

## **1. Introduction**

Following the publication of a Written Ministerial Statement (WMS)<sup>1</sup> on 24 May 2021 setting out the government's plans for the delivery of First Homes, this interim position statement sets out how Hertsmere Borough Council will implement the national requirement for the provision of First Homes in 'decision taking', in the period prior to publication of a Regulation 19 Local Plan and Affordable Housing Strategy, currently anticipated to be in mid-2022.

## **2. Background**

The Government has published a WMS setting out national planning policy for a new affordable housing product called First Homes. First Homes are a type of discounted market sale housing; they fall within the definition of Affordable Housing set out in the National Planning Policy Framework (NPPF) and are the government's preferred discounted market tenure.

The WMS covered matters including:

- Definition of First Homes;
- Eligibility criteria;
- Implications for local authority Affordable Housing policies and securing policy compliant development;
- Transitional arrangements;
- Discounts to be applied; and
- Other changes to planning policy including the introduction of First Homes Exception Sites.

Following publication of the WMS, Planning Practice Guidance (PPG)<sup>2</sup> was updated to reflect the WMS. The WMS and PPG set out the potential for First Homes to be provided through the planning system from 28 June 2021, before becoming a requirement in respect of planning applications determined from 28 December 2021 (or 28 March 2022 if there have been significant pre-application discussions). For the purposes of First Homes, this is classified as a pre-application where the required pre-application fee has been paid and the final written advice provided by the Council including where there have been substantive discussions relating to the proposed quantity or tenure mix of the affordable housing contribution.

The government has set out transitional arrangements in relation to the development plan for the area and determination of planning applications; the extent to which the requirement for First Homes needs to be reflected in Local Plans is dependent upon the stage of preparation of the Local Plan at 28 June 2021. As Hertsmere's emerging new Local Plan had not reached Regulation 19 stage at that date it will need to reflect the requirement for First Homes on qualifying sites. In the meantime, the PPG and WMS indicate that the local planning authority should make clear how existing policies should be interpreted in the light of First Homes requirements.

The current policy setting out the council's Affordable Housing policy is Policy CS4 *Affordable Housing* in the adopted Local Plan; this pre-dates the introduction of First Homes and therefore makes no reference to them. The emerging new Local Plan and an Affordable Housing Strategy which will sit alongside it will formally incorporate policy requirements for the provision of First Homes; the emerging new Local Plan (which sets out proposed, overall First Homes requirements) will however not carry weight until, at the earliest, the Regulation 19 Plan is published. In the intervening period this Interim Policy Statement sets out the basis on which First Homes will be

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<sup>1</sup> <https://hansard.parliament.uk/commons/2021-05-24/debates/21052448000014/AffordableHomes>

<sup>2</sup> <https://www.gov.uk/guidance/first-homes>

required on qualifying sites i.e. those where policy CS4 in the currently adopted Local Plan requires the provision of Affordable Homes.

### **3. Interim Affordable Housing/First Homes Policy**

In order to be policy compliant, planning applications for which Policy CS4 *Affordable Housing* requires the provision of Affordable Housing<sup>3</sup> which are determined from 28 December 2021, (or 28 March 2022 if there have been significant pre-application discussions) will:

- need to include the delivery of First Homes in line with the criteria set out in this Interim Policy Statement;
- need to deliver 25% of any requirement for Affordable Housing on a site as First Homes, in line with government policy<sup>4</sup>;
- be required to demonstrate that the homes intended to be sold as First Homes will meet the eligibility criteria set out below;
- include appropriate legal safeguards, including through s106 Agreements, ensuring that First Homes criteria are met in perpetuity;
- aim to result in 10% of all homes on the site being for affordable home ownership, as required by the NPPF. In locations within the borough where Policy CS4 requires 40% Affordable Housing the provision of 25% of Affordable Housing as First Homes will achieve this. Where CS4 requires 35% Affordable Housing, additional First Homes /affordable home ownership products may be required in order to bring the proportion of affordable home ownership up to 10% of total homes on the site (see section 7 below).

The normal requirements of Policy CS4 and the Affordable Housing SPD will continue to apply in relation to Affordable Housing provision, including

- on-site delivery of all Affordable Housing, including First Homes, is expected, and
- alternatives to on-site provision of the full Affordable Housing requirement will only be acceptable in exceptional circumstances, supported by robust evidence.

The WMS and PPG now form a material consideration in the determination of planning applications.

### **4. First Homes Eligibility Criteria - Homes**

In order to qualify as First Homes, development proposals submitted for consideration during the life of this Interim Policy Statement need to meet the national First Homes criteria. They must meet all of the following:

- be sold at a minimum of 30% discount against the market value;
- be sold to a person or persons meeting the First Homes eligibility criteria (see below);
- be capped at a price of £250,000 (after the discount has been applied) on first sale;
- ensure the discount is retained for every future sale.

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<sup>3</sup> The National Planning Policy Framework (NPPF) indicates that the provision of affordable housing 'should not be sought for residential developments that are not major developments' (paragraph 64). The glossary in the NPPF defines major developments as those 'where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more'. Consequently, we will only seek the provision of Affordable Housing on residential developments of 10 or more homes (gross) or sites with an area of 0.5 hectares or more. Affordable Housing will not be sought on developments of 1-9 homes (gross) unless the site has an area of at least 0.5 hectares. See <https://www.hertsmere.gov.uk/Planning--Building-Control/Planning-Policy/Other-guidance-and-information/Planning-publications/Affordable-Housing-SPD.aspx>

<sup>4</sup> Planning Practice Guidance Paragraph: 001 Reference ID: 70-001-20210524

Market value will be set by an independent registered valuer. Where s/he is appointed by the developer the Council's retained viability consultants may be asked to review the valuation provided, the cost of which may be charged to the applicant.

A developer will be free to offer a discount in excess of 30% should they wish to do so.

In order to ensure that the discount is passed on to all future purchasers the landowner will be required to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 that

- secures the delivery of the First Homes; and,
- ensures that a legal restriction is registered onto a First Home's title on its first sale.

When a First Home is sold by the developer to the first owner, a restriction is to be entered onto the title register identifying the unit as a First Home. This restriction will ensure that the title cannot be transferred to another owner unless the local authority certifies to HM Land Registry that the First Homes criteria and eligibility criteria have been met, including the discounted sale price.

First Homes are intended to be used as a person's sole or primary residence although national policy recognises there are occasions when it may be necessary for owners of First Homes to let out their property for short periods of time. Therefore, a First Homes owner can only rent out their home for a maximum period of two years but it is a requirement that the Council is notified; in such instances, the planning department should be notified and an acknowledgement received by the homeowner. In line with the national policy, any rentals for longer periods will only be considered exceptionally and under the follow circumstances:

- deployment elsewhere (for members of the Armed Forces);
- primary caring responsibilities for relative/friend;
- short job posting elsewhere; redundancy;
- domestic abuse; and
- relationship breakdown.

Where evidence justifies it (for example through emerging policy) the WMS enables the minimum discount in an area to be increased to 40% or 50%. The PPG indicates that 'as part of their plan-making process, local planning authorities should undertake a housing need assessment to take into account the need for a range of housing types and tenures... The assessment will enable an evidence-based planning judgement to be made about the need for a higher minimum discount level in the area, and how it can meet the needs of different demographic and social groups.'<sup>5</sup>

The South West Hertfordshire Local Housing Needs Assessment (LHNA) provides evidence of acute affordability issues in Hertsmere. An Affordable Housing Strategy, informed by the LHNA, is in the process of being developed and is likely to indicate a need to increase the discount on Future Homes from 30%. The national criterion of 30% discount for First Homes will however be applied unless and until the Affordable Housing Strategy clarifies any need for a greater discount and if this is subsequently reflected in the emerging new Local Plan once it has reached Regulation 19 publication stage and thus carries weight in the determination of planning applications.

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<sup>5</sup> PPG First Homes Paragraph: 004 Reference ID: 70-004-20210524

## 5. First Homes Eligibility Criteria - Buyers

National policy requires that all First Homes buyers must meet all of the following:

- be first-time buyers (as defined in paragraph 6 of schedule 6ZA of the Finance Act 2003 for the purposes of Stamp Duty Relief for first-time buyers);
- have a combined annual income not exceeding £80,000 (in the tax year immediately preceding the purchase);
- occupy a First Home as their sole or primary residence; and
- use a mortgage or home purchase plan (if required to comply with Islamic law) for at least 50% of the discounted purchase value.

These criteria will apply to First Homes in Hertsmere, unless and until the emerging Affordable Housing Strategy and new Local Plan introduce any of the additional buyer eligibility requirements which the WMS allows local authorities to apply.

In recognition of the unique nature of their circumstances, the PPG indicates that ‘members of the Armed Forces, the divorced or separated spouse or civil partner of a member of the Armed Forces, the spouse or civil partner of a deceased member of the Armed Forces (if their death was caused wholly or partly by their service) or veterans within five years of leaving the Armed Forces should be exempt from any local connection testing restrictions.’<sup>6</sup>

## 6. Future eligibility criteria

The purpose of the government’s First Homes policy is to enable people to get on the housing ladder in their local area. It therefore enables the local authority, through the s106 agreement, to apply additional local eligibility criteria, including a

- local connection test and/or
- key worker test.

The PPG indicates that local connections may include (but are not limited to) current residency, employment requirements, family connections or special circumstances, such as caring responsibilities. In order to maximize the opportunity for local households to secure access to First Homes in Hertsmere, it is likely that a local connections requirement will be applied to First Homes for which permission is granted once the new Local Plan and Affordable Housing Strategy are published.

First Homes are also designed in particular to ensure that key workers providing essential services are able to buy homes in the areas where they work. Authorities can therefore prioritise key workers for First Homes. The PPG indicates that the definition of a key worker should be determined locally and could be any person who works in any profession that is considered essential for the functioning of a local area. In order to ensure that as many people who provide essential services in Hertsmere as possible can live locally, it is also likely that certain categories of employment within which households will be prioritized for access to First Homes will be identified in the Affordable Housing Strategy.

To ensure compliance with national policy, any additional eligibility criteria in respect of local connection or key worker status, once introduced, will only apply for the first three months of

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<sup>6</sup> PPG First Homes Paragraph: 008 Reference ID: 70-008-20210524

marketing. If there is no sale after three months, any such local criteria will fall away and the default national criteria will apply.

## 7. Application of Policy CS4 Affordable Housing

Policy CS4<sup>7</sup>, as currently applied in line with the NPPF (see footnote 3 above) requires developments of 10 or more homes, or residential sites of 0.5ha or more, to make provision for Affordable Housing. The overall level of provision required varies between 35% and 40% depending on the location within the borough.

The council's expectations regarding tenure mix are set out in Policy CS4. Sites of less than 15 units can deliver intermediate housing, whilst those of 15 or more units are required to contain a mix of social rented, affordable rent, and intermediate homes reflecting current housing needs or updated supplementary guidance. The Affordable Housing SPD 2015 indicates that 'The tenure mix required on each site will take into account the tenure profile of the surrounding area, and will be based on the prevailing need for Affordable Housing units.' Table 3 of the SPD sets out the tenure mix requirements and notes that 'If the proposed Affordable Housing mix between social and intermediate housing is not acceptable planning permission is likely to be refused.' (para 1.27)<sup>8</sup>

Size of site (gross)	Affordable housing - on-site mix	Units sought off-site
15 units+	75% social and affordable rent, 25% intermediate	Only in exceptional circumstances
5 - 14 units	Intermediate and/or social rent	Only in exceptional circumstances
1 - 4 units where the site area exceeds 0.2ha*	None	Commutated sum

**Table 3 from Affordable Housing SPD**

The introduction of the government's First Homes policy requires 25% of affordable housing provision on qualifying sites to be for First Homes, with 75% remaining for other tenures. The WMS and Planning Practice Guidance state that once a minimum of 25% First Homes has been accounted for, social rent should be delivered in the same percentage as set out in the Local Plan, and then other tenures delivered in the same proportions as set out in policy. It should be noted in this context that First Homes are a type of Intermediate Affordable Housing.

From 28 December 2021 therefore, Policy CS4 requires the following Affordable provision to be made:

On sites of 10-14 units, where affordable provision may be delivered solely through intermediate housing, the affordable element may therefore either comprise 100% First Homes, a mix of First Homes and other intermediate products, or any combination of First Homes/other intermediate

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<sup>7</sup> See Appendix 1

<sup>8</sup> Sites of less than 10 units or 0.5ha are no longer required to provide Affordable Housing (see footnote 3 above)

products and social/affordable rent, subject to at least 25% of affordable units being First Homes<sup>9</sup>. On sites of 15 or more units, the split should be as close to the following as possible (following rounding)<sup>10</sup>:

- 25% First Homes
- 75% social and affordable rent

Should First Homes not be sold following effective marketing for 12 months, including where appropriate a reduction in the asking price, the units should be offered through alternative types of intermediate housing products as identified in either the Council's Affordable Housing SPD or Affordable Housing Strategy. Evidence of marketing should be provided to the Council. These requirements will be clarified in the s106 agreement for the site.

Detailed breakdown of size and tenure of First Homes units to be provided should be agreed with the Housing Officer on a site by site basis and will be required to reflect the prevailing need for Affordable Housing units in the area.

An additional consideration is that NPPF paragraph 65 indicates that where major development is proposed, at least 10% of the total number of homes should be available as an 'affordable home ownership product'.

The Council's emerging, draft Local Plan seeks 40% Affordable Housing on all sites which will result in the First Homes proportion amount to 10% of the total homes provided.

However, the current Core Strategy Policy CS4 requirement of at least 35% Affordable Housing in lower value areas of the borough will mean that the provision of 25% First Homes within the Affordable Housing requirement will only amount to 8.75% of units on site.

On sites of 10-14 units, Policy CS4 requires the provision of Affordable Housing to comprise intermediate units and/or social rent. Here, the provision of 25% First Homes with the remainder of the 35% affordable requirement being for Intermediate and/or social rent units will also achieve 10% Affordable Home Ownership without the need to reduce the proportion of social rented units in order to meet the 10% target (partly due to rounding).

On many sites of 15 units and above however, where policy CS4 requires the affordable provision to be split 75% social and affordable rent/ 25% intermediate properties, delivering 25% of the properties as First Homes, and ensuring that both

- Affordable Home Ownership comprises 10% of all homes on the site and
- three-quarters of the affordable units are social and affordable rent (as required by Policy CS4)

would require the provision of 40% Affordable Housing. At 35% Affordable Housing, achieving 10% Affordable Home Ownership would result in the balance of affordable tenures shifting slightly away

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<sup>9</sup> Subject also to the NPPF policy of achieving 10% of all units on a site being for affordable home ownership (see below)

<sup>10</sup> Subject also to the NPPF policy of achieving 10% of all units on a site being for affordable home ownership (see below)

from social and affordable rent towards First Homes and/or other affordable home ownership products.

On larger sites, a small deviation from the 25% Intermediate /75% social and affordable rent affordable tenure split can lead to a more noticeable change in the number of social/affordable rented units (see Appendix 2). As Policy CS4 requires *at least* 35% Affordable Housing, on sites of more than 50 units (gross), applicants should seek to exceed this and deliver 40% Affordable Housing unless it can be demonstrated that this is not viable. This will ensure that First Homes do not significantly affect the proportion or actual numbers of social/affordable units delivered on these larger sites. Where a commuted sum in lieu of on or off-site provision is agreed, the methodology for calculating the financial contribution due set out in the Affordable Housing SPD will be applied.

## **8. Community Infrastructure Levy**

The CIL Regulations provide that mandatory social housing relief can apply to dwellings where the first and subsequent sales are for no more than 70% of their market value i.e. First Homes. To be eligible, a planning obligation must be entered into prior to the first sale of the dwelling designed to ensure that any subsequent sale of the dwelling is for no more than 70 per cent of its market value. [Regulation 49](#) (as amended by the [2015 Regulations](#) and the [2020 \(No. 2\) Regulations](#)) defines where social housing relief applies.<sup>11</sup>

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<sup>11</sup> PPG Community Infrastructure Levy Paragraph: 065 Reference ID: 25-065-20201116

## **Appendix 1**

### **Policy CS4 Affordable Housing**

*To increase the supply of Affordable Housing, developments of 5 self-contained, residential units or more (gross), or residential sites of more than 0.2 hectares, should make provision for an element of Affordable Housing. On sites of fewer than 15 units, this may be delivered through the provision of intermediate housing (including shared ownership and share equity), with sites of 15 units or more containing a mix of social rented housing, affordable rent and intermediate housing.*

*The following percentage targets will be sought through negotiation:*

- 40% in post code areas EN5 4, WD25 8, WD7 8, WD7 7;
- at least 35% in all other locations;

*Appendix 6 provides a map of the post code areas within Hertsmere.*

*The policy equates to an affordable housing target of 1,140 from 2012 to 2027.*

*The Council will seek the maximum level of Affordable Housing on site. A lower level of provision will not be acceptable unless the Council agrees exceptional circumstances are demonstrated. Only in exceptional circumstances will an alternative to on-site provision be appropriate.*

*As a guideline, on sites of 15 or more units (gross) or 0.5 hectares, the Council expect that 75% of the Affordable Housing units will be delivered as social rented and/or affordable rent housing and the remainder as intermediate housing. The precise tenure and dwelling mix will be agreed with the Council on a site-by-site basis and reflecting current housing needs or updated supplementary guidance.*

*Where scheme viability may be affected, developers will be expected to provide full development appraisals to demonstrate an alternative affordable housing provision.*

### **Policy CS7 Housing mix**

*To help meet local housing needs, proposals for new housing should provide an appropriate mix and size of new homes in terms of housing size and type within each tenure. Development proposals will be permitted, subject to the requirements of other relevant DPD / Local Plan policies, so long as:*

- i) housing developments in excess of 10 units (gross) contain some variation within their housing mix, with sites over 25 units or 1 hectare reflecting identified variations within the Borough's housing need, subject to proposals respecting the prevailing character of the area; and*
- ii) on large sites allocated in the Site Allocations DPD and large windfall sites, the need for a proportion of sheltered or extra care housing is considered as part of the overall housing mix.*

*Consideration will be given to the incorporation of minimum floorspace guidance in revisions to Part D of the Planning and Design Guide Supplementary Planning Document in support of the provision of high quality residential environments.*



## Appendix 2

Affordable Housing mix scenarios where 10% of all units are provided as Affordable Home Ownership (AHO) units and one quarter of Affordable Housing units are provided as First Homes

(non-rounded figures in brackets)

<b>Total residential units</b>	<b>35% overall Affordable Housing provision</b>	<b>First Homes requirement (25% of Affordable Housing)</b>	<b>10% of all units - Affordable Home Ownership NPPF requirement</b>	<b>Additional intermediate units over and above First Homes provision to meet 10% AHO requirement</b>	<b>Split between First Homes/AHO and Social/Affordable Rent (if 10% of units are First Homes/AHO and total Affordable Housing remains at 35%)</b>	<b>Shortfall of social/affordable rent, if overall affordable provision remains at 35% to accommodate 25% First Homes</b>
10	4 (3.5)	1	1	0	25%/75%	0
11	4 (3.85)	1 (0.96)	1 (1.1)	0	25%/75%	0
12	4 (4.2)	1 (1.05)	1 (1.2)	0	25%/75%	0
20	7	2 (1.75)	2	0	29%/71%	0
30	11 (10)	3 (2.62)	3	0	25%/75%	0
50	18 (17.5)	4 (4.37)	5	1	29%/71%	1
60	21	5 (5.25)	6	1	29%/71%	1
100	35	9 (8.75)	10	1	29%/71%	1
150	53 (52.5)	13 (13.1)	15	2	25%/75%	2
200	70	18 (17.5)	20	2	29%/71%	2
400	140	35	40	5	29%/71%	5
500	175	44 (43)	50	6	29%/71%	6