

**Hertsmere Borough Council
Draft Affordable Housing SPD
(November 2015)**

Consultation Statement

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1. Introduction

- 1.1 The Affordable Housing SPD aims to provide advice to developers, including Housing Associations and other Registered Providers of Affordable Housing on the Council's approach to Affordable Housing provision. Guidance is presented on the criteria for Affordable Housing, including the thresholds and percentages applicable, as well as advice on viability and how and when commuted payments will be considered. The SPD also provides advice on Section 106 agreements, which will be used to secure the provision of Affordable Housing on new developments.
- 1.2 The original SPD was adopted in 2008, and a number of alterations are now required to reflect changes to local and national policy, as well as to incorporate lessons learnt from experience and best practice.
- 1.3 The proposed changes to the SPD *before* it went out for the first period of public consultation are summarised below. Changes were made:
- to simplify the policy detail to aid consistency and understanding;
 - to emphasise the importance of delivering Affordable Housing units which early dialogue and negotiation with planning and housing officers will help achieve;
 - to reflect the practical difficulties of delivery on small sites now covered by Affordable Housing policy (Core Strategy Policy CS4);
 - to acknowledge that commuted sums will be sought in more schemes than in 2008;
 - to base commuted sums on local house prices (from the Land Registry) and link them to future increases in local property prices in the interim the borough-wide sums (per unit) sought have been increased (the most recent being effective from 2 June 2014);
 - to update the Affordable Housing threshold to reflect the Core Strategy Policy;
 - to update the percentage of Affordable Housing to be sought in line with the Core Strategy;
 - to include the Government's revised definition of Affordable Housing;
 - to clarify when and where different tenures will be sought and what will be regarded as genuinely 'affordable';
 - to build in an element of 'future-proofing' (e.g. linking commuted payments to future increases in local property prices, new Affordable Housing 'products');
 - to explain when viability assessments will be required and how they will be assessed
 - this must reflect Government advice (see Appendix 1). A viability assessment will be important when it is necessary to understand the effect of a planning obligation which cannot be met in full. It should not be a requirement on every application with residential development, where there may be other reasons why Affordable Housing cannot be delivered on site. The Government expects councils to act reasonably and flexibly when considering Affordable Housing issues;
 - to re-emphasize that, when required, payments in lieu will normally be sought upon commencement rather than completion or occupation of a development;
 - to explain new/alternative methods of commuted sum collection: i.e. deferred payments and claw back arrangements (claw back enables a percentage of future (super) profit to be used for Affordable Housing);
 - to outline the ways the Council may use commuted sums;
 - to simplify and update Affordable Housing design information
 - e.g. to stress the importance of space standards in any 'new' Affordable Housing unit.
- 1.4 This statement has been produced in accordance with Regulation 12 (a) i of the Town and Country Planning (Local Planning) (England) Regulations 2012 and sets out those persons that have been consulted in the preparation of the Draft Planning and Design Guide: Part D – Guidelines for development (December 2012, for public consultation) and how those persons have been consulted.
- 1.5 The consultation has been undertaken in accordance with Regulation 12 (b) and 13 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

- 1.6 This statement includes a summary of the main issues raised by those persons and how those issues have been addressed in the draft SPD, pursuant to Regulation 12 (a) ii and iii of the afore mentioned Regulations.

Planning Policy Background

- 1.7 The National Planning Policy Framework (NPPF, March 2012) and national Planning Practice Guidance (PPG, March 2014) emphasize the delivery of development. Development should not be unduly held back and it is evident from Government that the delivery of economic development and housing is more important than simply achieving Affordable Housing targets.
- 1.8 Government guidance constrains the Council in what it can reasonably do through an SPD. Paragraph 153 NPPF says:
- “Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.”
- 1.9 The NPPF also requires the Council to be prudent and reasonable and to support appropriate development rather than threaten its viability.
- a) The NPPG gives further guidance on viability, including:
- Viability assessments in decision-taking should be based on current costs and values; and
 - Planning applications should be considered in today’s circumstances.
- b) The local planning authority should be flexible in seeking planning obligations. This is particularly relevant for Affordable Housing contributions which are often the largest single item sought on housing developments.
- 1.10 Hertsmere’s Core Strategy was adopted in January 2013 and is in general conformity with the NPPF. The Core Strategy replaces the Local Plan 2003 policies upon which the 2008 SPD was based. It:
- a) introduces higher percentage requirements for Affordable Housing (35% and 40% compared to 25% in the Local Plan 2003);and
- b) reduces the site thresholds when Affordable Housing will be sought (in the main settlements from 25 dwellings or 1 hectare in the Local Plan to 5 dwellings or 0.2 hectares).
- 1.11 The Community Infrastructure Levy (CIL) has been introduced altering the use and application of planning obligations. The CIL Regulations define the tests for planning obligations.

Other Contextual Matters

- 1.12 Relevant contextual information taken into account in revising the SPD includes:
- updates to the Council’s Housing Strategy and the new Local Implementation Plan;
 - the changing role of the Homes and Communities Agency;
 - the findings of the Council’s Development Economics Study on the viability of delivering Affordable Housing through privately developed sites;
 - more recent evidence on housing need and affordability, including house prices;
 - the introduction of the Government’s ‘affordable rent’ product and other housing reforms;
 - the new national Affordable Housing development regime, with significant reductions in public subsidy levels for the delivery of Affordable Housing and other welfare reforms including a cap on housing benefit
 - the introduction of the government’s Starter Homes policy in 2015

- the ability for developers to appeal directly to the Planning Inspectorate where there is an issue about a planning obligation; and
- recent experience of the delivery of Affordable Housing on development sites and securing of commuted sums – it being more difficult to secure Affordable Housing units on smaller sites.

2. Informal Consultation

2.1 Officers have undertaken a collaborative approach whilst reviewing and updating the Affordable Housing SPD throughout the process of its development, both before the first period of public consultation commenced in September 2014, and following the national policy changes which necessitated the second period of public consultation in June 2015.

Officers:

2.2 Planning Policy Officers have undertaken informal consultation within the Council's Housing, Planning and Legal departments as follows:

- The draft SPD was produced in conjunction with the Council's Affordable Housing Coordinator to ensure that the SPD is capable of delivering Affordable Housing which meets housing need in the Borough.
- The Development Management (DM) team were consulted in order to gauge whether the proposed changes would be acceptable in practice in order to support appropriate development.
- The Legal team were consulted to ensure that the SPD is compliant with regulations and is able to be implemented in terms of drafting Section 106 agreements.
- The draft SPD was presented to Chief Officers Board on 17 June 2014 and was approved for consultation with Members.

2.3 The SPD was presented to the Council's Management Board on 25 June 2014 where it was approved by Members and Chief Officers before being put to the Council's Executive.

Members:

- 2.4 The Portfolio Holder for Planning and Localism presented the draft SPD to members of the Executive during the 23 July 2014 meeting. This was in order to request that the contents of the draft SPD be approved for public consultation and for interim development management use for all applications registered on or after its date of publication, subject to any changes to be agreed by the Director of Environment in consultation with the Portfolio Holder for Planning and Localism.
- 2.5 It was also decided that officers be requested to explore the scope to charge build costs as part of any commuted payments and that, following any viability assessment required, further changes to the SPD be considered by the Portfolio Holder for Planning and Localism.
- 2.6 Following the approval at the Executive meeting, the draft SPD was sent to four independent viability consultants for their comment. The feedback from these reviews was carefully considered by the Council and changes were made to the SPD where necessary, in consultation with the Portfolio Holder for Planning and Localism, before commencing public consultation.
- 2.7 After receipt of legal advice, a further report was prepared for the Executive in November 2014 to enable weight to be given to the draft SPD in the determination of planning applications after the date of publication of the draft SPD (29th September 2014) rather than solely those registered after this date.
- 2.8 The further revisions to the draft SPD, following the consultation in 2014 and subsequent changes to national policy, were agreed in consultation with the Portfolio Holder for Planning and Localism.

3. Formal Consultation

- 3.1 The initial consultation on the draft SPD ran from Monday 29th September 2014 to 5pm on Monday 10th November 2014 in line with the Council's policy in the Statement of Community Involvement.
- 3.2 All of the Council's Members and Planning Officers were notified as well as all specific statutory consultees, government departments and neighbouring authorities and 520 general consultation organisations and interested parties, identified from Hertsmere's development plans database. The Draft document was published on Hertsmere's website and placed at the various deposit points.
- 3.3 A further 4 week period of consultation on the additional amendments took place from Monday 8th June 2015 to 5pm on Monday 6th July 2015 and reflected the consultation previously undertaken in 2014, as set out in paragraphs 3.1 and 3.2 above.
- 3.4 Further details of the two periods of consultation and the representations received are detailed in paragraph 3.6 below.

Website

- 3.5 Pursuant to Regulation 12 (b) and 35 (1) a and b, a copy of the following were made available on Hertsmere's website on the Affordable Housing SPD page (www.hertsmere.gov.uk/affordablehousing) with a link from the planning consultations page (www.hertsmere.gov.uk/planningconsultations):
- The relevant draft revised SPD (September 2014 or June 2015);
 - The consultation statement;
 - A copy of the covering letter circulated to consultees;
 - A notice outlining the address where representations could be sent to (via letter and/or email) and by which date they were to be made; and
 - The address and opening times of the inspection points (including the Civic Offices as the principal office) where hard copies of the documents could be viewed.

4. Consultation responses summary

Responses following first period of public consultation September-November 2014

- 4.1 Representations were received from 13 parties; these are summarised in Appendix 2 alongside the Council's responses to the comments made.
- 4.2 The main issues raised through the public consultation are as follows:
- a) A need for further guidance on new alternatives to on-site provision (including purchase of off-site units);
 - b) Commuted sums appear to be high and may be unviable;
 - c) Typical profit margins for market housing are too low and may make it difficult for developers to secure finance;
 - d) Clawback/viability reviews should not be based on 60% of sales;
 - e) Affordable Housing should not apply to extra care schemes which function as a single planning unit;
 - f) The SPD should include a greater acknowledgement of the problems involved with providing on-site affordable housing, and the viability issues faced with sheltered housing schemes, in particular extra-care housing;
 - g) Suggestion that the SPD should take a case-by-case approach to commuted sums;

- h) The appropriateness of the use of Existing Use Value (EUV) in valuation is questioned;
- i) Viability reviews/claw back should work in both directions in order to capture uncertainty in the market, i.e. if market conditions worsen, monies should be returned to the developer.
- j) Low cost market housing should be included as a form of Affordable Housing;
- k) The Council should consider the timing of Affordable Housing delivery on a case by case basis;
- l) 100% Lifetime Homes requirement is overly onerous;
- m) The affordability of homes should be assured;
- n) All Affordable Homes should meet Secured by Design part 2 standards;
- o) Document does not address the cause of affordability issues in the Borough and the consultation process was a box-ticking exercise;
- p) Various points relating to clarity.

National policy changes in November 2014 and March 2015

- 4.3 The draft SPD was revised further following changes in government policy made through Ministerial Statements on 28 November 2014 and 25 March 2015, and comments received during the first period of public consultation. The revisions were agreed in consultation with the Portfolio Holder for Planning and Localism and the Director of Environment and the SPD was used on an interim basis in the determination of planning applications from 8 June 2015.
- 4.4 The effect of the national policy changes had been to seek to raise the threshold at which planning obligations, including Affordable Housing contributions, could be sought to 11 units and above. Local authorities could still seek a financial contribution on sites of 6-10 units in the form of commuted sums on sites in designated rural areas (as defined by Section 157 of the Housing Act 1985). The Ministerial Statement also introduced a new requirement for a credit on the Affordable Housing contribution to be given where there were existing vacant buildings on a site. The statement was intended to form part of national policy although the National Planning Policy Framework itself was never updated, despite changes to national Planning Practice Guidance (PPG).
- 4.5 The Council carefully considered the statement, and decided to continue to apply its statutory development plan policies when determining applications, while regarding the statement and change to the PPG as material considerations in decision-making. This is because the planning system is plan-led, and legislation (s38(6) of the Planning and Compulsory Purchase Act 2004) requires that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise.
- 4.6 Some aspects of the national policy changes needed to be incorporated into the SPD including the Council's interpretation of the vacant building credit, (which allowed for an equivalent reduction in Affordable Housing floorspace proportionate to any vacant floorspace on the development site), and a change to seek commuted sums rather than on-site affordable units on sites of 5-10 units.

How those issues have been addressed in the SPD

- 4.7 A list of the proposed changes to the draft SPD as a result of the consultation comments and the national policy changes can be found in Appendix 4.
- 4.8 The changes proposed following the September 2014 consultation and the introduction of the 10-unit threshold through the Ministerial Statements (see para. 2.16 and 2.17 above) can be summarised as follows:
 - a) changes arising from various ministerial statements and the new Starter Homes policy, including an explanation of the Council's position and a section and appendix on the Vacant Building Credit;
 - b) the automatic acceptance of a commuted sum on sites of between 5 and 10 units, based on the new national threshold;

- c) clarification of some of the definitions of types of Affordable Housing;
 - d) recognition of the additional costs of providing sheltered and extra-care housing;
 - e) note added on the conversion of historic buildings;
 - f) paragraph added on the new permitted changes of use from office to residential;
 - g) paragraph added on the presumption that viability assessments will be made public unless developers present a case for non-disclosure;
 - h) new monitoring and administration section added;
 - i) new Appendix E added on the purchase of off-site land and units in lieu of on-site Affordable Housing provision; and
 - j) minor changes to aid clarity and understanding.
- 4.9 The above changes to the SPD were made before the second period of consultation in June 2015 and were agreed in consultation with the Director of Environment and Portfolio Holder for Planning and Localism. The SPD was used on an interim basis in the determination of planning applications from 8 June 2015.

Responses following the second period of public consultation June-July 2015

- 4.10 An additional four-week period of public consultation ran from Monday 8 June to Monday 6 July 2015, to which five responses were received (summarised in Appendix 2).
- 4.11 A total of five responses were received to this consultation; individual responses are summarised within Appendix 3. The main issues raised through the public consultation are as follows:
- a. the Council's position did not comply with the changes to national planning policy on Affordable Housing, with examples of appeal decisions which backed up the Government policy position, prior to its quashing in the High Court;
 - b. comments on the Council's interpretation of the Vacant Building Credit;
 - c. commuted sums required did not meet the tests for planning obligations in the NPPF;
 - d. viability appraisals should not be made public;
 - e. re-iteration of points raised in the previous consultation; and
 - f. further minor changes to aid clarity and understanding.
- 4.12 A High Court Judgment (R on the Application of West Berkshire District Council v Department for Communities and Local Government. Case Number: CO/76/2015) issued on 31 July 2015 quashed the changes to the national Planning Practice Guidance introduced through the Ministerial Statements mentioned in Para. 2.16 and 2.17 of this report. The draft SPD has been further revised to take account of this judgment and representations received during the final period of consultation.

How those issues have been addressed in the SPD prior to adoption in October 2015

- 4.13 Following the High Court judgment mentioned above, the changes arising from the Ministerial Statements and PPG changes needed to be removed, including the section on vacant building credit. The comments received as part of the consultation in June 2015 were carefully considered and taken into account in the version of the SPD recommended for adoption.
- 4.14 A Section 106 scrutiny review report was received by officers in September 2015, and a limited number of minor changes were made in response to this, to clarify how increased developer costs and any grant, where it exceptionally becomes available, are considered by the Council.
- 4.15 The main changes proposed as part of the SPD recommended for adoption are as follows:
- a) amendments to reflect the quashed government policy on planning obligations, including the removal of various references to the Vacant Building Credit following the removal of this from national planning policy (this includes the deletion of Appendix D);

- b) clarification that Affordable Housing is only required on C2 developments (residential institutions, including care homes and extra care developments) where self-contained units are proposed. This was in response to queries received from developers during the use of the Draft SPD (June 2015);
- c) clarification that the Council will consider the developers' profit levels used in viability assessments on a case by case basis, taking into account market conditions at the time. This would ensure that developers are aware that while in a weak market we may accept a profit of closer to 20%, in a more buoyant market it would be expected that the percentage profit would be lower; and
- d) updating the commuted sum figures in Appendix D based on Land Registry sales data for the 12 months to 30 June 2015.

Minor changes post-adoption of the SPD

4.16 The Affordable Housing SPD was adopted by the Council on 14th October 2015. The resolution allowed for minor changes to be made to the Affordable Housing SPD in consultation with the Director of Environment and the Portfolio Holder for Planning and Localism prior to its adoption. Minor changes included:

- a) additional reference to the High Court judgement in July 2015 and the government's intention to appeal against that judgement;
- b) reference to Policy SADM4 in the pre-submission draft of the Site Allocations and Development Management (SADM) Policies Plan 2015 which the Council added based on the Ministerial Statement, but now intends to remove from the SADM Plan as there is no longer any basis for the policy;
- c) minor clarification about Starter Homes discounts;
- d) updating of Commuter Sums table;
- e) minor clarification about the ratio between market and affordable homes across the main site and any off-site provision; and
- f) wording added to allow site-specific commuted sums in higher as well as lower value areas within the postcode areas set out in Table D2 where those land values are very substantially different from the table.

Appendix 1: List of statutory consultees

Specific statutory consultation organisations (in line with the Planning and Compulsory Purchase Act and Regulations)*

- Natural England
- The Environment Agency
- Highways England
- Historic England
- Natural England – Essex, Hertfordshire and London Team
- Local clinical commissioning groups and the National Health Service Commissioning Board
- Network Rail Infrastructure Limited
- Homes and Communities Agency
- Relevant Electricity Undertakers
- Relevant Gas Companies
- Relevant Sewerage Undertakers
- Relevant Telecommunications Companies
- Relevant Water Undertakers
- British Waterways Board
- The Coal Authority
- Marine Management Organisations

Government Departments

- Department for Environment, Food and Rural Affairs
- Department for Transport
- Department of Health (through relevant Regional Public Health Group)
- Department of Trade and Industry
- Ministry of Defence
- Department of Work and Pensions
- Department for Culture, Media and Sport

Neighbouring and other local authorities

- St Albans City and District Council
- Three Rivers District Council
- Watford Borough Council
- Welwyn Hatfield Borough Council
- London Borough of Barnet

- London Borough of Enfield
- London Borough of Harrow
- Broxbourne Borough Council
- Dacorum Borough Council
- East Hertfordshire District Council
- Hertfordshire County Council
- Mayor of London (GLA)
- North Hertfordshire District Council
- Stevenage Borough Council
- Luton Borough Council
- Central Bedfordshire Council
- Colney Heath Parish Council
- North Mymms Parish Council
- London Colney Parish Council
- Greater London Authority (Mayor of London)

Parish and town councils of Hertsmere

- Aldenham Parish Council
- Elstree and Borehamwood Town Council
- Shenley Parish Council
- South Mimms Parish Council

Appendix 2

Schedule of representations: Draft Affordable Housing SPD: Consultation 29 September 2014 – 10 November 2014

Ref	Name/ Body	Date Received	Comm ent type	Summary of representation made	Response
1	Heronsle a Group	7/11/2014	Comme nt	Para 1.12 Affordable housing (AH) requirement should be calculated based on the net number of units to be built, rather than gross as in Core Strategy policy CS4. Para 1.22 Welcome commitment for early agreement on number and mix of AH units. Encourage Housing team to be involved in pre-application discussions to gain early agreement. The example of increasing the number of units is inconsistent. Para 1.26 Problems for registered providers (RPs) in managing AH on sites of 5-15 units. Para 1.33 & 1.34 The timing of AH delivery is important, however should be considered on a case by case basis with phasing agreed with developer. Suggest wording change to ‘on a case by case basis’.	Para 1.12 As the representation acknowledges, the Core Strategy policy states that the Affordable Housing (AH) requirement will be calculated based on the gross number of units. No change. Para 1.22 Welcome the support, however it is unclear what is meant by the final point. Para 1.26 On sites of 5-14 units, the SPD seeks on-site provision of intermediate housing, which does not require the same management from RPs. No change. Para 1.33 & 1.34 This is acknowledged and the wording has been changed as suggested. A reference to clawback on schemes has also been added.

			Para 1.40 Alternatives to on-site provision are welcomed, including the potential to purchase existing units. Further guidance is needed on legal agreements and transferring stock. Suggest an appendix to the SPD. Para 1.45 The commuted sums appear high and should be assessed in line with the Council's development economics study to check viability. Para 1.51 Rural exception sites (RES) can also be delivered via a developer in conjunction with an RP/Parish Council. These can provide off-site provision as in para. 1.40. Developer may submit an app prior to transfer to an RP. Para 1.66	Para 1.40 The support is welcomed, and further guidance on the purchase of existing units will be provided. Para 1.45 The Viability Study for the Core Strategy showed that 40% affordable housing was viable in these areas. The SPD and the NPPF provide an opportunity to argue for a lower contribution on grounds of viability, where this can be clearly demonstrated. House prices in Radlett are very high so property is unaffordable for a large proportion of the community and a review of property prices for 12 months up to 15/01/2015 revealed that the values used to work out the commuted sums are still representative of the current values of each house type. No change. Para 1.51 Paragraph 1.55 (was Para 1.54) has been amended to include the wording “or exceptionally with the involvement of a developer”, as is acknowledged in para 1.57. The RES policy does not apply to units provided for off-site provision, but only to AH schemes to meet need in the locality. Para 1.66
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			Typical profit margins for market housing are relatively low. Funding difficult to secure if projected profit less than 20%. Para 1.71 Welcome the SPD has site value as EUV plus premium. Para 1.82, 1.83, 1.87 SPD focuses on a climbing market and does not take into account that market conditions may worsen. Clawback should not be based on 60% of sales when 100% figures can be provided once all are sold. Fails to allow for a reduction in the amount of AH due if market conditions decline. Suggest staggering the AH requirement according to site size, taking a similar approach to Chiltern Council.	The SPD does not refer to a fixed level of profit but states that it is not a fixed amount although 15-20% for market and 6% for affordable are typical, with schemes in Hertsmere achieving between 12% and 20%. The wording has been adjusted to provide some additional recognition of the range of profit margins which can be achieved on developable site. However, 15-20% is recognised to be a typical profit margin.¹ Para 1.71 Support welcomed. Para 1.82, 1.83, 1.87 No change made to a further viability assessment being carried out after 60% of sales. However, it is recognised that the recent Ministerial Statement has stated that contributions should not be sought before completion of units. Para 1.83 has been amended to reflect this as have references elsewhere in the SPD which previously referred to payment on commencement. There is a reference to a declining market in Para 1.81 (was Para 1.80). However, deferred payments are only used where a scheme is shown to be unviable in current market conditions, but that it would become viable if market conditions improved. If the market was to drop and the scheme was shown not to be viable after 60% of sales, then the deferred payments would not be required.
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¹ See The challenges of brownfield land, Daniel Watney

					It is also possible for developers to apply to modify the AH requirements of a s106 agreement based on economic viability under section 106b of the 1990 Planning Act. The option of staggering the level of AH required is noted but cannot be considered for this SPD due to Policy CS4 in the current Core Strategy. However, it will be considered for the review of the CS.
2	Planning Issues on behalf of Churchill Retirement Living	7/11/2014	Comment	Para v) Confusing. 29% of new housing was affordable, but how was AH increased as a result of commuted sums? Would be helpful to understand how much collected through commuted sums, the reasons and where money has been spent. Para xi) Should refer to 2014 document rather than 2013. The letter points on p.6 do not follow in sequence. Para xii) Needs to be updated to take account of the current position. Hopes that the Council will meet timescales for adoption set out in Para xvii). Timetable for production of a SHMA should be changed to be more specific rather than saying ‘over the next 12 months’. Tenure Mix	Para v) Comments are noted. This SPD is not the place to publish a detailed breakdown of commuted sums collected on individual planning applications, or for a breakdown of expenditure. It is intended to incorporate this information into future AMRs. Para xi) Noted. The corrections to the year of the SPD and the letter points have been made. Para xii) Noted. The timescales in Para xvii) are expected timescales only although the increasingly piecemeal nature of recent government planning and housing announcements, have led to some delay whilst the Council considers how these changes should be applied. The reference to the SHMA timescale has been changed to be more specific – it is ‘expected to be completed by mid-2015’. Tenure Mix

			Difference between ‘social’ and ‘affordable’ rent could be significant and could affect viability. This difference needs to be recognised within the SPD and by officers. Para 1.13 - Sheltered housing The SPD recognises that there are specific issues associated with the development of sheltered housing (para 1.13), however not all issues which affect viability are acknowledged in the SPD. Para 1.13 – on-site provision It can be impractical/unsuitable to provide on-site affordable housing within sheltered housing schemes, and the SPD should recognise this. Appendix D The calculation of commuted sums set out in Appendix D does not comply with the principle that commuted sums should be equivalent to the cost of providing AH units on site. Suggested that the approach in Development Economic Study 2011 should be adopted, whereby sums are calculated on a case by case basis. Para 1.41 Sheltered housing will almost always be in a position where an off-site contribution in the form of a commuted sum is the most	The point is noted, however it is unclear what is being sought. Para 1.13 Sheltered housing Noted. Paragraph has been amended to acknowledge that there are higher build costs and a higher amount of non-saleable floorspace in this type of development. Para 1.13 – on-site provision The concerns are noted. A distinction has been made between retirement housing and extra care housing, where commuted payments will be required if it is demonstrated it is genuinely not practical to provide AH on site. Appendix D The approach suggested was considered but was thought not to provide sufficient clarity to developers. No change. However, Appendix is considered to comply with the need to ensure that the commuted sums are equivalent to the cost of providing AH site. The amounts are based around the average cost of purchasing land and broken down by postcode areas. In this way, the Council would not be seeking contributions which do not reflect typical land values in that locality. Para 1.41 This needs to be demonstrated and will be considered on a site by site basis, as it will not be the case for all sites. No change.
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			appropriate method of providing AH. Para 1.74 - Land value benchmarks It is surprising and contradicts the RICS guidance that the draft SPD uses EUV. RICS guidance leans towards using market value with emphasis on willing landowner and willing developer. Costs and values The costs associated with developing sheltered accommodation are different to general needs housing. Para 1.79 Accepted that the developer will meet the costs of a viability assessment, however these must be reasonable and the developer should be offered 3 quotes to ensure a competitive rate. Para 1.81 Developers will require that viability assessments are dealt with in an efficient and timely manner to ensure they are not out of date through poor management of the planning process. Para 1.82, 1.89-1.91 – Claw back and deferred payments Developers need to have certainty and assuming the market may improve is a mistake. Viability should be assessed at the	Para 1.74 - Land value benchmarks The suggested method has been considered, and the RICS guidance has been consulted. The Council has sought independent reviews of the draft SPD which all recommended different methods. A balanced view had to be taken which resulted in the decision to accept EUV. Other representations support the use of EUV plus premium. Costs and values A paragraph has been added (Para 1.86) to reference the costs for this type of housing. Para 1.79 Hertsmere is currently working on procuring a list of retained valuers whose services will be used to assess viability. The services of these valuers will then be used in order of their placement on the list. Para 1.81 The Council has to work within the statutory time constraints for dealing with planning applications, therefore viability assessments will be dealt with within these timescales unless otherwise different timescales are agreed through a planning performance agreement. Para 1.82, 1.89-1.91 – Claw back and deferred payments The Council will take into account market conditions at the time of submission, and if a scheme is demonstrated to be unviable in the market conditions
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				time of an application, and before the implementation of a scheme or phase. Therefore the reference to 'deferred payments' in 1.89-1.91 should be deleted.	at that time, it has the ability to reduce or waive the policy requirement for AH. If conditions improve during the construction and sale of the development, resulting in a viable scheme, the Council will only then receive any additional payment. There is a reference to a declining market in Para 1.81 (was Para 1.80). Deferred payments are only used where a scheme is shown to be unviable, but that it would become viable if market conditions improved. If the market was to drop and the scheme was shown not to be viable after 60% of sales, then the deferred payments would not be required. It is also possible for developers to apply to modify the AH requirements of a s106 agreement based on economic viability under section 106b of the 1990 Planning Act. No change.
3	Cala Homes	06/11/2014	Comment	Para 1.8-1.9 Helpful to see 'low cost housing' as a form of intermediate housing. The term 'Discounted sale' as used in 1.9 would be a more appropriate term to use. The statement that this tenure would only be considered in exceptional circumstances is unreasonable and unrealistic as it can be equally as affordable as shared ownership. Para 1.8 The % of sale on equity share housing has not been included. The tenure includes both social rent and affordable rent. Clear guidance on when each is appropriate is required.	It is recognised that it could be offered, but house prices in Hertsmere are generally too high for it to be affordable without a significant level of discount being offered. The government definition of affordable housing for planning purposes ('Definitions of general housing terms', DCLG, Nov 2012) specifically excludes 'low cost market housing'. An additional paragraph has been amended however to take account of the new Starter Homes initiative which seeks at least a 20% discount for first time buyers under 40. Para 1.8 Government guidance gives no set percentage. The rate is negotiable and depends upon the capital cost of the units, and the area of the borough they are built in. For example, capital costs may be the same for a unit in Borehamwood as for one in Radlett, however the market value in Radlett is likely to be higher. In higher

					value areas the Council will seek to hold a higher % of the equity in order to make the unit more affordable. Para. 1.26 states that “Intermediate housing products should be discounted so that they are typically 40% of the open market price in the higher value areas set out in Policy CS4 and 50% in all other locations” (Note added to Para.1.8). The private developer or house builder would transfer the equity and freehold title to the Borough Council and then have a building under licence agreement to build the said Equity Share dwellings. A S106 legal agreement would enforce this approach. It is not certain what is meant by equity share including both social and affordable rent, as these are defined as two separate tenure types. On developments of 15 units or more, where 75% of the AH will generally be social or affordable rented housing, the Council's Housing Officer will advise on the most appropriate tenure for the particular development. Para 1.16 Noted. A reference to the RP has been added to the paragraph.
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			Para 1.16 While the Council should play a significant role in advising developers on amount, size, type and tenure of AH, the developer and RP should also contribute. Para 1.17 There is no reason for the Council to be provided with details of any agreement between a developer and a RP. Para 1.18 Need a statement explaining what should be done if a RP does not agree to 100% nominations being given in perpetuity to the Council. Para 1.20 Rounding numbers ‘up or down accordingly’ would be better expressed as ‘at 0.5 or below the number will be rounded down, at 0.51 and above it will be rounded up’. Para 1.21 The ‘size mix’ table is described as a guide and this should be emphasised. This is usually termed the ‘housing type mix’. Para 1.22 The example implies the percentage	Para 1.17 Where viability is raised as an issue, the Council will need to be provided with this information. No change. Para 1.18 This does not meant that all nominations will automatically go to the Council in all cases, but where there is a need for it. No change. Para 1.20 Noted. This will be clarified but the numbers will be rounded up from 0.5 and down from 0.49 will be used. Para 1.21 The comments are noted but there is not considered to be a need for any change. No change. Para 1.22 It has been added that this will apply where the
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			requirement for AH could be applied to floorspace if the private dwellings are large houses. Unacceptable as the policy refers to units not floorspace. Para 1.23 Unclear why tenure mix should take account of physical character of the area. Should say 'tenure profile of the surrounding area'. Para 1.24 Is the table a guide or fixed? There will be rounding and it is not clear how this is achieved. Para 1.25 Ambiguous. Does it mean shared ownership or intermediate housing products? Information on level of discount would be better in Para 1.19 as it is a viability consideration and more explanation is needed. Para 1.26 Pepper potting and clustering is ambiguous	developer agrees. Para 1.23 Noted. This has been amended. Para 1.24 The table is fixed and takes the on-site mix for sites of 5 units or more directly from Core Strategy Policy CS4. The requirement for sites with 1-4 units but which exceed 0.2ha is more accommodating than in the Core Strategy which does not distinguish between these sites and those with 5-14 units. It is not entirely clear what the rounding refers to but if the relevant % tenure mix does not result in a round number, in terms of the number of units to be provided, it would be rounded up or down. Para 1.20 will be amended to include this. Para 1.25 Shared ownership is a form of intermediate housing. The second sentence of para 1.25 refers to all types of intermediate housing, including both equity share and shared ownership, which must both be discounted to be 40% or 50% of market value. The levels of discount for equity share have been included in the table at para 1.8. Paragraph 1.19 simply repeats Policy CS4. No change. Para 1.26 Noted that this is ambiguous. The paragraph has
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			and should be removed. Para 1.29 HCA do not give grant to AH required by planning obligations so this paragraph is irrelevant. Para 1.30 Lifetime Homes requirement to all new dwellings is overly onerous. Should be applied by agreement with RP that it is necessary. Para 1.33 Timing of delivery could be ambiguous and should perhaps give more detailed information as will impact on s106 wording. Para 1.36-39 The area of viability is quite loose and would benefit from more detail on assumptions and inputs. Para 1.40 The wording is unclear and percentages	been reworded to remove the issue. Para 1.29 This part of the SPD also applies to affordable-only schemes which may be built by an RP or the Council, so may be relevant to these. No change. Para 1.30 Core Strategy Policy CS22 states that “Where practicably possible 100% of new residential units should be built to the Lifetime Homes Standards based on the Joseph Rowntree Foundation standards...”). This has been carried through to the SPD. Para 1.33 Precise timing will be agreed with the developer and set out in the s106 agreement. The paragraph has been amended based on another representation, adding that ‘the Council will consider the timing of affordable housing delivery on a case by case basis’. Para 1.36-39 There is a more detailed section on viability and what is expected from a viability assessment later on in the SPD. Para 1.40 The percentages have been corrected to reflect the policy requirements.
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				incorrect. Para 1.60 Use of BCIS as a benchmark is proven to be inaccurate and unreliable so it is good SPD acknowledges specific scheme costs should be utilised. Para 1.87 If clawback is to capture uncertainty it should be structured to work in both directions so commuted sums can be returned to developer if outturn is worse.	Para 1.60 The support is welcomed. Para 1.87 Deferred payments are only used where a scheme is shown to be unviable, but that it would become viable if market conditions improved. If the market was to drop and the scheme was shown not to be viable after 60% of sales, then the deferred payments would not be required. On very large schemes, viability would be reviewed after 60% of sales in each phase, which would take account of any changes in market conditions before the remaining phases are developed. It is also possible for developers to apply to modify the AH requirements of a s106 agreement based on economic viability under section 106b of the 1990 Planning Act, so the legislation already provides a provision for taking into account a falling market. Para 2.2
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				Para 2.2 The ‘equity share’ tenure does not accurately tie in with the reference in table in para 1.8. Not clear who retains the equity. Para 2.4 Not clear how the ‘mix of tenures overall percentage ‘of AH can influence how it is ‘affordable’.	Noted. Paragraphs 1.8 and 2.2 have been amended to refer to the Council, RPs and developers. Para 2.4 Noted. Text ‘and is affordable’ removed.
4	Pegasus Group on behalf of Hamlin Estates	5/11/2014	Comment	Extra Care Housing These type of housing schemes function as a single planning unit despite each unit within them being self-contained with its own kitchen, bathroom and living areas. Therefore AH should not apply to extra care housing schemes.	Extra Care Housing Circular 05/2010 defines dwelling houses for the purposes of the Use Classes Order as “buildings that ordinarily afford the facilities required for day to day private domestic existence”. Premises which form a single dwelling house are “a single, self contained unit of occupation which can be regarded as being a separate ‘planning unit’ distinct from any other part of the building containing them and designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house”. Whether extra care housing should be viewed as being within use class C2 or C3 may depend upon the degree of independent living, the type of

					accommodation, any obligations to provide a care package through s106, and the minimum level of care available to residents. For the purposes of council tax, extra care housing units are seen as independent units and the occupants of each unit are liable to pay council tax. It might be argued that the purpose of extra care housing schemes is to provide people with independent living with the option of taking up care services as and when they are needed. As there is no universal requirement for people buying a unit in an extra care scheme to prove that they need the extra care facilities on offer, it is considered reasonable to treat them as separate units for planning purposes. If, in a particular case, a scheme places restrictions on occupation based on pre-existing health conditions as well as age, for example, then it may be considered that, exceptionally, that particular scheme falls within use class C2 rather than C3. No change. Viability of extra care housing schemes
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				Viability of extra care housing schemes Whilst the draft SPD makes allowance for consideration of viability, production of a detailed viability assessment is time-consuming and adds to expense of the development of such schemes. No viability modelling suggesting extra care housing can viably contribute to AH.	The NPPF focuses on delivering sustainable development and on viability as a key concern over the provision of AH. This means that, in the same way as any other type of housing scheme, a viability assessment is required in order to justify not providing the full policy amount of AH on-site. If this is shown not to be viable alternatives to on-site provision will be considered. However, where it can be clearly demonstrated that a scheme cannot practically accommodate on-site AH, it is recognised that there should not be a required for a viability assessment Para 1.13 Amended to state: “Where it is demonstrated that it is genuinely not practical to provide on-site affordable housing units on extra-care housing schemes, a commuted payment will be accepted without a need to first provide a viability assessment, subject to the required contribution being offered..”
5	Hightown Praetorian and Churches Housing Association	30/10/2014	Comment	Para 1.31 100% Lifetime Homes not supported. Larger so reduce total number of units built. Encourage under-occupation of affordable homes.	Para 1.31 Core Strategy Policy CS22 states that “<i>Where practicably possible 100% of new residential units should be built to the Lifetime Homes Standards based on the Joseph Rowntree Foundation standards...</i>”). This has been carried through to the SPD but there is a difference between Lifetime Homes and Wheelchair Accessible housing. The SPD also stresses the importance of entering into a dialogue with the Council’s Housing Department and any RP involved at an early stage, where the precise local need can be identified.

6	Resident	06/10/2014	Comment	1. Properly affordable, based on 2.5x average salary. 2. Local people to get priority. 3. Proper sizes, not shoeboxes. 4. Adequate parking at least 1.5 spaces per property. 5. Low rise.	1. Affordability will be considered on a case-by-case basis to ensure that units are affordable in the particular areas of the borough. Para 2.3 emphasises that rent levels will need to be consistent with the Council's Tenancy Strategy, 2. The AH provided will be allocated to those on the Council waiting list for social housing, or an RP's waiting lists for intermediate housing. 3. The Council's internal space standards for new dwellings are set out in the Planning and Design Guide Part D (213) which applies to both market and affordable housing. These are minimum standards which should be exceeded wherever possible. If any housing is to receive grant funding then Homes and Communities Agency space standards must be complied with, which are higher than general standards. 4. The Council's general standards set out in the Parking Standards SPD (214) apply to all new development. Standards for affordable units are the same as for market units and start at 1.5 units for a studio or 1-bedroom unit. 5. The Council seeks for affordable housing provision to reflect the provision of market housing, so the height of blocks/units will depend on the height of market housing proposed. 6. The design of affordable housing should be the same as market housing provided on the same site. The Planning and Design Guide Part D seeks high quality design in all new developments; however it is not always possible to enforce design principles as there need to be robust reasons if a
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				6. Some character, not more Wimpey clones. 7. Mechanism in place to prevent profiteering from market. 8. No buy to let. 9. Decent sites, not just the ones next to motorways and railways that developers don't want.	scheme is to be refused planning permission. 7. Developers of affordable housing are generally developing it alongside market housing, from which they seek to make a profit. The National Planning Policy Framework places emphasis on the viability of developments, so in order for a development to be viable the developer has to make a profit. 8. Legal agreements will restrict the type of mortgage people can take out in order to purchase equity share or shared ownership units, preventing these properties from being bought and then rented on the private rental market. 9. The Council seeks affordable housing provision on the same sites as market housing; therefore sites should be suitable for both types of housing. In the instances that alternative sites are provided, or a financial contribution is used to purchase land by the Council or a RP, sites will need to ensure appropriate living conditions for future residents in line with Council policy in the Core Strategy and Design Guide Part D. 10. Affordable housing will ideally be provided alongside market housing so infrastructure will need to be in place before people can move in, and is usually provided by the developer. Where infrastructure is required up front, to enable a development to take place, a condition or s106 agreement can be used to achieve this. 11. Such measures are not part of the planning process so are outside the scope of this document. These are down to the allocation of social housing tenants by the Council's Housing department and
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				10. Infrastructure in place first. 11. Measures in place to deal with problem neighbours/residents.	the management of properties by Registered Providers.
7	Herts Police Architect-ural Liaison (Michael Clare)	03/10/2014	Comment	Design of new homes Para 1.27-1.29 Requests additional part regarding standard of physical security required/expected by Council. Secured by Design developments suffer lower rates of burglar, vehicle crime and criminal damage. Crime also has a large environmental impact which would be reduced. Policy CS22 and NPPF back this up. Wording suggested for a new paragraph: <i>All social housing will be required / expected to achieve part 2 of the Secured by Design</i>	Para 1.27-1.29 New paragraph added: All social housing will be expected to achieve part 2 of the Secured by Design award in relation to physical security which is the police approved minimum security standard. (Note: this change was not added to the June 2015 consultation draft of the SPD through an error, but is included at paragraph 1.31 of the final adopted SPD November 2015)

				<i>award in relation to physical security which is the police approved minimum security standard.</i>	
8	Aldenham Parish Council	27/10/2014	Support	'In principle we are in agreement with the proposals outlined in the Affordable Housing Document.'	The support is noted.
9	Heathrow Airport Safeguarding	30/09/2014	No Comment	No safeguarding concerns raised.	Noted.
10	Shire Consulting	29/10/2014	Objection	Council has not taken into account primary cause of Hertsmere's apparent problem with the affordability of housing in the District which is the Council's persistent refusal to allocate sufficient housing land to meet demand. Evident from the tone of the covering letter and from the stated intention to use the document for DC purposes even before responses to consultation are received, that this alleged consultation is just a box-ticking exercise that has no serious intent.	The affordability of housing in Hertsmere is also linked to the proximity of the borough to London, where house prices are very high, and the existence of very high value areas within the borough (e.g. Radlett). This document does not address land supply, however the Council has a sufficient supply of land to meet projected need. A Strategic Housing Market Assessment is underway which will identify future demand. It is normal practice to introduce supplementary planning documents for interim Development Management use alongside public consultation. This allows any issues with the use of documents to be discovered and changes made prior to adoption. Representations received during the consultation period will be carefully considered and taken into account before the document is adopted.
11	Elstree and Boreham	06/11/2014	Support	Believed the document overall is comprehensive and well thought out. Family sized homes are in demand in Elstree and	The support is noted, as is the comment on family-sized homes.

	wood Town Council			Borehamwood and the Council recognises the important of supporting people who cannot afford homes on the open market. Measures in the SPD need to be realistic and achievable.	
12	English Heritage	30/10/2014	Comment	We do not have any substantive comments, but suggest that in the section on Design of new affordable homes at Page 13, the role that the reuse of buildings can make to the affordable housing stock, particularly in rural areas, as well as the importance of good design could be recognised. See guidance on affordable housing and the historic environment: http://www.helm.org.uk/place-and-placemaking/housing/affordable-rural-housing/ In the section on Rural Exception Sites (RES) at Page 18 it is important that even where rural exception sites are proposed, they should take account of the provisions of any Conservation Area Appraisals/ Management Plans, Village Design Statements or Parish Plans. Our affordable housing guidance is relevant and also our guidance on the conversion of traditional farm buildings: http://www.helm.org.uk/guidance-library/conversion-of-traditional-farm-buildings/	Page 13 – Design of new affordable homes Noted. New paragraph 1.31 added to reference this. “Where historic buildings are being converted to provide affordable housing, the impact on the historic environment needs to be taken into consideration. Further information can be found in the English Heritage guidance on affordable housing and the historic environment at: www.helm.org.uk/place-and-placemaking/housing/affordable-rural-housing/.” Rural Exception Sites Where rural exception sites are proposed, they should take account of the provisions of any Conservation Area Appraisals/ Management Plans, Village Design Statements or Parish Plans. The English Heritage affordable housing guidance is relevant (www.helm.org.uk/place-and-placemaking/housing/affordable-rural-housing/) and also the guidance on the conversion of traditional farm buildings (www.helm.org.uk/guidance-library/conversion-of-traditional-farm-buildings/).
13	Natural England	26/09/2014	No Comment	Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of	Noted.

			nt	present and future generations, thereby contributing to sustainable development. Whilst we welcome this opportunity to give our views, the topic of the Supplementary Planning Document does not relate to our remit to any significant extent. We do not therefore wish to comment.	
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Appendix 3

Schedule of main changes to the draft SPD following public consultation in September 2014

N.B. Deletions are ~~crossed through~~; insertions are underlined. Where deletions have occurred as a result of representations made during the public consultation these are shown as a ~~double strike through~~. Insertions added as a result of the public consultation are shown as a double underline.

Paragraph numbers given refer to the new paragraph numbers in the revised draft SPD (April 2015 version).

Location in SPD	Change made	Comments
Introduction New paragraphs added - Para iv) to vii)	iv) <u>In November 2014 a written Ministerial Statement by the Minister of State for Housing and Planning (Brandon Lewis) (House of Commons Written Statement – reference HCWS50) set out changes to national planning policy in relation to planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended). A further Ministerial Statement by the Secretary of State for Communities and Local Government in March 2015 sought to clarify the status of the November 2014 Statement (House of Commons Written Statement – reference HCWS488), resulting in changes to the national Planning Practice Guidance (nPPG). In March 2015, the government also announced the introduction of a planning policy on Starter Homes. These are material planning considerations.</u> v) <u>The November 2014 statement sets out that on sites of 10 units or less, and which are smaller than 1000sqm, contributions should not be sought. In designated rural areas a contribution can be sought on sites of 6-10 units in the form of commuted sums. The Ministerial Statement also introduces a new requirement for a credit on the Affordable Housing contribution to be given where there are existing vacant buildings on a site.</u> vi) <u>Hertsmere Borough Council has carefully considered the Written Statement made by The Minister of State for Housing and Planning on 28 November 2014 and associated changes to the nPPG. The planning system is plan-led and s38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise. The Council regards the Ministerial Statement and associated changes to the nPPG, as well as the National Planning Policy Framework, as material considerations which will inform</u>	In response to national planning policy changes introduced through ministerial statements

	<u>the Council's decisions.</u> vii) <u>The Council will continue to apply statutory development plan policies when determining planning applications whilst at the same time having suitable and appropriate regard to other material considerations, including any case law and legal precedent that emerges.</u> viii) <u>The need for Affordable Housing in Hertsmere remains a significant material consideration and the borough has an exceptionally high house price to earnings ratio. As of 1 February 2015, there were 802 households on Hertsmere's housing register (a 6.5% increase from the previous month 2015). Approximately 90% reside in Hertsmere and all are required to have a connection with Hertsmere and there remains an acute need for Affordable Housing in Hertsmere.</u>	
What have we reviewed to get to this new SPD? (p.6) New bullet point added to Para xiii):	m) <u>The revised SPD includes a section on the vacant building credit which was introduced through the Ministerial Statement on 28 November 2014.</u>	In response to national planning policy changes introduced through ministerial statements
Para 1.8 and Para 1.24 (was Para 2.22) (re: equity share)	Both paragraphs have been amended to refer to the Council, RPs and developers, any of whom could potentially retain the equity.	For clarity.
Para 1.8 Wording added to Shared Ownership description	The purchaser buys a percentage share of a property (<u>initially a minimum share of 25%, or a maximum 75%</u>) and pays rent on the share that they do not own, <u>which is capped at 3% of the value of that share. Shared Ownership properties are always leasehold but the purchaser may gradually acquire the freehold in stages from the RP (known as 'staircasing'). If the purchaser staircases up to 100% of the property, the capital receipts will be ring-fenced to deliver more Affordable Housing and/or to tackle homelessness in Hertsmere. Where 100% staircasing occurs, the RP or Council will have first right of refusal on purchasing the property back.</u>	For clarity.

Wording added to Equity Share description	1.8 The purchaser buys a percentage share of a property and does not pay rent on the share that they do not own. The remaining equity is transferred to the Council or a RP, <u>or in some circumstances may be retained by the developer.</u> Equity Share can be either freehold or leasehold. The purchaser may gradually acquire the freehold in stages from the Council or a RP. If the purchaser staircases up to 100% of the property, the capital receipts will be ring-fenced to deliver more Affordable Housing and/or to tackle homelessness <u>in Hertsmere. Equity Share housing products should be discounted so that they are typically 40% of the open market price in the higher value areas (as set out in Policy CS4) and 50% in all other locations.</u>	For clarity. NOTE: The discount comes from Paragraph 1.35 in the revised draft SPD, which reads: “In present circumstances, shared ownership units are more likely to be suited to sites of 5-14 units. Intermediate housing products should be discounted so that they are typically 40% of the open market price in the higher value areas set out in Policy CS4 and 50% in all other locations.”
New Paragraphs added – Para 1.10 to 1.12	1.10 <u>The announcement by the government in March 2015 of the introduction of a planning policy on Starter Homes provides an opportunity for such developments to come forward on starter home exceptions sites. On such exception sites, it is expected that local authorities will waive their usual Affordable Housing requirements. However, until additional guidance is issued by the government, the Council may not be able to accept applications for developments seeking to be classified as part of the Starter Homes policy.</u> 1.11 <u>The limited guidance issued to date on Starter Homes exceptions sites states that properties outside of London should not have a discounted price of more than £250,000. On this basis, any properties developed as Starter Homes on exceptions sites should not have a full market value (including any aspects of the development sold or leased separately to purchasers, such as parking) of more than £312,500.</u> 1.12 <u>The Council would not expect to consider properties which materially exceed the minimum dimensions in the new national space standards for different dwelling types as starter homes. These minimum standards exceed the dimensions of many new build properties which were developed in the borough prior to the introduction of space standards, and are considered to represent an appropriate size for any properties specifically developed under the Starter Homes policy.</u>	To address the announcement of the Starter Homes policy.

Para 1.16 Wording added	<u>The additional upfront costs of providing sheltered and extra-care housing may include higher build costs, a higher proportion of non-saleable floorspace due to communal areas and facilities, and a slower sales rate than mainstream housing.</u>	Recognition of the additional costs involved in this type of housing provision which may affect viability.
New paragraph added - Para 1.17	1.17 Where it is very clearly demonstrated that it is genuinely not practical to provide on-site affordable housing units on extra-care housing schemes, a commuted payment will be accepted without a need to first provide a viability assessment, subject to the required contribution being offered. <u>Should the required contribution not be offered, a viability appraisal should be submitted which should include details of anticipated income from on-site services and facilities for which charges are made.</u>	Recognition of the additional costs involved in this type of housing provision which may affect viability.
Para 1.24 Wording added	1.24 The calculated number of affordable units <u>or units within different tenures</u> will not always equate to a whole number. Numbers will therefore be rounded up or down accordingly <u>(at .5 or above the number will be rounded up; at .49 or below the number will be rounded down).</u> Where, exceptionally, a commuted payment is agreed, the amount sought will be based on the specific number of affordable units required, including any decimal places.	For clarity.
Para 1.26 Wording added to the example box	<u>This will apply where the developer agrees to this approach.</u>	For clarity.
New section added – Vacant Building Credit Para 1.24 – 1.34	1.27 <u>The Ministerial Statement published 01/12/2014 states that: “A financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes”.</u> 1.28 <u>The vacant building credit will apply where vacant buildings, which have not been abandoned, are brought back into lawful use or are demolished as part of a new development. This credit will be worked out based by subtracting the gross floorspace of the existing building from the overall floorspace to be created by the development.</u> 1.29 <u>The Council will consider whether a building is ‘vacant’ for the purposes of the credit on a case by case basis. However, regard will be had to the provisions in the Community</u>	To address national policy introduced through a Ministerial Statement in November 2014.

	<u>Infrastructure Levy (Amendment) Regulations 2014 (CIL Regulations), which state that a building is not vacant if it has been in lawful use for 6 months continuously in the last 3 years; the length of time the building has been unoccupied; the extent to which it has been marketed as vacant and the physical condition of the building.</u> 1.30 <u>Where the ‘vacant building credit’ is applicable, it will be calculated in the following way:</u> a. <u>GIA of existing building to be demolished or brought back into use (where qualifying) divided by the total floor space proposed (all uses classes)= Vacant building credit (%)</u> b. <u>Number of residential units proposed multiplied by the adopted affordable housing policy (%) = Gross AH requirement (amount)</u> c. <u>Gross AH requirement (amount) multiplied by Vacant building credit (%) = Vacant building credit (amount)</u> d. <u>Gross AH (amount) less Vacant building credit (amount) = Net Affordable Housing requirement.</u> 1.31 <u>A worked example is shown in Appendix D.</u>	
Para 1.35 Re-written to read	<u>1.35 The nature and size of the proposed development will influence the distribution of the affordable homes. In all cases they should be an integral part of the development and on larger developments spread throughout the site rather than concentrated in one area, to promote integrated and sustainable communities. The practicalities of managing and maintaining units will be taken into account when agreeing the appropriate spatial distribution of units on the site.</u>	For clarity.
Para 1.38 Changes made	1.38 All social housing and intermediate housing requiring Homes and Communities Agency National Affordable Housing Programme (NAHP) Social Housing grant <u>funding</u> must be built to meet the relevant design and quality standards. Further information can be found on the HCA’s website here: http://www.homesandcommunities.co.uk/ourwork/design-and-sustainability-standards	Reference to this specific programme removed.
New paragraph added - Para 1.39	<u>1.39 Where historic buildings are being converted to provide affordable housing, the impact on the historic environment needs to be taken into consideration. Further information can be found in the English Heritage guidance on affordable housing and the historic environment at:</u>	To address potential impacts on historic buildings in line with representations made by

	http://www.helm.org.uk/place-and-placemaking/housing/affordable-rural-housing/.	Historic England.
Para 1.41 Text deleted:	1.41 A proportion of wheelchair accessible homes, typically around 10% , should be provided on new residential redevelopments of 15 or more units. Applicants are requested to consider this provision at an early stage of design. Provision should be agreed with the Council on a site by site basis, having regard to current needs in the Borough. The wheelchair accessible housing required – i.e. by size and type of dwelling - should meet the greatest need of those on the Council's Housing Register at the time the planning application is determined.	Amendment in line with the Core Strategy policy CS22.
Para 1.43 Wording added	1.43 Affordable Housing units must be provided expeditiously: this includes any off-site provision that has been agreed. As a guide, the Affordable Housing units should be completed proportionately with the market housing, <u>however the Council will consider the timing of affordable housing delivery on a case by case basis.</u>	In order to ensure that the Affordable Housing is provided in the best way for each particular scheme.
Para 1.44 Wording added to read	1.44 This is particularly important on larger schemes, where poor timing can result in isolated pockets of development and cause problems with infrastructure delivery, leading in the short term to a poor living environment for new residents. Phasing of Affordable Housing delivery should <u>generally</u> be commensurate with market housing, <u>although phasing will be considered on a case by case basis</u> taking into account the phasing of other infrastructure. <u>If a clawback agreement has been negotiated, the Affordable Housing delivery during the first phase of development will be set out in the agreement, and Affordable Housing delivery may be increased during later phases of the scheme.</u>	For clarity.
Para 1.50 Wording added and deletions made	1.50 Alternatives to on-site provision will only be agreed exceptionally and where off-site alternatives are considered to be the best way to achieve the delivery of more affordable units. If off-site provision is agreed for reasons other than viability, the Council will look to maintain the ratio between market housing and Affordable Housing, required by Policy CS4, across the main site and the donor site or equivalent commuted payment. This is to ensure that the market housing comprises no more than <u>60% or 65%</u> of the housing being delivered/funded, <u>the remaining proportion comprising Affordable Housing in line with Policy CS4. Where off-site units are provided, the precise percentage required may vary slightly depending on the number of</u>	For clarity.

	Affordable Housing units required and the need to round the calculation up or down. Where the Council is satisfied that off-site provision is required for reasons of viability, the Council will seek a ratio that is close as possible to the mix required by Policy CS4. The alternatives to on-site provision are set out in priority order below.	
Para 1.60 Wording added and deletions made due to additions to PPG:	1.60 If a payment in lieu has been agreed, the Council will negotiate for payment or a proportion of payment to be triggered <u>on completion on an agreed number of units or particular development phase.</u> S106 agreements should refer to payment upon the completion of the units to which that payment relates, prior to the commencement of development on site, rather than following completion or occupation of a development or development phase.	To address concerns raised by developers.
Para 1.64 Wording added:	1.64 The new housing should: be delivered through a RP (including a village or other charitable trust, <u>or exceptionally with the involvement of a developer</u>);	For completeness.
New paragraph added – Para 1.68	<u>1.68 Where rural exception sites are proposed, they should take account of the provisions of any Conservation Area Appraisals/ Management Plans, Village Design Statements or Parish Plans. The English Heritage affordable housing guidance is relevant (www.helm.org.uk/place-and-placemaking/housing/affordable-rural-housing/) and also the guidance on the conversion of traditional farm buildings (www.helm.org.uk/guidance-library/conversion-of-traditional-farm-buildings/).</u>	To address potential impacts on historic buildings in line with representations made by Historic England.
Para 1.77 Wording added on developer profit	1.77 For market housing it can be <u>is typically 15 – up to 20%</u> of the gross development value <u>and is typically between 15 – 20% and</u> for Affordable Housing <u>is typically around 6%</u> of the gross development cost (i.e. excluding land).	Wording altered following discussions with London Boroughs Viability group in order to clarify acceptable profit levels.
Para 1.81 Wording added:	b) The Alternative Use Value where there is an extant planning permission on a site <u>or the site is allocated through the development plan</u> ; or	For clarity.

New paragraphs added - Para 1.85 and 1.86	<u>1.85 Certain types of housing, including sheltered accommodation, can sometimes incur higher upfront costs than general needs housing. This can be due to the amount of saleable floorspace, longer marketing and sales periods, and potential longer development periods although this may be offset through income from on-site services and facilities for which charges are made.</u> <u>1.86 Where a site would benefit from a permitted change of use from office to residential under the temporary provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (or any subsequent Order), the Council will attach little weight to this as a measure of alternative use value. In addition, the number of units which could be provided under permitted development will only be considered as a ‘fallback position’ for the purposes of calculating the Affordable Housing requirement where an application has been made and prior approval is not required by the Council. The Council will only consider such schemes to be a ‘fallback position’ where the size and layout of proposed units are capable of providing satisfactory accommodation, having regard to the national Technical housing standards and Part D of the Council’s Planning and Design Guide SPD.</u>	In response to comments from providers of this type of housing. To address recent changes to the permitted development regime.
Para 1.88 Wording added	• abnormal costs, including those associated with treatment for contaminated sites or listed buildings, or historic costs associated with brownfield, phased or complex sites. <u>All abnormal costs should be disaggregated within the appraisal;</u>	For clarity.
New paragraph added - Para 1.89	<u>1.89 Development values should include:</u> <u>1. purchase offers for affordable housing from RPs;</u> <u>2. all sales values for the proposed development, including any garaging, parking or other facilities which may be sold or leased separately.</u>	For clarity.
Para 1.92 Wording added and	1.92 The Council has a list of recommended valuers which can be made available. However, The Council will appoint an independent valuer (at the applicant’s expense) to review viability appraisals submitted as part of a planning application, including for any re-appraisal required at	To reflect the introduction of the new Hertfordshire-wide viability framework agreement

deletions made:	<u>part of any clawback arrangement. The appointment will be through the Hertfordshire-wide viability framework agreement set up by local authorities across the County.</u>	for viability appraisals.
New paragraph added - Para 1.94	<u>Publication of viability assessments</u> 1.94 The Council will publish all information submitted in support of a planning application, including viability appraisals. If the applicant considers that any element(s) of a viability assessment should be kept confidential, they should provide justification for why disclosure would harm both their commercial interests and the public interest, in line with the Environmental Information Regulations 2004. Following consideration of this, the Council would then publish the information with any elements it considers should not be disclosed redacted. If this is the case. the applicant may be asked to provide a redacted version of the appraisal.	Added following the First Tier Tribunal ruling on the Greenwich Peninsula case which found in favour of disclosure.
Para 1.95 Wording added	1.95 The Council recognises that market conditions change and circumstances prevailing at the time of determining a planning application may vary – i.e. improve or worsen. For this reason, it is highly important that developers provide up-to-date viability information. This is particularly important where larger, phased schemes are being contemplated. In very limited instances, it may be possible to show that a scheme is not viable under current market conditions. In those situations, the Council has made provision to move the scheme forward via either ‘claw back’ or ‘deferred payments’. <u>Value growth assumptions will not be accepted in place of a mid-development viability review, if such a review is considered necessary.</u>	Wording altered following discussions with London Boroughs Viability group.
Para 1.97 Wording added and deletions made:	1.97 If this is the case, an additional viability appraisal will be carried out upon completion of 60% of sales (or on large developments, 60% sales completions for each phase). <u>The Council recognises that some properties can be purchased ‘off plan’ and no payments will be sought prior to completion of the units to which that payment relates.</u> The purpose is to review the circumstances and determine whether an additional number of Affordable Housing units or an additional financial contribution could be made based on current costs and values. Developers will be unable to sell the remaining units until the required review has been submitted and approved, and monies due at that point paid to the Council.	Amended following representations from developers.

New paragraph added 1.102	1.102 If it is found that viability has worsened due to falling market conditions, it may be possible to renegotiate the tenure of on-site affordable housing units. Where material changes to an approved scheme are proposed, a fresh planning application will be required.	
Para 1.105 Wording added:	1.105 The scheme viability will be reviewed upon 60% of sales completions or on larger schemes, completion of a particular phase, and the Council will receive 50% of any additional surplus up to the amount required under the deferred payment. This review is to ensure that any requirement for additional financial contributions is based on <u>up to date</u> values. The costs of the review will need to be met by the applicant. <u>60% of monies due would then need to be paid to the Council upon completion of 60% of the units or on completion of a phase, with the remainder being paid upon completion of 80% of the development.</u>	Amended following representations from developers.
New paragraph added 1.108	Monitoring and Administration <u>1.108 Considerable monitoring of residential schemes and their associated s106 legal agreement can be required where no Affordable Housing is provided on-site, in order to ensure that a development continues to be acceptable in planning terms. This includes tracking when units have been sold, ensuring that off-site units provided are genuinely affordable (in line with this SPD and in consultation with the Council’s Housing department), additional work on the part of the Council required as part of any clawback stage and obtaining required information from the Land Registry. The Council will seek a modest monitoring and administration fee of £100 per residential unit permitted as part of the application on schemes of up to 10 units, and £50 for each additional unit up to 100 units alongside any proportion of CIL receipts which the Council may use for monitoring (up to 5% of CIL receipts). On all schemes of above 100 units, any monitoring fee will be agreed on a site by site basis. The fee will be index linked to increases in CPI from the date of adoption of this SPD.</u>	To clarify the circumstances in which a monitoring fee will be sought.
<u>2. Management and Occupancy</u>		
Perpetuity Para 2.9	2.9 All money received as a result of occupants either purchasing their property (e.g. through the ‘right to acquire’) or acquiring a further equity share (e.g. through ‘staircasing’) will, subject to any statutory restrictions, be used to provide Affordable Housing within the borough.	For clarity.

Wording added	Recovered HCA grant must either be paid back to the Agency or recycled to provide Affordable Housing, in accordance with the HCA's guidance on recycled capital grant funding. <u>Equity Share arrangements will be set out through a Section 106 agreement as a charge on the property.</u>	
New Appendix D: worked Vacant Building Credit examples	<u>Proposed residential only scheme:</u> <u>An application is submitted for 15 flats in Potters Bar. A new building of 1,200 sq m GIA is proposed, this includes 100sqm of retail and 750sqm of residential (including communal areas, along with a 100sqm basement car park). 35% affordable housing is required in Potters Bar. There is a vacant building on the site with a GIA of 350sqm which is to be demolished.</u> <u>Existing building (350sqm) divided by total floor space proposed (950sqm) = Vacant building credit of 36.8%</u> <u>Amount of residential units proposed (15) multiplied by the adopted affordable housing policy (35%) = Gross AH Requirement of 5.25 units</u> <u>Gross AH requirement (5.25 units) multiplied by Vacant building credit (36.8%) = Vacant building credit of 1.93 units</u> <u>Gross AH requirement (5.25 units) less Vacant building credit (1.52 units) = 3.32 units</u> <u>Proposed mixed use scheme:</u> <u>1,000sqm residential (11 units) and 450sqm retail in Potters Bar with vacant building of 750sqm.</u> <u>Existing building (750sqm) divided by total floor space proposed (1450sqm) = Vacant building credit of 51.7%</u> <u>Amount of residential units proposed (11) multiplied by the adopted affordable housing policy (35%) = Gross AH Requirement of 3.85 units</u> <u>Gross AH requirement (3.85 units) multiplied by Vacant building credit (51.7%) = Vacant</u>	In response to new national planning policy.

	<u>building credit of 1.99 units</u> 5. <u>Gross AH requirement (3.85 units) less Vacant building credit (2 units) = 1.86 units</u> <u>Please note that the Council will not accept claims that a larger percentage of the units will be accommodated within the floorspace or footprint of the vacant building or that the new floorspace will accommodate more communal space.</u>	
Appendix E		
<u>Page ix, 1st para</u> <u>Wording added:</u>	<u>The Council will adjust the amount required by the standard contributions by the % change in sales price data for the postcode area for that house type from figures in Table D2, based on data from the Land Registry. The Council will aim to update the amounts quarterly subject to the availability of Land Registry data, and they may go up or down over time.</u>	To explain how the standard contributions will be adjusted to allow for changes in house prices.
<u>Page ix, 2nd para</u> <u>Deletion:</u>	... Where there is either a deferred payment/claw back arrangement or where the trigger for payment is dependent on a future date (e.g. commencement of development), the amount set out in the s106 agreement will be linked to future sales price changes... Various changes and updates to Tables D1 and D2 and supporting notes	To reflect the change made to paragraph 1.60
<u>New Appendix F added</u>	<u>Paragraph 1.50 sets out the Councils preferred options for providing affordable housing in cases where on-site provision is not possible. Options 2 and 4 involve the purchase of land to be gifted to a RP or the Council. Option 3 involves the purchase of existing housing units to be sold to a RP or the Council at a discount.</u> <u>This appendix provides further detail on the Council's requirements if these options are being considered.</u> <u>Options 2 and 4: Purchase of land for a RP or the Council either within the same settlement (Option 2) or elsewhere in the borough (Option 4)</u> <u>The mechanisms for transferring the land and precise timings and requirements will be set out in individual Section 106 agreements.</u> <u>For all cases where the purchase of land is being considered as an option, the following criteria</u>	To provide further explanation of options 2, 3 and 4 in Table 4.

	<u>need to be met:</u> • <u>The location of the site needs to be discussed and agreed with the Council’s appointed Housing Office and the relevant RP if it is proposed to transfer the land to an RP. Sites will need to be within existing residential locations with no obvious abnormal build costs.</u> • <u>The site must have planning permission for the desired mix of units, so a concurrent application should be made for this land alongside the main application.</u> • <u>The site must be cleared.</u> • <u>The site must be serviced (gas, water, electricity, telephone line).</u> • <u>The highway, drainage and street lighting need to be constructed by the developer to the adoptable standards and the developer will be responsible for maintenance until they are adopted.</u> • <u>The developer will need to be liable for any CIL payments for the site (relief from CIL can be claimed for the development of affordable housing, however the development will be CIL liable and an exemption form must be submitted in order to claim the relief).</u> • <u>The site would need to be transferred to the RP or the Council on a freehold basis.</u> <u>Option 3: Purchase of existing units within the Borough</u> <u>The mechanisms for transferring the land and precise timings and requirements will be set out in individual Section 106 agreements.</u> <u>For all cases where the purchase of existing units is being considered as an option, the following criteria need to be met:</u> • <u>The location of the units needs to be discussed and agreed with the Council’s appointed Housing Office and the relevant RP if it is proposed to transfer the land to an RP. Where possible, units should be in a location where the RP already has a presence, and where more than 1 unit is required, they should not be widely spread around the borough unless they are in locations where the RP already owns and manages units.</u> • <u>The market cost of the units must be agreed with the RP or the Council. The units will typically be sold to the RP or the Council at a 30%-40% discount on the market value, and</u>	
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	<u>the level of discount must also be agreed.</u> • <u>The units must be purchased prior to the commencement of development. This will be a requirement of the Section 106 agreement.</u> • <u>The condition of the units must meet the Home and Communities Agency Decent Homes Standard to enable them to be used as affordable housing immediately. All the relevant safety certificates for the units must be provided. (Decent Homes Standard link: www.gov.uk/government/policies/improving-the-rented-housing-sector--2/supporting-pages/decent-homes-refurbishing-social-housing)</u>	
<u>Glossary</u>		
Deleted	<i>Development Economics</i> The assessment of key variables included within a development appraisal; principally items such as house prices, build costs and affordable housing revenue.	Duplicates 'viability' and 'viability appraisal' definitions in the glossary.

Appendix 4**Schedule of representations: Draft Affordable Housing SPD: Consultation 8 June 2015 – 6 July 2015**

Ref	Name/ Body	Date Recei ved	Comment type	Summary of representation made	Response
1	Natural England	12/06/ 2015	No Comment	Do not wish to comment on this document.	
2	Planning Issues on behalf of Churchill Retirement Living	17/06/ 2015	Comment	Additional comments supplement first reps and incorporate comments on Vacant Building Credit. Para 1.17: Only refers to extra-care housing schemes while the elements referred to also apply to retirement sheltered housing where sites are usually small and it is impractical to achieve AH on site. Calculation of commuted sums: Unsatisfactory that the approach in the 2011 Development Viability Study has not been adopted. It does not meet the criteria of being: 1. Related in scale and kind to the development in question; and 2. Fair and reasonable. Disagree with the previous response that	The comments acknowledge some changes which have been made to improve the clarity of the SPD, and these are welcomed. Para 1.17: No change. Para 1.17 applies specifically to extra-care housing. Para 1.16 recognises the additional costs involved in developing retirement housing. Where these affect viability this will be taken into account, and the hierarchy of options in Para 1.44-1.59 will apply. Calculation of commuted sums: No change. This method is considered to provide clarity because developers will be able to calculate exact commuted sum amounts before a planning application is submitted. The CIL Regulations actually state the following: Obligations must be:

				this provides clarity to developers.	1. Directly related to the development; and 2. Fairly and reasonably related in scale and kind to the development. It is directly related to the development by way of being linked to a sum derived from sales values in the area of the developments, and to be used to provide affordable housing in lieu of any AH being provided on-site in accordance with Policy CS4. It is fairly and reasonably related in scale to the development because it represents a proportion of the land value in the area of the development. The Council and most RPs do not have large land holdings on which to provide Affordable Housing and therefore the cash approach has to reflect the cost of buying plots elsewhere. It is fairly and reasonably related in kind because it is a payment which should only be required in exceptional circumstances when AH cannot be provided as units on-site. It is also possible for developers to provide an argument on the grounds of viability in order to reduce the commuted sum amounts payable. In addition, if there is a problem with a planning obligation, a separate application can now be made to vary this, and individual clauses can also be appealed should the Local Authority not agree to vary them, so it is considered that there are ample options for developers to reduce the amount payable if there is a viability reason to do so. Claw back and deferred payments: Para. 17 of the PPG on Viability and decision-taking states: “Viability assessment in decision-taking should be based on current costs and values. Planning
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				Claw back and deferred payments: Disappointed that the Council still seeks to apply clawback to single-phased developments despite being contrary to the NPPF and RICS guidance.	applications should be considered in today's circumstances." Circumstances at the point at which the scheme is being built and a viability review is requested (which could be over 3 years since the planning application was considered), could be significantly different to those when planning permission was granted. If circumstances have not improved, no additional monies would need to be paid to the Council, and if they had, the developer would still make a higher profit than was shown in the initial viability appraisal.
				Several comments refer to the comments made by other parties and the Council's response to these. No response is made here, as these points have been addressed in the Council's responses to the previous comments.	Vacant Building Credit Following the recent High Court Judgment (<i>R on the Application of West Berkshire District Council v Department for Communities and Local Government. Case Number: CO/76/2015</i>) the Vacant Building Credit is no longer a part of national planning policy so the Council considers that there is no need to provide detailed responses to the section of the SPD which

				Vacant Building Credit Concerns are raised about the interpretation of this.	related to it. This section is removed from the draft being put forward for adoption.
3	Woolf Bond on behalf of Gilson Investments Ltd	06/07/ 2015	Comment	Para 1.21 Suggest amendment to “... <u>Ideally</u> the Council will need to be provided with evidence of detailed offers from RPs for the units they are intending to provide.”	Para 1.21 No change. Registered Providers have stated that they prefer to be involved at a pre-app stage in order to put their requirements to developers to enable a suitable scheme to be designed. In feedback received from RPs during the planning application process, the preference is for involvement before the tenure and mix is confirmed, in order that they are taking on a product which fits with their working practices and which will meet affordable housing need. The Council retains the aspiration that the tenure and mix should be discussed with the Council’s Affordable Housing Officer and an RP before a formal planning application is made.

				Para 1.95 This paragraph should be omitted because this is unusual and no resolution has been reached as yet.	Para 1.95 No change. Several London Boroughs already require this (including Islington Draft Development Viability SPD June 2015), and the judgment decision in the Royal Borough of Greenwich against the Information Commissioner (EA/2014/0122, 30/01/2015) provides a resolution. Dealings with public authorities are subject to the freedom of information regimes under the Freedom of Information Act and the Environmental Information Regulations (EIR), including all information submitted relating to planning applications. Regulation 12(5)(e) of the EIR states the following: “ (5)... A public authority may refuse to disclose information to the extent that its disclosure would adversely affect – ... (e) The confidentiality of commercial or industrial information, where such confidentiality is provided by law to protect a legitimate economic interest.” Companies can ask for exceptions to be considered, and draw the Council’s attention to sensitive parts of a document, but the decision makers in relation to freedom of information are the public authority (the Council) and the Information Commissioner. The tribunal decision states that: “The exception
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				applies only if in all the circumstances of the case, the public interest in maintaining it outweighs the public interest in disclosing the information. There is a presumption in favour of disclosure.” (EA/2014/0122, 2015, p.4). Therefore it is considered that there is precedent for this, and that it is reasonable to disclose viability information. Para 1.98 Change. This has been considered and the change has been made because the proposed heading is thought to be clearer. Para 1.107 No change. This paragraph was added following the ruling attached to the representation, in order to provide justification for monitoring fees specifically for the monitoring of schemes where off-site affordable housing has been agreed. Where schemes are fully policy-compliant and affordable housing is provided on-site, no such fee is necessary.
			Para 1.98 Propose amending the section heading from ‘Clawback’ to ‘Viability Review’.	
			Para 1.107	

				Propose omitting the paragraph on monitoring fees.	
4	Preston Bennett	06/07/2015	Comment	Conflict with government policy The Draft SPD is in conflict with government policy on affordable housing thresholds. Request that the document be amended to accord with national policy. Various appeal decisions have been provided which were decided in favour of the appellants.	Conflict with government policy Following the High Court Judgment (<i>R on the Application of West Berkshire District Council v Department for Communities and Local Government. Case Number: CO/76/2015</i>) on 31st July 2015 the changes to national policy brought in through the Ministerial Statement in November 2014 have been quashed so the SPD is now in accordance with the adopted development plan.
5	Héronslea Group	06/07/2015	Comment	Previous comments are attached and remain applicable. Conflict with government policy A number of recent appeal decisions are listed which relate to the national policy changes. Vacant Building Credit	The previous comments have already been addressed and the Council's response is included within this report (above). Following the High Court Judgment (<i>R on the Application of West Berkshire District Council v Department for Communities and Local Government. Case Number: CO/76/2015</i>) on 31st July 2015 the changes to national policy brought in through the Ministerial Statement in November 2014 have been quashed so the SPD is now in accordance with the adopted development plan. Vacant Building Credit Following the recent High Court Judgment (<i>R on the Application of West Berkshire District Council v Department for Communities and Local Government.</i>

				Concerns about the Council's approach to this.	<i>Case Number: CO/76/2015</i>) the Vacant Building Credit is no longer a part of national planning policy so the Council considers that there is no need to provide detailed responses to the section of the SPD which related to it. This section is removed from the draft being put forward for adoption.
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Appendix 5**Schedule of main changes to the draft SPD following public consultation in June 2015**

N.B. Deletions are ~~crossed through~~; insertions are underlined. Where deletions have occurred as a result of representations made during the public consultation these are shown as a ~~double strike through~~. Insertions added as a result of the public consultation are shown as a double underline.

Paragraph numbers given refer to the new paragraph numbers in the revised draft SPD for adoption October 2015.

Location in SPD	Change made	Comments
Introduction		
Why is a revised SPD required?	Some amendments made to reflect the quashed government policy on planning obligations	Section amended to reflect new changes made following the quashing of the government policy.
What have we reviewed to get to this new SPD?	Some amendments made to reflect the quashed government policy on planning obligations	Section amended to reflect new changes made following the quashing of the government policy.
Status of this Guidance	<u>Section deleted</u>	No longer needed now the consultation period has been completed.
Consultation	<u>Section deleted</u>	No longer needed now the consultation period has been completed.
1. Providing Affordable Housing		
Para 1.16 Extra care and sheltered housing schemes	<u>1.16 Extra care and continuing retirement communities often provide self-contained units, for sale, to meet the needs of a growing older population. Such developments of self-contained units, whether they are within a Class C2 or Class C3 development, will be required to meet the Council's Affordable</u>	For clarity.

	<u>Housing requirements in Policy CS4.</u>	
Para 1.25 Vacant Building Credit Paragraph deleted in its entirety	1.1 The Ministerial Statement published 01/12/2014 states that: “A financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes”. 1.2 The vacant building credit will apply where vacant buildings are brought back into use or are demolished as part of a new development. The credit will not be applied by the Council where a building has been abandoned, has been deliberately made vacant or benefits from a current or recently expired permission for similar development. This credit will be worked out by subtracting the gross floorspace of the existing building from the overall floorspace to be created by the development. 1.3 The Council will consider whether a building is ‘vacant’ for the purposes of the credit on a case by case basis. However, regard will be had to the provisions in the Community Infrastructure Levy (Amendment) Regulations 2014 (CIL Regulations), which state that a building is not vacant if it has been in lawful use for 6 months continuously in the last 3 years; the length of time the building has been unoccupied; the extent to which it has been marketed as vacant, and the physical condition of the building. 1.4 Where the ‘vacant building credit’ is applicable, it will be calculated in the following way: a. GIA of existing building to be demolished or brought back into use (where qualifying) divided by the total floor space proposed (all uses classes) = vacant building credit (%) b. Number of residential units proposed multiplied by the adopted affordable housing policy (%) = Gross AH requirement (amount) c. Gross AH requirement (amount) multiplied by vacant building credit (%) = vacant building credit (amount) d. Gross AH (amount) less vacant building credit (amount) = vet Affordable Housing requirement. 1.5 Worked examples are shown in Appendix D.	Deleted following quashing of national policy on vacant building credit.
Para 1.27 -1.28		To remove reference to a commuted sum being

Tenure Mix Adjustments made to Table 3 and the text	Size of site (gross)	Affordable housing - on-site mix	Units sought off-site	required on sites of 5-10 units following the High Court Judgment quashing national policy on which this point was based.
	15 units+	75% social and affordable rent, 25% intermediate	Only in exceptional circumstances	
	11 5 – 14 units	Intermediate	Only in exceptional circumstances	
	5-10 units	None	Commutated sum	
	1 - 4 units where the site area exceeds 0.2ha*	None	Commutated sum	
	In present circumstances, shared ownership units are more likely to be suited to sites of 10 5 -14 units, or alongside social / affordable rented products on larger schemes. Intermediate housing products should be discounted so that they are typically 40% of the open market price in the higher value areas set out in Policy CS4 and 50% in all other locations.			
Paragraph 1.31 Text added	<u>All social housing will be expected to achieve part 2 of the Secured by Design award in relation to physical security which is the police approved minimum security standard.</u>			In response to consultation response (September 2014) from Herts Constabulary.
Paragraph 1.44	This will be accepted on sites of 10 units or less. This will be accepted on sites larger than 0.2 hectares where 1-4 units are proposed. On larger sites it will only ever be accepted after the alternatives above have been actively considered by the developer and discounted by the Council.			Deleted following quashing of national policy on which this point was based.
Para 1.45 What happens if the required mix of	The Council recognises that it may be necessary to negotiate over the amount, mix and location of Affordable Housing to enable a development to come forward. Negotiations will be undertaken with the Planning Officer and the appointed Housing Officer and will be based on delivering the best			Text added for clarity.

affordable units cannot be delivered on-site?	outcome to meet local housing needs. They will take the following form: - the preferred mix and tenure of dwellings will be negotiated to establish whether the percentage target can be met through an alternative tenure mix that will still meet local housing need. <u>the method of providing the Affordable Housing will be negotiated to establish whether the percentage target can be met through a mix of on- and off-site provision, using the hierarchy in Table 1.</u> <u>if neither of the above options can be achieved,</u> the Council at its discretion may consider an alternative percentage of Affordable Housing, in order to achieve on-site provision.	
Para 1.76 What the Council expects from a viability assessment	this is also referred to as the developer's profit. As a general guide, for market housing it can be up to 20% of the gross development value and is typically around 15-20% and f <u>As a general guide, for market housing it is typically around 15-20%, although the level of profit the Council will consider acceptable will be considered on a case by case basis, taking into account market conditions at the time of the application (i.e. if the housing market is weak a profit level closer to 20% may be acceptable, while in a buoyant market it would be expected that the percentage profit would be lower).</u> For Affordable Housing <u>the developer's profit</u> is typically around 6% of the gross development cost (i.e. excluding land).	Text inserted and deletions made to clarify acceptable profit levels
Para 1.91 Submission of viability assessments	<u>1.91 The Council will appoint an independent valuer (at the applicant's expense) to review viability appraisals submitted as part of a planning application, including for any re-appraisal required at part of any clawback arrangement. All initial appraisals and reappraisals will be at the applicant's expense. The appointment will be through the Hertfordshire-wide Viability Framework Agreement which has been set up by local authorities across the County.</u>	Text inserted for clarity
Claw back (p.16) Heading changed	Claw back <u>Viability Reviews ('clawback') and deferred payments</u>	Sub-heading changed for clarity following a representation made.
Claw back (p.17)	Claw back <u>Viability Review</u>	Sub-heading changed for clarity following a

		representation made.																																										
Appendices																																												
Appendix D: Vacant Building Credit	Entirety of Appendix D deleted	Deleted following the 31 July 2015 High Court Judgment (<i>R on the Application of West Berkshire District Council v Department for Communities and Local Government. Case Number: CO/76/2015</i>) which quashed the national policy which introduced the VBC.																																										
Appendix D: Commuted Sums (was Appendix E) Table D2: Standard Financial Contributions Updated figures added The tables for the worked examples Scheme 1, Scheme 2 and Scheme 3 in Appendix E have been updated with	Table D2 <u>E2</u>: Standard Financial Contributions Note that these sums are based on sales data for the 11 months from April 2014 to February 2015. <table><tr><th colspan="2">Place</th><th colspan="4">Contribution (£)¹</th></tr><tr><th></th><th>Post Code(s)</th><th>Detached</th><th>Semi</th><th>Terrace</th><th>Flat/Mais</th></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Borehamwood</td><td>WD6 1/2/4/5</td><td><u>£262,757</u></td><td><u>£191,094</u></td><td><u>£142,846</u></td><td><u>£100,191</u></td></tr><tr><td>Elstree</td><td>WD6 3</td><td><u>£574,243</u></td><td><u>£224,518</u></td><td><u>£178,386</u></td><td><u>£120,547</u></td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Bushey</td><td>WD23 2/3/4</td><td><u>£298,1709</u></td><td><u>£196,269</u></td><td><u>£176,559</u></td><td><u>£162,051</u></td></tr></table>	Place		Contribution (£) ¹					Post Code(s)	Detached	Semi	Terrace	Flat/Mais							Borehamwood	WD6 1/2/4/5	<u>£262,757</u>	<u>£191,094</u>	<u>£142,846</u>	<u>£100,191</u>	Elstree	WD6 3	<u>£574,243</u>	<u>£224,518</u>	<u>£178,386</u>	<u>£120,547</u>							Bushey	WD23 2/3/4	<u>£298,1709</u>	<u>£196,269</u>	<u>£176,559</u>	<u>£162,051</u>	Figures updated to reflect the latest figures from Land Registry for 12 months to 30 June 2015.
Place		Contribution (£) ¹																																										
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the new figures (tables not included here).	Bushey Heath	WD23 1	<u>£417,112</u>	<u>£222,070</u>	<u>£170,276</u>	<u>£223,623</u>
	Potters Bar	EN6 1/2/3	<u>£279,613</u>	<u>£192,036</u>	<u>£144,793</u>	<u>£109,203</u>
	Radlett	WD7 7/8	<u>£627,323</u>	<u>£254,767</u>	<u>£226,043</u>	<u>£136,298</u>
	Shenley	WD7 9	<u>£293,567</u>	<u>£226,550</u>	<u>£215,688</u>	<u>£88,286</u>
Notes: ¹ Each contribution figure is based on the average sales prices provided by the Land Registry in the 11 <u>12</u> months up to (and including) the end of February <u>30 June</u> 2015. The average sales price figure is multiplied by 44% to calculate the standard financial contribution (the answer being rounded to the nearest hundred). For example, the average sale price of a detached property in Bushey Heath was £918,699 <u>£947,982</u>: the standard financial contribution per detached house has been calculated as follows, £918,699 <u>£947,982</u> x 44% = £404,200 <u>£417,112</u> (rounded).						
Appendix F: Affordable Housing policy checklist (was Appendix G)	10) <u>Is there an exceptional reason to justify a lower level of provision or an alternative to on-site provision (e.g. an unsuitable site or demonstrated viability issues)? (see para 1.39, p.7)</u>					Paragraphs updated to reflect the new hierarchy on p.18 of the SPD