

Build to Rent and Affordable Private Rent Consultation

Highbury Group on Housing Delivery Response

Q 1: Please provide your name and contact details in the box provided, and identify whether you are responding as (please tick one):

- A private individual?
- On behalf of an organisation?

The Highbury Group

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

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

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

- An investor in Build to Rent schemes
- A developer of Build to Rent homes
- A lender to Build to Rent schemes
- A supplier of management and/or other services to Build to Rent homes
- Other private landlord
- Social landlord (either Registered Provider or local authority)
- A developer of other housing tenures besides Build to Rent
- A trade or other representative body
- Local authority
- Other (please specify)

The Highbury Group is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies on policy options for optimising the output of housing including affordable housing. The current core membership is set out in a footnote to this submission.

<https://www.westminster.ac.uk/highbury-group-documents>

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

- London
- South East
- East of England
- South West

- East Midlands
- West Midlands
- Yorkshire & Humber
- North East
- North West
- Other (please specify)

England and the UK

Q 5: Do you consider there are market and regulatory failures impeding the rapid development of the Build to Rent market that merit national policy intervention? Please add comments.

- Yes
- No
- Don't know

Market rental yields do not provide an economic return in the short to medium term (5 to 15 years), though the yield gap has been closing in recent years. Long-term investments from 30 to 60 years provide an economic return. Most current investors have not been looking at long-term holdings and either accept a low return (Buy-to-Let) or see PRS as a short to medium term investment pending open market sale, or as a means of increasing absorption rates on apartment developments through non-institutional investors. For these reasons, institutional appetite for long-term holding of PRS has been low, but as other asset class yields fall institutional investor interest in PRS is picking up.

Political and regulatory risk was high in the second half of the 20c but has reduced. Care should be taken with any policy intervention to ensure we do not return to large scale disinvestment in the sector.

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

- Yes
- No
- Don't know

The NPPF should be a strategic and high level policy framework and not be cluttered with potentially short term initiatives.

Q 7: Do you think that Government should set a policy expectation on Affordable Private Rent in the National Planning Policy Framework, or not? (Please state your reasons).

- Yes
- No
- Don't know

The NPPF already has a general policy expectation on affordable housing. It does not need to refer to particular products. Furthermore, the current definition of intermediate market housing is sufficient to encompass the proposed Affordable Private Rent (APR) product.

Q 8: Will a policy expectation in the National Planning Policy Framework send a sufficiently strong signal to support Affordable Private Rent as the main vehicle for affordable housing in Build to Rent? (Please state your reasons)

- Yes
- No
- Don't know

We say no, because the main incentive for planning authorities will be the appropriateness of APR for the range of housing need to be met and the gap it will fill in the range of sub-market products.

Q 9: Do you consider that Affordable Private Rent could play a useful role in the delivery of affordable housing in the area(s) where you live or operate?

Yes

No

Don't know

In some markets, particularly in high value areas, an intermediate market rent product such as APR can meet identified need.

Q 10: Do you consider that the efficiencies arising through on-site provision of Affordable Private Rent can materially improve the viability of Build to Rent, compared to other affordable housing tenures?

Yes

No

Don't know

The economies mentioned in the consultation paper are likely to be very small. Rented housing provision can work equally well when pepperpotted in small numbers across a neighbourhood as in a large block under single management. So called economies of scale have proven to be illusionary whether in construction, funding, or management. No minimum scheme size is needed (other than the S106 thresholds, of 10 dwellings, etc).

The potentially lower subsidy requirement from a land owner or developer to include APR within a scheme should not be seen as an efficiency.

The lower value of the obligation is more likely to lead to higher land prices being paid (and expected). On our calculations very little, if any, developer subsidy will be required for APR, as is the case for any sub-market product which is closer to market costs for the occupier than more heavily subsidised or discounted products.

Q 11: Do you consider that there could be unintended consequences of Affordable Private Rent if it is accepted as a form of affordable housing?

Yes

No

Don't know

As another sub-market product, it is unlikely to have any unintended consequences if it is properly designed (see comments below) and part of a range of products required to meet identified need. But if it is designated in national policy as sufficient to meet any planning obligations for affordable housing, without regard to the need for a range of affordable products in the locality, then it is highly likely that it will be to the detriment of those other needs.

Q 12: If your answer to Q11 is yes, would these consequences be mitigated by limiting Affordable Private Rent only to Build to Rent schemes?

Yes

No

Don't know

“Build to Rent” is a general term to describe an intention. It is not a permanent tenure, a use class, or even necessarily a specific built form. It is market housing, and as such should

meet obligations to mitigate development which may or may not include the proposed APR. The same risk of unintended consequences as described in answer to Q11 would apply.

Q 13: Do you think it is reasonable for Planning Authorities to specify minimum tenancy lengths in Build to Rent schemes? Please add your reasons, and give examples of such agreements where appropriate.

Yes

No

Don't know

Whilst, with a growing number of households' dependent on the PRS for their housing, there is merit in encouraging longer-term tenancies than the typical 6-month or 12-month period, this is a matter of landlord and tenant law and agreement between the landlord and tenant. Different tenancy lengths, notice periods and rent review mechanisms will affect starting rents. Perhaps as a matter of policy we should encourage landlords and tenants to use 3 to 5 year leases (with no premium) if both want longer term security and the responsibilities that go with that. None of this is a planning matter, nor is there any realistic way in which a planning authority could monitor a "minimum tenancy length" requirement.

Q 14: Do you agree that Build to Rent tenancies should be for at least three years (with a one month break option for the tenant after the first six months), for all customers in the development who want one?

Yes

No

Don't know

See response to Q13 above.

Q 15: Does the definition of Build to Rent set out on page 20 capture all of the appropriate elements? (If not, please state why, and what criteria should apply).

Yes

No

Don't know

It is not at all clear why Build to Rent should have a specific definition in planning terms. It is a market activity and there should be no restriction on whether dwellings should be for rent or owner occupation.

If the intention of a Build to Rent definition is to reduce costs, to enable land to be acquired at a lower price (or to have lower value obligations through APR), or to create some other advantage for the developer, then in effect that is state aid to selected parts of the market, and therefore uncompetitive.

There is no justification that all dwellings of a building should be one tenure, that built form should be for one specific purpose, that tenancy lengths should be specific and policed, that block ownership should remain in one ownership, or that there should be only one manager and that they should be "professional" (whatever that means). In fact, these definitions will impair the value of the development, restrict exit routes, and make funding harder.

There is nothing in national, or local, planning policy that stops any market dwellings from being let into the market rented sector, and if that use is appropriate for the developer and the long-term investor then they are at liberty to let.

Q 16: Do you agree that the National Planning Policy Framework should put beyond doubt that Affordable Private Rent qualifies as affordable housing in Build to Rent schemes? (If not, please state why).

Yes

No

Don't know

To single out a particular product for more detailed definition is peculiar, unless the intention is that it would not only qualify as affordable housing but would enable an applicant to state that they meet any affordable housing obligation by insisting on this product alone, whatever the local identification of need and the range, and share, of affordable housing products required to meet that need.

There may well be a case for a more detailed definition of (the range of) all affordable housing products referred to in the NPPF (including but not solely APR). For example, some Shared Ownership offers are a full market offer in that the sale portion is by definition at open market value, and that the FRI rent on the retained equity is sometimes at market levels or with review clauses that could take it above (though this is rare amongst not-for-profit Registered Providers); in that respect, it is not affordable housing and no subsidy is required or discount offered to the user yet it does meet the current loose definition of affordable housing in the NPPF.

Q 17: Do you agree with the proposed definition of Affordable Private Rent set out on page 21? (If not, please state why, and what criteria should apply).

Yes

No

Don't know

This is a weak definition to ensure that value is obtained and maintained. Planning obligations and nominations agreements go into far more detail to ensure the obligation for low-rent social housing or Affordable Rent housing is met and maintained. The risk is that the definition as used in the consultation will be used to override these necessary details.

Commentary on the criteria follows in response to Q18.

Q 18: The Government intends to set the parameters of Affordable Private Rent as:

- a minimum of 20 per cent of the homes to be discounted;
- the discount to be set at minimum of 20 per cent relative to the local market;
- an offer of longer tenancies of three years or more;
- the discount to apply indefinitely (subject to a "claw-back" arrangement if Affordable Private Rent homes are withdrawn).

Taken as a whole, are these parameters: (i) reasonable; (ii) too onerous; (iii) insufficient? Which, if any of them, would you change and why?

Reasonable

Too onerous

Insufficient

Don't know

- The requirement for a minimum of 20 homes to be discounted goes to the heart of the problem of the "unit" based approach. Obligations to mitigate development need to be evaluated and the best method to do that is to use the value of the subsidy required to deliver the discount to market for the intended period of that use. So for example if the intended use is a short time period then a greater number of those dwellings would be needed. Or for example if the identified need was for a much

higher discount to market and/or for larger dwellings to be discounted then less than 20% of the homes may meet the obligation. The statement in the consultation document that the APR rent should be higher than low-rent social rent has not been justified; as such it appears to foster a prejudice against low rent social rent being part of a mix of tenures and a range of affordable products. Where government is offering grant (to achieve a sub market cost to the occupier and lower housing benefit requirement) then it should dictate the terms but in the case of planning obligations this is not public subsidy. The value of a planning obligation is not owned by government but by the community and administered on its behalf by the Local Planning Authority which holds the responsibility for determining how that obligation is met, and maintained.

- The minimum discount (to market for each home) at 20% is sensible. This provides a clear distinction from the market, and allows a buffer for the subjectivity in assessing market values. But it is not sensible to say that that should be a discount to local market rental values. The local market (around the development) may have a completely different character and dwelling types, ages, and condition. It is the assessed market rental value of the proposed dwelling itself that should be used to set the discount
- Comments have been made above on the inappropriateness for tenure length to be part of the planning remit
- There are difficulties in requiring that the discount should be required indefinitely, or in perpetuity. The length of time the discount is available is a material matter but so is the life expectancy of the dwelling. A dwelling replacement (after end of useful life, and then again, and so on) is a much greater obligation than the discount obligation and would have to be included in any viability assessment. It would be better to make a reasonable assessment for dwelling life and apply that to the discount life and its present value calculation. A 60-year life would be a “fair” life for a structure; an 80-year period is a reasonable substitute for “in perpetuity”; either could apply.

There are also other necessary “parameters” to be added to these. The questions of eligibility and claw-back are addressed in response to Q20 and Q21.

The consultation document discusses built form and suggests this should be specifically designed for renting. At one point the consultation paper encourages tenure-blind built forms and designs. Later it talks of discreet blocks purely for this new tenure. Unfortunately, we see, even on our better-quality developments, an increasing trend for tenure segregation by block with features that distinguish the tenures, such as treatment of entrance areas, quality of materials, and size of balconies. Housing associations are also driving this trend often to reduce service charges (and amenity and quality) and management costs. We should not be “locking-in” tenure by built form. Not only does this devalue any sub-market product and label its occupiers, but takes no account of the need for a dwelling to change tenure over time and as market conditions, and policy, adapt to new circumstances.

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

National Planning Policy Framework

Guidance

Not helpful to specify parameters

Don't know

Guidance would be helpful. Inclusion of these details within the NPPF would be out of place, especially as so many of the high-level policy requirements of NPPF each require some volume of detail to implement effectively. APR should not be the exception.

DCLG should work with the industry to shape the guidance, and to aid good practice in delivering all types of affordable housing through planning obligations.

Q 20: The Government is minded to leave determination of eligibility and nomination criteria for Affordable Private Rent to negotiation between the developer and the local authority. Do you support this position? Will it affect take-up of the policy? Please give your reasons.

- Support position
- Do not support position
- Will affect policy take-up
- Will not affect policy take-up
- Don't know

An APR tenure on a national average £250,000 OMV VP dwelling would, at 80%, deliver a rent of £200pw which would be affordable to households on gross incomes of c.£45,000 and above. Whilst in some markets this would undoubtedly meet a need, but if it were mandatory nationally it will do little other than trap most of the 70% of households who have gross incomes below this level, into benefit dependency, and at high cost to the Exchequer. It is important therefore that LPAs target this product (amongst other products to meet identified need) to suitable household income levels to ensure that in high value areas it is allocated to households who would not become benefit dependent or to ensure that the discount is large enough to meet the needs of lower income households and provide reasonable employment or career enhancement incentive and reduced costs to the housing benefit bill.

Household incomes, especially at the 70% to 80% discount to market affordability range, change markedly within a few years. Key-worker schemes found that within three years' tenants had left that employment sector or had progressed to the point where market prices were within range. The eligibility criteria will require regular income assessments and suitable adjustments and reallocation of the implied subsidy following an adjusted discount (response to Q21 below).

These are not functions that private developers can exercise. They have no experience of balancing these goals.

A community good, which the APR would be, should be used as directed by the local authority as trustees for the community.

Q 21: The Government considers there is no need for a fixed minimum covenant period, so long as appropriate claw-back arrangements are provided for. Do you agree?

- Yes
- No
- Don't know

A covenant (for say 15 years) might have a place where the obligation is to provide APR for the short to medium term. The present value of the obligation will be lower per dwelling therefore the number of discounted dwellings should increase.

Build to Rent should not be covenanted as this market activity should not be subsidised or held in lien but should be left free to operate in the market.

But this requires that the claw-back (and recycling) mechanisms for APR are robust.

The consultation document considers this in some detail, but in one place promotes a formula and in another leaves the calculation to the LPA.

The general principle is good. If a sub-market product is no longer used for its original purpose then some or all of the implied subsidy should be used to provide an alternative sub-market product or a commuted sum paid to the LPA to achieve same.

This is better than having time limited covenants, such as the GLA proposal for 15 years for Build to Rent. And, as government now appears to accept, better than creating a market rent, or sub-market, planning use class, with all the difficulties that that would create with lower valuations for restricted use, and with reduced exit routes.

The proposed clawback calculation (at the original discount % of the then open market value) is flawed. Subsidy to deliver a sub-market product is not a linear proportion of OMV related to the % discount on rent. The subsidy is also sensitive to changes in cost of money, rental yields, and in operating costs relative to house price or market rental inflation.

For example, a £250,000 dwelling offered at 80% of market rent would today require a subsidy of 27% of OMV, not 20%, and this % would change in future.

Rather than try to produce a formula it might be better just to say that change of use or removal of the discount requires replacement provision, pro rata. In the main this can be achieved by using the proceeds of each APR dwelling sold on the open market at OMV VP to buy another vacant market dwelling (or pro rata by value) on the scheme or nearby to offer at the original APR discounted rent terms (or more dwellings at lower discount or vice versa). That keeps the ratio of market to sub-market stock (by value) the same.

Where an owner of an APR dwelling cannot, or will not, achieve this within a reasonable timescale then a commuted sum (meanwhile secured by a first charge on the owner's property or bank account) should be paid to the LPA to procure the higher multiple of APR dwellings by new development through another provider. For example, if an original scheme of 100 dwellings had 20% at APR and now that scheme is all open market sales then funds must be sufficient to deliver 25 new dwellings each at similar market value at the same APR discount to market rent¹.

Q 22: Do you think Government should (a) prescribe the basis for calculating the amount of claw-back, (b) set a possible basis for calculating the amount of claw-back in guidance, or (c) leave the amount of claw-back to be agreed between the local authority and the applicant?

(a)

(b)

(c)

Don't know

Whilst these claw-back points are well understood by those experienced in housing and infrastructure economics, project appraisals, and funding, there are many planning

¹ There is a point here about further obligations that may be required for the new APR dwellings which represent an increase in stock for example to fund school places, rather than just swapping of tenures within existing stock, which for example would not change demand for school places. This point seems to be overlooked by the CIL Review Panel who recommend that CIL should be charged on all new dwellings regardless of tenure. If their recommendation is taken then the commuted sum will need to be increased further to cover this obligation on the new stock.

authorities who are less experienced in these matters than their applicants (or future property owners). It would be helpful for DCLG to issue guidance and some worked examples but not to determine a single approach as that would run the risk of being inappropriate in some circumstances, get out of date, and restrict innovation in techniques.

Q 23: Should the Government's Build to Rent and Affordable Private Rent policy be identical across the whole of England or does it need to be set differently between London and the rest of England? If it should be set differently, please use the comments box to tell us how and why the policy should vary in London from the rest of England.

Identical across the whole of England

Different for London

Don't know

The policy should be identical. Interpretation of guidance should be possible to meet local circumstances or to design new variants.

Q 24: Would it be helpful for Government to produce model clauses (which would not be mandatory) that could be used in Section 106 agreements to give effect to Affordable Private Rent?

Yes

No

Don't know

And this would also be helpful to give better effect to low-rent social rent, Affordable Rent and intermediate market products (of which APR is only one).

Q 25: Is a transitional period of six months appropriate for the introduction of the policy? (If not, why not?)

Yes

No

Don't know

The preparatory groundwork and pre-implementation consultation needs to be thorough. [The Stater Home initiative suffered from too short a design phase.] At least a year might be needed.

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

Yes, a fair assessment

No, not a fair assessment

Don't know

Yes, it is fair, especially as all measures to increase supply will help those in need and disadvantaged groups are over-represented amongst those in housing need.

Using APR, however, as the only way to deliver affordable housing would have a negative impact unless the level of discount could be increased to achieve low-rent social housing target rent levels or similar, and, we make progress in increasing the quality of services provided by for-profit (and unregistered) landlords and their managers.

Members of Highbury Group are:

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The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of individual members or of their employer organisations.

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