affordable Housing Statement

Applicants are requested to submit, as part of their planning application, an Affordable Housing Statement to allow for quicker assessments of proposals. This Statement ensures that engagement and consideration of affordable housing provision is undertaken at the earliest opportunity to enable the appropriate layouts, mix and affordable housing tenure to be delivered.

The Statement will identify how the proposals meet planning standards whilst incorporating RSL requirements into the design of the building. The Affordable Housing Statement will include:

1. Confirmation of the proposed mix of approved affordable housing tenures and the RSL identified to deliver affordable housing;
2. Confirmation that the proposal meets the priority housing needs as identified in the HNDA and includes the following:
 - a) A mix of housing size and type, representative of that provided by the market housing; and
 - b) "Tenure blind" housing.

3. If affordable housing is not to be provided by an RSL, a clear statement on the management / maintenance arrangements and rationale for providing a lower priority tenure will need to be demonstrated, with a supporting detailed cost plan.

SECTION 2 - On-site affordable housing:

On-site affordable housing is the Council's stated preference for the delivery of any given affordable housing contribution. This will typically involve either:

- 1) A land transfer for no monetary or other consideration. The land must be capable of providing at least 25% of the proposed residential units. It will be transferred to the Council or a third party nominated by the Council for no monetary or other consideration. The land will be serviced land. The trigger points for the land transfer will be clearly laid out in a Section 75 Agreement. The Council's model agreement anticipates the land transfer will take place before 30% of the market units are completed (to ensure the affordable housing is not back-loaded). To satisfy the test of acting reasonably, there is a time limit of 60 months for the Council to agree contracts for the delivery of the affordable housing, on a "use it or lose it" basis. If, within this timescale, the Council cannot arrange for delivery on-site (or for an alternative flexible affordable housing solution to be agreed with the developer, all parties acting reasonably) the land will revert to the applicant as land for market housing.
- 2) Transfer of built units to an RSL or the Council. Following early engagement with an RSL or the Council, the developer builds the affordable housing units as an integral part of the development. These units would then be transferred (either as shells or as fully fitted units)

to an RSL or the Council for onward management and maintenance.

- 3) Delivery of on-site unsubsidised units. There are a range of unsubsidised affordable housing tenures, which all meet an identified affordable housing need in Edinburgh. Rather than gifting land for no monetary consideration, the developer may build out the units, and will be free to rent or sell them. The price and tenure of the units will be governed by a Deed of Conditions, which is agreed by both the developer and the Council within the Section 75 legal agreement. There is more information on each tenure type in the next section and the Council would encourage applicants to meet with officials at the earliest opportunity to discuss these arrangements in detail to help find the most suitable solution for both parties, on a case-by-case basis.

SECTION 3 - Tenure Types:

There is a broad range of approved affordable housing tenures. These are contained within Scottish Government Circular PAN 2/2010 paragraph 5 (or such future updated equivalent documents, as guidance may be updated from time to time).

The tenures below are ranked in priority order, reflecting the highest housing need identified for the City. Applicants should clearly identify how their proposals have been designed to allow for on-site delivery by an RSL in the first instance. Should that not be proposed, a clear rationale for providing a lower priority tenure should be demonstrated.

The Approved Tenure types:

The approved tenures are ranked below, in priority order, reflecting the highest housing needs of the city.

Social Rent (highest priority)

Housing provided at an affordable rent and usually managed locally by an RSL such as a Housing Association, Housing Co-operative, local authority or other housing body regulated by the Scottish Housing Regulator.

There is an expectation that 70% of the AHP requirement on each site to be for Social Rent, reflecting HNDA requirements and Scottish Government targets.

Mid Market Rent (MMR)

Private rented accommodation, subsidised, available at rents below market rent levels in the city, below Local Housing Allowance (LHA) levels.

Intermediate Rent (Unsubsidised MMR)

Private rented accommodation, unsubsidised, available at rents below market rent levels in the city (i.e. at a point at or below Scottish Government's last published Local Housing Allowance figures for the Lothians Broad Rental Market Area, or, only in agreement with the Council, at or below Scottish Government's last published figures for the Lothians Broad Rental Market Area 30th Percentile).

To provide certainty for developers and to allow for meaningful viability appraisals to take place, whilst ensuring such proposed developments meet an affordable housing need at the point where planning consent is issued, the Council is willing to agree to set rent levels using those figures on the date of the appraisal, even though those figures are recalculated and changed annually.

Intermediate Rent is an affordable housing tenure that is suited to large 'Build-to-Rent' (BTR) developments that are financed by institutional Investors and will deliver new homes rapidly and at a scale that supports placemaking.

Unsubsidised LCHO

A limited number of affordable homes delivered as unsubsidised LCHO may be acceptable if there is a clear rationale for not delivering higher priority affordable housing tenures. Any form of unsubsidised LCHO should not normally exceed 20% of the overall affordable housing provision, or 12 units, whichever is the lesser.

Unsubsidised LCHO (1) Golden Share

The purchase price is set at 80% of market value, the market value being set by an independent or district valuer to the satisfaction of the Council. The purchase price should not exceed £214,796, and properties approaching this value are expected to be 3 bedroom. Estimated sales values will be required to be submitted during the planning application for review. Purchasers must be able to evidence local connection and an inability to finance the purchase of the full market value of the property.

Unsubsidised LCHO (2) Unsubsidised Shared Equity

The owner purchases part of the dwelling, usually 60 to 80% of value, with the remaining stake held by a developer.

The maximum price paid for the purchaser's stake must not exceed 3.5 times the average income level in the city (a maximum purchase price of £159,051 based on Edinburgh's 2019 average household income of £45,443).

The property may therefore be valued anywhere up to £265,085 (in which case the £159,051 purchase price would give the purchaser a 60% stake in the property).

SECTION 4 - Flexibilities & How they work procedurally:

Where on-site, subsidised affordable housing is not viable or feasible there are three other possibilities which may be explored i.e. unsubsidised affordable housing tenures, off-site land provision, and commuted sum payments.

Where this is the case the Affordable Housing Statement should include a clear rationale for providing an off-site contribution and must be submitted as part of the planning application, along with a detailed cost plan.

Unsubsidised on-site affordable housing – see above sections on Golden Share and Unsubsidised Shared Equity.

Off-site land provision (wording as agreed in Planning Committee report 6 August 2009).

When an application proposes off-site affordable housing provision, it must be demonstrated that the alternative location:

- is a location where housing is supported in principle.
- is capable of delivering more than the number of affordable units required on the principal site (usually 25% of the total).
- is delivered to the Council, or directly to an RSL at no consideration, quicker than the affordable housing would have been delivered if located on-site, and typically no later than when the first building or demolition works take place on the principal site; and
- is within an area where there is not already a concentration of social rented accommodation.

A concentration of affordable housing would be present where there is a locality with more than 50% of the housing as social-rented tenure, including localities where the introduction of the proposed off-site arrangement would create more than 50% social-rented tenure within the locality area.

A locality area is normally the datazone within which the alternative site is found and the adjoining datazones. Datazones are the key small-area statistical geography in Scotland. Datazones are compiled by the Scottish Neighbourhood Statistics (SNS) Department of the Scottish Government.

The affordable housing clauses within the Section 75 legal agreement will be discharged immediately upon the transfer of title of the off-site location by a Developer to the Council (or an RSL).

A primary consideration within this approach is to ensure the AHP contributes to the Council's commitment to create mixed, sustainable communities.

Commuted Sums (wording as agreed in Planning Committee report 13 May 2010).

Commuted sums may be considered for local developments and, where justified, in exceptional cases may be considered for major developments.

The commuted sum is a financial sum, paid by a developer to the Council. The Council shall utilise the commuted sum towards the provision of affordable housing within 10 years of payment.

The commuted sum is paid in lieu of serviceable land which would have been delivered to the Council or to an RSL nominated by the Council for the purpose of developing affordable housing.

The principal site should be valued assuming it benefits from planning permission, it is serviceable, there is no affordable housing contribution to be made and there is no commuted sum payable.

The commuted sum should be arrived at by multiplying the land value per unit by the number of affordable housing units required.

The Council rounds down the number of affordable housing units required to the nearest lower whole number of units when those units are provided on-site. However, for the commuted sum formula the Council employs a direct percentage calculation in order to reflect the precise affordable housing contribution generated by the application.

For example, a 15 unit proposal would generate a 3 unit contribution on-site or a 3.75 unit (15/4) contribution if a commuted sum is agreed. In practice, in this example, the developer would pay 3.75 x agreed land value per unit. Land value would be based on a DV Independent valuation. The developer will be required to cover the costs incurred by the Council to carry out this valuation.

Full commuted sums will be secured using the above formula. Only where the principle site demonstrates a nil land value or negative land value, then the commuted sum will be calculated by the District Valuer based on latest market evidence of land value within a one-kilometre radius of the principle site.

SECTION 5 - Six considerations associated with on-site affordable housing:

- 1) “Tenure blind” requirement: In the interests of delivering mixed, sustainable communities the AHP units will be expected to be identical in appearance to the market housing units, an approach often described as “tenure blind”.
- 2) Consolidation: On smaller developments of between 20 and 50 flats, it is likely an RSL will want to consolidate ownership of the affordable homes within a single stairwell. Proposals should be designed taking this into account, along with

RSL design standards, to allow for on-site delivery to be achieved. Affordable homes with three or more bedrooms should be on the ground floor where practical.

- 3) Availability of subsidy: Availability of subsidy will be a key determining factor around the eventual tenure mix. Given that subsidy arrangements are considered annually, but a planning consent is typically between 2 and 5 years, the Council prefers to set at planning stage and within Section 75 agreements that 25% of the residential units in the application will be of approved affordable housing tenures, with the precise tenure mix to be determined by application stage. This is acceptable in policy terms and allows for viability, financial and deliverability considerations to be fully taken into account. There are a range of unsubsidised tenures which have been developed in Edinburgh in the event that public subsidy is not available.

There has been a long-held aspiration that, where sufficient public subsidy is available, there will be a majority of social rented units within the AHP contribution, and where possible an aspirational mix of 70:30 should be achieved between social rented units and other approved affordable housing tenures.

Developers should note that the provision of subsidy is not guaranteed, and where subsidy is not available, the policy’s requirement to deliver affordable housing remains.

- 4) Viability considerations: There are two types of viability consideration taken into account when discussing on-site affordable housing contributions.
 - i) Viability for the Council / RSL – The developer and RSL may calculate the construction price equivalent (excluding land) for a tenure blind 2 bed property if delivered on-site using the

same materials & construction techniques as the market housing units proposed.

- ii) Viability for the developer / open book – If a developer wishes to demonstrate that their development contains exceptional costs which make the affordable housing contribution non-viable on-site, then a full assessment of costs will be required based on an “open book” approach i.e. the developer will be expected to make all of the relevant cost information available to the Council and/or relevant partner housing association. The developer will be required to cover the costs incurred by the Council to carry out this assessment. This is most often applied where there is a renovation of an existing listed building or where there are demonstrable exceptional site preparation and decontamination costs which the developer will incur.
- 5) Valuing AHP land By convention nil value as codified in a number of Section 75 agreements. Valuing AHP land differs from valuing sites for affordable housing, which valuations tend to carry a positive but lower than market value.
- 6) Planning Permission in Principle (PPP) applications and phased developments.

When such applications go before the Planning Committee, Place will seek as a minimum commitment that the applicant is committed to providing 25% of the residential units as approved affordable housing tenures. The Department’s preference is that these should be delivered on-site, though Section 4 covers other approved flexible affordable housing solutions. Where the development is to be phased, the department seeks a commitment that the specific affordable housing plots are identified at the time of application

(and that these locations are acceptable to the Council), or alternatively that each phase of the development will contain 25% affordable housing. This is to ensure the development does not either overly concentrate or “back-load” the affordable housing contribution.

Prior to the submission of relevant detailed matters, the applicant should engage with the Council and RSLs to identify the affordable housing provision and approach to delivery. The proposed approach should be explained within a further Affordable Housing Statement submitted for consideration and approval as part of relevant applications for the Approval of Matters Specified in Conditions

SECTION 6 - Definition of Priority clients

Priority clients for affordable housing tenures in Edinburgh are people in housing need who cannot afford to access accommodation through the regular functioning of the housing market, whether for rental or home ownership tenures. Housing need refers to households lacking their own housing or living in housing which is inadequate or unsuitable, who are unlikely to be able to meet their needs in the housing market without some assistance and who earn less than the average household income.

The average household income in Edinburgh is £45,443 and is annually updated.

SECTION 7 - Contact details:

If you would like to discuss any of the content of this practice note please contact:

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HAPPY TO TRANSLATE

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