

Planning and affordable housing for Build to Rent– Local Government Association consultation response

04 May 2017



Introduction

The Local Government Association (LGA) welcomes the opportunity to respond to this [consultation](#).

The LGA is here to support, promote and improve local government. We will represent local government and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services. www.local.gov.uk

This response has been agreed by the LGA's Environment, Economy, Housing and Transport (EEHT) Board. The EEHT Board has responsibility for LGA activity in relation to the economy and environment, including: transport, employment and skills, economic development and business support, housing, planning, waste and climate change.

Summary and key points

The [LGA's Housing Commission report](#) (December 2016) highlighted the potential to expand the development of purpose built large scale developments for private rent. We welcome the opportunity to expand the recommendation of that report that national and local government should work together to attract institutional investors into this type of development.

The Build to Rent consultation document includes a number of examples of successful Build to Rent developments facilitated by councils. Councils are also developing their own purpose built schemes for private rent. There is much existing good practice to share, which should be fully exploited before further reforms of the planning system are implemented.

Key messages:

- Councils are supportive of Build to Rent and recognise the important role that it can play in delivering much needed high quality market rented housing.
- There are already numerous examples of successful arrangements between councils and developers, as outlined in the consultation paper. Learning from these early adopters can be used to support other developments. Central government and the LGA could play a role in sharing this knowledge to provide support to councils and developers.

Briefing

- Councils need local flexibility to support the development of the Build to Rent market so that it can be aligned with local housing priorities. The potential for Build to Rent will vary across different housing markets, and appetite for development will be strongest in areas where demand, land values and returns from rental income make it economically viable. Rather than changing the National Planning Policy Framework, government should allow councils to adopt a flexible approach by using guidance to support the development of this sector.
- It is important that any definition of affordable housing reflects the realities of what households can afford locally and that local planning authorities can plan for the mix of new housing that meets community need. Our view is that councils through their Local Plans should determine any proportion of Affordable Rented Homes that are required, taking into account local housing need as identified in their Strategic Housing Market Assessments (SHMAs) and site viability.
- The transitional period for the introduction of any policies proposed in this consultation should be aligned with other proposed changes to affordable housing and the wider changes in the National Planning Policy Framework, with an appropriate lead-in period.
- The government should provide clarity as soon as possible on whether LPAs should be giving consideration to the proposed new affordable housing definition that includes Affordable Private Rent, where schemes are likely to be completed after the six month period/April 2018.

Response to consultation questions

Q 1: Please indicate whether you are responding as a private individual or on behalf of an organisation?

This response is from the Local Government Association

Q 2. If you are responding as a private individual, please identify in what capacity you are replying and whether your main interest is as:

- ***A person living in private rented accommodation?***
- ***A person living in affordable housing?***
- ***A private landlord?***
- ***Other? (Please specify)***

Not applicable

Q 3. If you are responding on behalf of an organisation, please identify in what capacity you are replying and the main interest of your organisation:

- ***An investor in Build to Rent schemes***
- ***A developer of Build to Rent homes***
- ***A lender to Build to Rent schemes***
- ***A supplier of management and/or other services to Build to Rent homes***
- ***Other private landlord***
- ***Social landlord (either Registered Provider or local authority)***

- **A developer of other housing tenures besides Build to Rent**
- **A trade or other representative body**
- **Local authority**
- **Other? (please specify)**

Local authority

Q 4. Please specify the part(s) of England in which you live, or your organisation's activities (or members) are principally located:

- **London**
- **South East**
- **East of England**
- **South West**
- **East Midlands**
- **West Midlands**
- **Yorkshire & Humber**
- **North East**
- **North West**
- **Other (please specify)**

The Local Government Association is a national organisation representing councils in England.

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? Please add comments.

While the consultation paper focuses on the role of the planning system in facilitating the Build to Rent market there are other wider, issues to consider. A narrow focus on the planning system may miss the opportunity to consider broader actions to unlock potential investment.

For example, funders are generally seeking investment opportunities in developments that have already been built, rather than commissioning and building new properties themselves. The lack of suitable stock for them to purchase is one of the reasons for the slow development of the market. The British Property Federation (BPF) highlighted this point in their evidence to the LGA's Housing Commission.

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

Councils need local flexibility to support the development of the Built to Rent market so that it can be aligned with local housing priorities. The potential for Build to rent will vary in different housing markets, and the appetite for development will be strongest in areas where demand, land values and returns from rental income make it economically viable. We consider that it would be more appropriate for Build to Rent to be included as an example within the National Planning Policy Practice Guidance.

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.)

Affordable Private Rent could be a useful addition to the existing suite of affordable housing products, where this fits with local needs. However, it should be for councils in negotiation with developers to determine the type of affordable housing in any given development, taking local housing need into account.

Councils are already accepting Discounted Market Rent products as a form of affordable housing for Build to Rent schemes and have been demonstrated to apply a more flexible approach to affordable housing negotiations by allowing developers to provide lower levels of affordable housing where necessary.

The consultation document outlines that the definition of affordable housing in the NPPF implicitly allows Affordable Private Rent to count as intermediate housing and councils are often already accepting Discounted Market Rent products as a form of affordable housing for Build to Rent schemes. We are therefore unclear why the changes to the NPPF are necessary and have concerns that the proposals appear to reverse the minimalist approach taken in establishing the National Planning Policy Framework

Should government implement the proposed changes, any revision to affordable housing policy must reflect the realities of what households can afford locally, and allow local planning authorities to plan for the mix of new housing that meets community need. For many households in many housing markets, 20 per cent below market rent as is proposed for Affordable Private Rent remains unaffordable.

We would welcome clarity on the exact definition for Affordable Private Rent that is being proposed – the definition as set out in Box 4 on page 100 of *'Fixing our broken housing market'* is different to that proposed in this consultation paper on page 21.

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)

As noted in our answer to Question 6 we do not agree that it is necessary to amend the National Planning Policy Framework. We consider that building councils' knowledge and awareness of Build to Rent, through advice, guidance and sector-led support would be more appropriate than setting out a policy expectation in national policy.

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?

Affordable Private Rent could play a useful role in the delivery of affordable housing in some housing markets, but as our response to question 7 outlines, in others, 20 per cent below local market rent will remain unaffordable for many households. LPAs will need flexibility to negotiate

with developers to determine a discounted rent that is affordable to local people based on locally assessed needs and taking into account site viability.

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?

This would need to be tested on a case by case basis. While it may be cheaper to provide affordable private rent onsite as part of the commercial development this may not be the best solution for local housing need.

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?

The consultation raises concern about potential risks that could arise if Affordable Private rent if, for example, widespread uptake on other types of development meant that fewer new affordable homes were made available as Affordable Private Rent or as other types of affordable housing.

We have concerns about the government's proposed strong policy direction to ensure that LPAs accept a Build to Rent development's contributions to affordable housing, if they offer a minimum of 20% of the homes, at a minimum of 20% discount as Affordable Private Rent, as part of a planning application.

LPAs should still be able to seek a higher percentage contribution or larger level of discount where site viability allowed and where it would help to meet locally assessed housing need. Otherwise, there is a risk that the proposal could result in fewer affordable homes than might have otherwise been secured as well as housing that is not accessible to those in genuine affordable housing need because the discount is not set at the right level.

The consultation paper states that schemes will typically be professionally managed stock in single ownership and management control. There should be flexibility for there to be a registered provider role in Affordable Private Rent, where appropriate and agreed locally with a developer. We would welcome clarity regarding the safeguards that will be put in place as to the management of Affordable Private Rent if regulation, similar to that covering more traditional forms of affordable housing, is not envisaged.

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?

Our view is that councils through their Local Plans should determine any proportion of Affordable Private Rented homes that are required, taking into account local housing need as identified in their Strategic Housing Market Assessments (SHMAs) and site viability.

Locally led delivery will enable councils and developers to balance the delivery of Affordable Private Rented alongside other discounted-market home ownership and rental products, on a site by site basis.

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.

Yes, along with the ability for the tenant to choose the tenancy length that suits them.

The tenant should also have the right to renew their tenancy. This would allow families (for example) to have greater confidence that they could remain living in the same home for longer than 3 years.

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?

Yes.

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 the consultation paper recognises, there is a risk that a tight definition of Built to Rent housing could constrain the market. Government should set a loose definition of tenure and typology and allow councils to set local definitions that best meet the needs of the market.

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.)

We consider that it would be helpful for the government to provide a steer that Affordable Private Rent qualifies as affordable housing in Build to Rent schemes, providing clarity to local authorities and the Build to Rent sector. However, we consider that this should appear within the National Planning Practice Guidance rather than on the face of the National Planning Policy Framework.

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 consider that this definition is too tightly defined for the National Planning Policy Framework. We consider that the definition of Affordable Private Rent housing outlined on page 100 of the 'Fixing our broken housing market' paper is sufficient, with the caveat that it would be more appropriate to refer explicitly to Build to Rent as an example within the National Planning Policy Practice Guidance rather than on the face of the NPPF.

The guidance should also be clear that LPAs can seek a higher percentage contribution or larger level of discount where site viability allows and where it would help to meet locally assessed housing need.

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 tenancy 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?

It is important that the definition of affordable housing reflects the realities of what households can afford locally and that local planning authorities can plan for the mix of new housing that meets community need. For many households in many housing markets, 20 per cent below market rent or price remains unaffordable.

Should the parameters be set as proposed, LPAs should have flexibility to determine the balance of affordable housing products delivered locally, including rent and home ownership. This should include the proportion of Affordable Private Rent homes that are required to meet locally assessed need.

We would welcome clarity on whether all the proposed parameters would apply to Affordable Private Rent in all contexts, or just for Affordable Private Rent in Build to Rent schemes.

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

If the proposals are taken forward they should be included with the National 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.

Determination of eligibility and nomination criteria for Affordable Private Rent should be set through local policies, rather than negotiated between developers and local authorities, unless there are exceptional circumstances why the policies cannot apply on a site by site basis. The government could emphasise the importance of early pre-application discussions between Build to Rent developers, councils and the local community about design and the types of homes to be provided in Build to Rent schemes. This could also include early discussion about the local policy expectations regarding eligibility and nomination criteria.

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 there is no need for a fixed minimum covenant period to be set nationally, but there should remain flexibility for councils to enter into a covenant with Build to Rent schemes to remain in the Private Rented Sector, for an agreed minimum period of time.

This could be accompanied by guidance, that government could develop with local government and the Build to Rent sector which would set out a possible basis for calculating the amount of claw-back where withdrawal of the Affordable Private Rent homes is necessary. This could cover cases where:

- a) a local authority has not entered into a fixed minimum covenant period with a Build to Rent scheme or
- b) there are exceptional circumstances why a Build to Rent scheme cannot fulfil an agreed covenant commitment and the local authority agrees that the covenant can be broken

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?

The consultation paper notes that national parameters may not work in London because of the specific nature of the rental market. Other places may also offer specific markets and contexts. To give councils flexibility, the amount of claw-back should be agreed between the local authority and the applicant.

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.

No comment.

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, this would streamline the planning process and the government should work with local government to develop these.

Q 25: Is a transitional period of six months appropriate for the introduction of the policies proposed in this consultation? (If not, why not?)

The White Paper proposes a transitional period for the changes to the affordable housing definition to align with the coming into force of other proposals set out (April 2018), which is not consistent with the above proposal of six months.

The transitional period for the introduction of any policies proposed in this consultation should be aligned with other proposed changes to affordable housing and the wider changes in the National Planning Policy Framework, with an appropriate lead-in period.

The government should provide clarity as soon as possible on whether LPAs should be giving consideration to the proposed new affordable housing definition that includes Affordable Private Rent, where schemes are likely to be completed after the six month period/April 2018.

Q 26: Does the summary Equalities Statement in Annex A represent a fair assessment of the equalities impacts of the policy proposals in this consultation? Please provide any further evidence on this issue, including how any negative impacts might be minimised and positive impacts enhanced.

We welcome the government's commitment to give further consideration to the equalities impact. Additional evidence will help to explore the impact of rapid growth in this sector, particularly if Government implements policy change to facilitate Affordable Private Rent as a form of affordable housing on Build to Rent schemes in place of other types of affordable housing.

As noted above, clarity on the safeguards for the management of tenancies in the proposed new category of Affordable Private Rent would provide reassurance that tenants, including vulnerable groups, would have an equivalent degree of protection as those living in homes provided and managed by a social landlord.