



The London Plan
Affordable Housing Draft
Supplementary Planning Guidance
Response of the House Builders
Federation

1. Introduction

- 1.1 Thank you for consulting the HBF on this Draft Supplementary Planning Guidance (SPG). We present our response to this SPG in two parts.
- 1.2 First, we are providing a general commentary as to the SPG and how, in our view as the representative body for the private house building industry following consultation with our membership, the SPG will not assist the Mayor to meet his fundamental objective of accelerating the delivery of new housing towards the annual target of 30,000 new homes.
- 1.3 Secondly, we provide our views on the specific detail of the SPG on a paragraph-by-paragraph basis.

2. Overview

- 2.1 It is clear that the aim of this SPG is to maximise the delivery of affordable housing through new development. This objective must be assessed in the context that the private sector will deliver the majority of housing and affordable housing in London. At the outset, we draw your attention to Para 3.42 of the London Plan, which states that the Mayor wishes to encourage, not restrain residential development and boroughs should take a reasonable and flexible approach on a site-by-site basis. This means securing a planning framework that realises residential development potential and encourages creative approaches to affordable housing provision in London. We do not consider that this SPG achieves these objectives.
- 2.2 While the very existence of the planning system means some market intervention, there needs to be a sensible balance between the market and control. However, we consider that this SPG is shifting the balance too far towards control through an increasingly interventionist approach of over-riding markets and enabling boroughs to prescribe the mix of house type by tenure and size and control the level of return to the investment risk through economic viability assessments. The concern is that this highly prescriptive approach will reduce the incentive to invest in residential development opportunities in London.

- 2.3 Although the SPG is providing local authorities with a greater degree of prescription in relation to tenure and size, this is within the parameters of the Mayor's strategic target for 50% overall affordable housing provision and the London-wide objective of 70% social housing and 30% intermediate on all boroughs. However, the Mayor now seems to consider that 50% affordable housing provision from all sources can substantiate a policy of 50% market provision (Para 7.13). This effectively introduces new planning policy which is not permissible via supplementary planning guidance.
- 2.4 The Mayor has also recently sought to impose this 50% market provision requirement on Lambeth Borough where the local housing needs survey identified that a 50% target on market provision was not necessary. The Mayor also raised the issue of non-conformity of Westminster City Council's UDP with the London Plan on the basis that it included a 30% affordable housing target from private developments. The justification for this target was that it would deliver less affordable housing on grounds of economics of provision and the ability to compete effectively with other commercial land uses.
- 2.5 The HBF seek confirmation through the SPG that boroughs are able to operate autonomously in preparing planning policies relating to affordable housing, in particular with regard to borough-wide targets sought from private residential developments. It is essential to ensure that the starting point for negotiation is set at a level that will enable residential development opportunities to be nurtured.
- 2.6 It is extremely difficult to create a framework that seeks to achieve a balance between the market and control through an SPG that prioritises the provision of affordable housing over the wider matter of securing residential development potential. Yet this SPG establishes that an SPG relating to Housing Provision is to be prepared. It is misconceived to prepare and consult upon these SPG's separately in particular as it is intended that the two pieces of policy should be published in a single document. It is only if this inter-relationship between market and control is considered holistically can this balance be secured and the residential development potential within London delivered.
- 2.7 Seeking to delay completion of a S106 development until a local authority is able to confirm the availability of public subsidy is not acceptable. This will not provide sufficient certainty to justify the massive capital outlays associated with larger phased developments. A proliferation of planning agreements would delay development and threaten viability by tying up these capital funds even longer.
- 2.8 In order to avoid this problem arising and to facilitate the swift delivery of new private and affordable housing the preferable approach is to ensure that a fall back position is built into the S106 agreement through a cascade which transfers the responsibility for the provision of affordable

housing to the developer or seeks a lower percentage of affordable housing where public subsidy is not forthcoming or is at a reduced level.

- 2.9 The inclusion of the GLA/Housing Corporation joint statement regarding social housing grant and section 106 agreements is not readily comprehensibly or relevant. The Housing Corporation has the responsibility for determining which projects are funded with decisions made following consultation with boroughs. The Mayor is not involved in this process. The Mayor is not responsible for preparing S106 agreements, even where planning applications are referred to him. There is no rationale for incorporating this protocol into the SPG.

3. Comments on Individual Paragraphs

1.2: Private developers should be included in the list of organisations which provide affordable housing. Private developers currently deliver affordable housing through low cost home ownership, which may include rented accommodation, shared ownership or fixed equity dwellings. The Housing Bill includes a provision to enable the Housing Corporation to pay grants to companies which are not registered social landlords to provide affordable housing. There are existing examples of private developers providing affordable housing for rent and using RSL's to carry out the management function.

The HBF agree that 'affordable housing' should be defined primarily by affordability and not by tenure. However, this SPG contains numerous references to tenure.

1.3: This conflicts with Circular 6/98 Para 4 which states that "The terms "affordable housing" or "affordable homes" are used in this Circular to encompass both low-cost market and subsidised housing that will be available to people who cannot afford to rent or buy houses generally available on the open market". Whilst it is acknowledged that the Circular is scheduled to be withdrawn once revised PPG3 is formally published it is considered that this is a very effective definition which has been of considerable benefit to all stakeholders involved in meeting housing need.

The definition of subsidy and reference to a financial contribution from a developer under a S106 agreement requires greater clarity. Does financial contribution from a developer refer to an off-site financial contribution? It is not clear how discounted land disposal amounts to a subsidy. Land disposal is simply the return to a landowner necessary to enable the sale of land. It is unclear how this relates to a subsidy from a landowner.

1.4: It is misconceived for the Affordable Housing and Housing SPG's to be the subject of separate consultation exercises given that they are interdependent since private development opportunities are the principal

source through which affordable housing is delivered. This is acknowledged by the intention to combine the published policy in a single document. And indeed Para 2.2 of this SPG refers to the GLA Housing Requirement Study, which has considered housing need and housing market flows in London for the period 2002-2012 in terms of both quantity and tenure.

There is a fundamental common theme between these two SPG's ie. delivery of housing. The separation of the consultation exercises and the requirement to respond on one before the other has been made available, denies all respondent stakeholders the opportunity to reflect upon the proposed policy in a comprehensive manner and to respond accordingly. This will create a substantial and inherent flaw in both the consultation process and any policy which is subsequently adopted.

2.1: A revised PPG3 is due imminently. It is likely to be available prior to the publication of the final SPG. If changes to the SPG are introduced as a result of changes to PPG3 and the revocation of Circular 6/98 these should, as a matter of course, be subject to further public consultation to ensure that the development of regional policy in the context of national policy is transparent and has the benefit of the comments of all appropriate stakeholders.

2.2: London does not just have an acute shortage of affordable housing. It has an acute shortage of housing generally. It is this which drives the affordable housing requirement. New housing should be provided to meet all income ranges in London.

It is inappropriate to refer to the GLA housing requirements study. The methodology of this study has not been tested independently and little weight can therefore be attached to the outcome of this study. The interim report has yet to be published. It is not therefore possible to ascertain how the overall housing requirement or the affordable housing requirement has been calculated or how affordable housing is defined. Policy 3A.1 of the London Plan sets the overall housing supply target and Policy 3A.7 the strategic target for affordable housing provision. It is not appropriate to include text within the SPG that suggests alternative targets. This is effectively to introduce new planning policy, which is not permissible via supplementary planning guidance.

In any event, the ODPM Interim 2002-based Household Projections question the conclusions of the housing requirement study. These projections put the annual average additional household formation in London from 2001-2021 at 46,400.

2.3: This represents an inaccurate interpretation of London Plan Policy 3A.1. This establishes that housing provision up to 2006 will be monitored against a minimum target of 23,000 additional targets per year. This implies a target of 11,500 affordable dwellings per year up to 2006 and not up to 15,000 additional affordable homes.

The principle of the transfer of existing market sector stock to affordable housing provision is supported. However, re-assurance needs to be provided that the boroughs will be able and are required to monitor such transfers accurately. This source of affordable housing is not included within the definition of affordable housing provision stated in Para 6.1 of the SPG.

Para 3.26 of the London Plan refers to intermediate housing that is affordable by households on incomes of less than £40,000 and that this pan-London figure will be kept under review through the SPG both in terms of its quantum and distribution across boroughs. The SPG does neither.

There is no justification as to why this income level has been set. The Government-led key worker initiative has set a maximum household income level of £80,000 in London and the South-east. To apply this £40,000 figure pan-London in a policy context becomes relatively meaningless to boroughs given the significant variations in the mean house price between boroughs in London. It is not clear what the Mayor is seeking to achieve through this approach.

We seek clarification as to how the 'maximum reasonable amount' of affordable housing is defined.

3.1: Para 3.26 of the London plan refers to social housing where rents are no higher than target rents set by the government for housing association and local authority rents. If we assume from Para 3.7 of the SPG that net income is 70% of gross income then net income from £15,000 will not exceed £10,500. If rents and service charges are not to exceed 30% of net household income, this equates to a maximum figure of £260 per month or £60 per week for social rented accommodation. This is currently considerably lower than prevailing London RSL rent and service charge levels and is inconsistent with Para 3.26 of the Plan.

If all rental income and service charges are capped at this income level it is very doubtful whether this provide for sufficient rental income to enable adequate management and maintenance of residential estates. In particular, if boroughs seek to secure integration of all tenures within a development and shared use of all communal facilities, this may result in service charge levels that housing associations will find difficult to fund through combined rental incomes and service charges of £260 per month, particularly given the London-wide objective of social rented housing is 35% of new provision. Private and intermediate residents cannot be expected to subsidise social rented tenants regarding the payment of service charges.

3.3: There will be circumstances whereby local residents will need to be housed on a short-term basis. It is unreasonable to exclude all social rented properties from this category.

3.4: See comments in relation to Para 2.3. The £40,000 figure is a pan-London figure that becomes relatively meaningless in a policy context given the significant variations in mean house prices between boroughs.

3.5: Studio flats should not be restricted to qualify for intermediate provision in circumstances where boroughs consider this appropriate. There is no explanation why studio flats may not be considered suitable for intermediate housing provision generally. Para 1.2 states that affordable housing is defined by affordability. Furthermore, the GLA Housing Requirement Study appears to be demonstrating a need for smaller units. The last sentence of this paragraph should be deleted.

3.7: The requirement that average intermediate housing costs are affordable by households on an average income of £27,500 pa is misconceived. It is agreed that intermediate housing provides for households with a range of incomes, but the pan-wide London maximum of £40,000 is not considered to be the correct level – this is a matter to be left to boroughs to determine and at least allow for household incomes of up to £80,000 in line with Government key worker initiatives.

Details of thresholds for affordable housing and the type of affordable housing to be provided should be substantiated at the local level, supported by an appropriate borough wide assessment of housing needs.

If intermediate provision is to provide for households with a range of incomes below the upper limit and provide a range of dwelling sizes then why are studio flats marginalised in this process. The mix of dwelling sizes sought by a borough should be defined through a local assessment and not by the GLA.

3.8: The last sentence of this paragraph is ambiguous. Para 3.26 of the London Plan refers to low-cost market housing where its price is equivalent to other forms of intermediate housing. Low cost or sub-market housing should be treated as affordable housing if this criteria is met.

3.9: Para 3.28 of the London Plan states that student housing should be monitored separately from social housing and intermediate provision. This does not exclude student housing from meeting affordable housing needs. The Panel Report into the draft London plan Para 4.41 states “we conclude that purpose built student accommodation should be regarded as contributing to meeting an affordable housing requirement”. The SPG currently precludes this. This is not justified and the SPG should be altered to clarify how student housing contributes towards the affordable housing requirement.

It is accepted that student housing will normally be let on a short-term basis and may not therefore be classified as social rented housing. It

should, however, be classified as intermediate housing unless the 70/30 ratio is to change and specifically incorporate student housing.

3.14: There should be a clear definition of the term “perpetuity”. The principle of perpetuity must be applied consistently amongst different land uses. If 15 years perpetuity is considered appropriate in relation to affordable housing delivered through retail developments then it is considered that the same opportunity should be open to all land uses including private residential developments where affordable housing is provided.

4.1: The London Plan does not contain any reference to a London-wide housing needs assessment or the GLA Housing Requirements Study. A borough housing needs assessment should not have to take these issues into consideration. The results of the Housing Requirements Study have not been substantiated through independent assessment. They are at variance with the ODPM Interim 2002-based Household Projections, which show that 46,400 additional households will be required from 2001-2021.

4.3: Although a borough may have regard to data on regional and sub-regional housing need in assessing housing need, the weight given to this data must be carefully assessed. In particular, the London Housing Requirements study has not been tested independently to assess its validity.

4.4: The use of these headline figures from the housing requirements study is not appropriate. This study has not been tested at an independent inquiry. These figures therefore have little weight in the planning process. They have been undermined by the ODPM Interim 2002-based Household Projections. Policy 3A.1 of the London Plan establishes the housing requirement. These figures are undermining the clarity of those housing figures contained within the London Plan. This paragraph should therefore be deleted from the SPG.

5.1: Whilst boroughs may identify the mix of unit sizes for each category of affordable housing provision that is sought, the SPG must make provision for flexibility in the mix of affordable housing by size secured from individual sites and that local planning authorities must not be prescriptive in identifying the overall housing mix.

5.2: The reference to design and location in considering the mix of affordable housing is welcomed. However, we would add to this site characteristics and the mix of private sector units being provided.

The reference to social and physical infrastructure and community support networks goes far beyond the parameters of affordable housing. These are issues linked to the wider matter of planning obligations.

6.1: The transfer of existing market sector stock to affordable housing provision should be included within the definition of affordable housing.

6.2: This has already been stated in Para 6.1. Delete for purposes of brevity.

6.3: Reference to the London-wide objective of 70% social and 30% intermediate housing is a partial interpretation of Policy 3A.7, which also refers to an assessment of all housing needs, a realistic assessment of supply and mixed and balanced communities when determining the mix.

6.5: There is no reference to deliverability as a factor to be taken into account. This is a serious omission. Its significance has been recently demonstrated for example by Westminster City Council seeking a 30% affordable housing requirement on the basis that seeking 50% would impact upon viability and deliver fewer housing developments from which affordable housing could be sought.

There is no justification for the GLA housing requirements study to form the basis of a regional assessment of need.

6.6: The exclusion of student housing from affordable housing is not appropriate. The Panel Report into the draft London Plan Para 4.41 states “we conclude that purpose built student accommodation should be regarded as contributing to meeting an affordable housing requirement”.

6.8: The London Plan Policy 3A.7 establishes a strategic target for affordable housing provision of 50%. It is not considered appropriate for the Mayor to determine how a borough should set an overall housing target relative to the strategic target. The Mayor may specify the factors that a borough may wish to take into consideration in setting a target. This guidance however should not be oriented to setting affordable housing targets relative to the strategic target.

However, we note that these criteria do not include the viability of development. We do not consider that it is appropriate to rely upon access to provision of affordable housing in neighbouring boroughs. Para B2 of Circular 1/97 requires that planning obligations are directly related to the proposed development and necessary to make a proposal acceptable in land use planning terms. Also, planning obligations may relate to matters other than those covered by a planning permission, provided that there is a direct relationship between the planning obligation and the planning permission. It is not clear that broadening the provision of affordable housing to meeting sub-regional and regional needs meets these criteria.

6.9: The comments to Para 6.8 that the Mayor should not be concerned at how boroughs set affordable targets relative to the strategic target of 50% are re-iterated . We also re-iterate the comment in Para 6.8 on

Circular 1/97 Para B2 regarding the affordable housing provision to meet the needs of other boroughs.

6.10: This is repeating Para 6.3.

6.12: The use of a London wide average when considering housing provision within individual boroughs is not supported. The emphasis must be upon the housing stock within those individual boroughs. In boroughs where there are high proportions of social housing, the SPG should allow for greater provision of market housing as well as intermediate housing.

7.1: The requirement that any site suitable for housing provision should normally be considered suitable to provide some affordable housing is at variance with London Plan Para 3.46, which encourages boroughs to set a threshold below 15 units where this can be justified. Also, it does not comply with existing Government Guidance. The draft revised guidance issued by the ODPM on 17 July 2003 does allow for affordable housing to be sought on sites of less than 0.5 hectares or developments of less than 15 dwellings. However, this is dependent upon the requirement that it would result in an increased supply of affordable housing and would not have an adverse effect on the overall supply and pace of housing development. The SPG does not take these issues into consideration.

7.2: PPG3 Consultation Paper Para 10 establishes that affordable housing should not normally be sought on sites of less than 0.5 hectares or developments of less than 15 dwellings. The reference to the capacity of a site is inappropriate and should be deleted and reference made to developments of 15 or more units.

7.3: Justifying a lower threshold must also have regard to whether this would result in an increased supply of affordable housing and would not have an adverse effect on the overall supply and pace of housing development.

7.4: This is going beyond the strategic planning remit of the Mayor. This is a detailed planning policy that should be considered by boroughs through the UDP. This Para should therefore be deleted.

7.5: The reference to subsidy should be amended to public subsidy. The references to viability are endorsed. There is both duplication and inconsistency between this Para and Para's 5.2/5.3.

7.6: The reference to tenure is implying that boroughs should be determining the overall mix of housing, including private housing, to be provided within a development. This is far too prescriptive and goes beyond national planning guidance. The mix of tenure, unit size and type of provision will also depend upon the factors listed in Para 7.5 such as the economics of site development.

7.8: It is adequate to refer to the provision of housing to meet the needs of specific groups. It is not acceptable to give different priority to different client groups. This approach does not facilitate innovative delivery focussed approaches to affordable housing provision. An example would be exploring the ability to cross subsidise social rented housing from intermediate provision in particular where there is no or restricted public subsidy.

This requires a less prescriptive approach to determining the affordable housing outcome. Where public sector funding is not available or is restricted, boroughs must be able to operate a cascade mechanism whereby the affordable housing mix is adjusted to ensure that the development remains viable and will be implemented. This is necessary given the uncertainty with social housing grant funding.

This Para provides for a higher than norm proportion of intermediate provision, primarily comprising smaller dwellings, targeted at households without children. This demonstrates how restrictions on studio flats as intermediate provision are not justified.

There should also be the opportunity to provide greater levels of market housing in areas with very high levels of social rented accommodation. This will facilitate the development of mixed and balanced communities within wider neighbourhoods and can contribute to wider urban regeneration objectives.

7.10: The use of the term economic viability of the preferred outcome is objected to. The first sentence of this Para requires local authorities to control the rewards from the investment risk. This will not promote private residential development in London. Circular 6/98 simply refers to economics of provision. The emphasis should be upon enabling the residential development potential of sites to be achieved. This stresses delivery, which will not be realised with the degree of prescription contained within this SPG.

It is not correct to say that where sales values are high that the required affordable housing output may be funded from site. The ability of a development to finance affordable housing is far more complicated than this. In Westminster where average house prices are at their highest in London, the City Council has introduced a 30% affordable housing target from private residential development on the basis that the affordable housing provision reduces the value of development sites for housing and if the affordable housing target is set too high then there will be a greater incentive to deliver the land for commercial purposes resulting in fewer housing developments and thus less affordable housing.

The reference to direct subsidy should be amended to direct public subsidy.

7.11 It is unacceptable to require a local authority to confirm grant availability before concluding a S106 development. This will deter and delay development unnecessarily. If grant is not available or is available at a reduced rate and the RSL is not able to acquire the agreed affordable housing within a specified time period then the S106 may include a cascade mechanism whereby it will become the responsibility of the developer to provide this affordable housing.

7.12: This emphasis upon assessing the extent to which site value can support a range of affordable housing options is not supported.

7.13: This is strongly rejected. Para 6.2, which supports Policy 3A.7 clearly states that the strategic target for 50% of new housing provision to be affordable is from all sources (listed in Para 6.1). This is not a strategic target of 50% market provision, 35% social housing and 15% intermediate.

The Mayor cannot require developers to submit a comprehensive viability assessment to a local planning authority. This should be deleted from the SPG.

The encouragement for boroughs to use financial appraisals for other applications is completely irrelevant to this SPG and this should be deleted.

7.14: The Housing Corporation's London Regional Investment Guidance 2004/05 & 2005/06 Para 3.5 refers to an association being able to clearly demonstrate the need for public subsidy where affordable homes are being built as a consequence of a S106 planning requirement. Private developers are not therefore required to submit a financial appraisal to the Housing Corporation and this paragraph should be amended to reflect this.

The statement that a financial appraisal should be undertaken before any application to the Housing Corporation for grant funding is made and before any decision in relation to a planning application, which includes an application for affordable housing provision is taken is meaningless.

7.15: It is not clear who is responsible for identifying an alternative site to enable off-site provision. It may be appropriate for developers to offer financial payments to boroughs for affordable housing provision off-site. This may allow for the provision of affordable housing in forms other than new build, for example re-use of long-term vacant property.

7.16: The lenient approach towards housing association schemes whereby there is no requirement to include an element of market provision is contrary to the wider approach in this SPG of promoting mixed and balanced communities (Para 6.5).

7.17: This paragraph has no link to the provision of affordable housing. It relates entirely to housing provision in a wider sense and again illustrates the shortcomings of issuing the affordable housing SPG separately from the housing provision SPG.

7.18: It is wholly irrelevant for the purposes of this SPG that residential development as part of a mixed-use development can be of financial benefit to the developer. This text should be removed from the SPG.

The reference to the additional financial benefit arising to the developer and/or landowner, from the use of low value employment land for housing purposes is inappropriate and not relevant to this SPG. The SPG should concentrate upon securing the residential development potential from development opportunities.

8.1: This paragraph is considering housing provision in a broader sense and should be incorporated into the housing provision SPG.

9.1: The second bullet point refers to there being no net loss of affordable housing from estate regeneration. The first sentence then begins “In calculating the net loss of affordable housing..”. This does not make sense. It should either read “In calculating if there is a net loss of affordable housing provision..” or “In calculating the net gain of affordable housing..”.

In any case it is inappropriate not to permit a net loss of affordable housing. Estate redevelopment can offer an excellent opportunity to break down high concentrations of social rented housing to facilitate a more mixed and balanced community within the neighbourhood and facilitate urban regeneration objectives. Estate redevelopment should therefore allow for greater supply of market housing and not just permit replacement of social rented units by intermediate provision.

9.2: How can the Mayor be assured that increased densities will facilitate an appropriate form of development from a design perspective that enhances the built environment and meets other planning objectives? The SPG needs to be more flexible regarding estate regeneration objectives.

**Annex: Social Housing Grant and Section 106 Agreements.
Response by paragraph:**

1: The role of the Mayor regarding decision making with regard to social housing grant and Section 106 agreements needs to be clarified – what is envisaged here does not appear to be correct or appropriate. Certainly the Mayor is not responsible for preparing S106 agreements, even where planning applications are referred to him. His input to social housing grant is at a more strategic level through the London Housing Board and the London Housing Strategy. There is therefore no rationale for incorporating this protocol into the SPG and it should be deleted.

2: Para 2 establishes that this protocol is effectively Housing Corporation policy with regard to the allocation of social housing grant. The first sentence begins with 'The Housing Corporation's objective'. It is not appropriate to incorporate the Housing Corporation's objectives into an SPG issued by the Mayor. These objectives relate to discussions between developers, local authorities and housing associations. It is not relevant to the planning process. Also, how will the Mayor address changes to corporate objectives introduced by the Housing Corporation, which are likely, for example through the grant to developers initiative that is currently included with the Housing Bill?

4: There is no link between this paragraph and social housing grant and S106 agreements. It is simply a statement of the Mayor's objectives and role in the planning process.

5: Precisely. The Housing Corporation has the responsibility for determining which projects are funded with decisions made following consultation with boroughs. The Mayor is not involved in this process so there is no justification for this joint statement.

6: The input of the Mayor to the London Housing Strategy 2003 is acknowledged. However, the framework for London housing investment in the London Housing Strategy is not directly linked to decisions on the allocation of social housing grant, and does not justify this joint statement.

7: Reference to the Housing Corporation's London Regional Investment Guidance adds weight to reject this protocol on the basis that this Guidance is not informed by the GLA.

10: There is no justification for applicants for planning permission to put forward financial appraisals as part of their planning application. The Housing Corporation's London Regional Investment Guidance 2004/05 & 2005/06 Para 3.5 refers to an association being able to clearly demonstrate the need for public subsidy where affordable homes are being built as a consequence of a S106 planning requirement. It is relevant that the discussions referred to in this paragraph do not involve the Mayor, highlighting that the Mayor does not have a material role in this process so that this protocol is not required.

13: Agreements on grant and affordable housing outturn on different phases must be built into a Section 106 agreement at outline stage and not require a planning application for each phase. Stability is required by fixing the obligations at the outline approval stage as this is often when the land acquisition crystallises. A cascade can be built into the S106 to address circumstances where grant is not forthcoming at the anticipated level. This requirement will either deter development or delay the implementation of a development. It should therefore be deleted.