

Data Protection Officer
Mid and East Antrim Borough Council
The Braid
1-29 Bridge Street
Ballymena
BT43 5EJ

Section B. Your Details

Q1. Are you responding as individual, as an organisation or as an agent acting on behalf of individual, group or organisation? (Required)

Please only tick one

Individual (Please fill in the remaining questions in the section, then proceed to Section F.)

Organisation (Please fill in the remaining questions in the section, then proceed to Section D.)

Agent (Please fill in the remaining questions in the section, then proceed to Section E.)

Q2. What is your name?

Title

[Redacted]

First Name (Required)

[Redacted]

Last Name (Required)

[Redacted]

Email

[Redacted]

Q3. Did you respond to the previous Preferred Options Paper?

Yes

No

Unsure

Section C. Individuals

Address Line 1 (Required)

Murray House

Line 2

Murray Street

Line 3

Town **(Required)**

Belfast

Postcode **(Required)**

BT1 6DN

Section D. Organisation

If you have selected that you are responding as an organisation, there are a number of details that we are legally required to obtain from you.

If you are responding on behalf of a group or organisation, please complete this section, then proceed to Section F.

Organisation / Group Name **(Required)**

Co-Ownership

Your Job Title / Position **(Required)**

Director of Product Development

Organisation / Group Address (if different from above)

Address Line 1 **(Required)**

As above

Line 2

Line 3

Town **(Required)**

Postcode **(Required)**

Section E. Agents

If you have selected that you are responding on behalf of another individual, organisation or group there are a number of details that we are legally required to obtain from you.

Please provide details of the individual, organisation or group that you are representing.

Client Contact Details

Title

First Name **(Required)**

Last Name **(Required)**

Address Line 1 **(Required)**

Line 2

Line 3

Town **(Required)**

Postcode **(Required)**

Q4. Would you like us to contact you, your client or both in relation to this response or future consultations on the LDP?

Please only select one.

Agent Client Both

Section F. Soundness

The draft Plan Strategy will be examined at Independent Examination in regard to its soundness. Accordingly, your responses should be based on soundness and directed at specific strategic policies or proposals that you consider to be unsound, along with your reasons. The tests of soundness are set out below in Section M.

Those wishing to make representations seeking to change the draft Plan Strategy should clearly state why they consider the document to be **unsound** having regard to the **soundness tests** in Section M. It is very important that when you are submitting your representation that your response reflects the most appropriate soundness test(s) which you believe the draft Plan Strategy fails to meet. There will be no further opportunity to submit information once the consultation period has closed unless the Independent Examiner requests it.

Those who make a representation seeking to change the draft Plan Strategy should also state whether they wish to be heard orally.

Section J. Type of Procedure

Q5. Please indicate if you would like your representation to be dealt with by:
(Required)

Please select one item only

- Written (Choose this procedure to have your representation considered in written form only)
- Oral Hearing (Choose this procedure to present your representation orally at the public hearing)

Unless you specifically request a hearing, the Independent Examiner will proceed on the basis that you are content to have your representation considered in written form only. Please note that the Independent Examiner will be expected to give the same careful consideration to written representations as to those representations dealt with by oral hearing.

Section K. Is the draft Plan Strategy Sound?

Your comments should be set out in full. This will assist the Independent Examiner understand the issues you raise. You will only be able to submit further additional information if the Independent Examiner invites you to do so.

Sound

If you consider the Plan Strategy to be Sound and wish to support the Plan Strategy, please set out your comments below.

(Required)

Please see the comments in the attached response paper.

Section L. Unsound

In this section we will be asking you to specify which part(s) of the draft Plan Strategy you consider to be unsound.

Note: If you wish to inform us that more than one part of the draft Plan Strategy is unsound each part should be listed separately. Complete this page in relation to one part of the draft Plan Strategy only.

Q6. If you consider that the draft Plan Strategy is unsound and does not meet one or more of the tests of soundness below, you must indicate which test(s) you consider it does not meet, having regard to Development Plan Practice Note 6 available at:

https://www.planningni.gov.uk/index/news/dfi_planning_news/news_releases_2015_onwards/development_plan_practice_note_06_soundness_version_2_may_2017.pdf

Please note if you do not identify a test(s) your comments may not be considered by the Independent Examiner.

Continued on next page.

Section M. Tests of Soundness (Required)

Procedural tests

- P1. Has the plan been prepared in accordance with the Council's timetable and the Statement of Community Involvement?
- P2. Has the Council prepared its Preferred Options Paper and taken into account any representations made?
- P3. Has the plan been subject to Sustainability Appraisal including Strategic Environmental Assessment?
- P4. Did the Council comply with the regulations on the form and content of its plan and on the procedure for preparing the plan?

Consistency tests

- C1. Did the Council take account of the Regional Development Strategy?
- C2. Did the Council take account of its Community Plan?
- C3. Did the Council take account of policy and guidance issued by the Department?

Coherence and effectiveness tests

- CE1. The plan sets out a coherent strategy from which its policies and allocations logically flow and where cross boundary issues are relevant is it in conflict with the plans of neighbouring Councils.
- CE2. The strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base.
- CE3. There are clear mechanisms for implementation and monitoring.
- CE4. The plan is reasonably flexible to enable it to deal with changing circumstances.

Section N. Which part(s) of the draft Plan Strategy are you commenting on?

This should relate to only one section, paragraph or policy of the draft Plan Strategy. If you wish to inform us that you consider more than one part of the draft Plan Strategy is unsound, you can submit further representations by completing and submitting additional copies of this section.

Relevant Policy number(s)

(and/or)

Relevant Paragraph number(s)

(and/or)

District Proposals Map

Please give full details of why you consider the draft Plan Strategy to be unsound having regard to the tests(s) you have identified above. Please be as clear and concise as possible.

A large, empty rounded rectangular box with a thin blue border, intended for the user to provide full details of why they consider the draft Plan Strategy to be unsound. The box is currently blank.

MEA-DPS-005

If you consider the draft Plan Strategy to be unsound, please provide details of what changes(s) you consider necessary to make the draft Plan Strategy sound.

A large, empty rounded rectangular box with a thin blue border, intended for providing feedback on the draft Plan Strategy. The box is currently blank.



Co/ownership

**Submission to Mid and East Antrim Council's Consultation on its Local
Development Plan 2030 Draft Plan Strategy issued in September 2019**

by

Northern Ireland Co-Ownership Housing Association Limited
Murray House
Murray Street
Belfast
BT1 6DN

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Nothing in this document or any part thereof shall constitute any intention to create legal relations with any of the parties named herein, nor shall it constitute any contract or other relationship of any kind between such parties. The views herein contained are those of Co-Ownership and are not meant to be relied upon, interpreted or construed as a definite statement of the law.



EXECUTIVE SUMMARY

1. Co-Ownership welcomes the opportunity to respond to Mid and East Antrim's consultation on its Local Development Plan 2030 Draft Plan Strategy issued in September 2019.
2. A key element is the definition of affordable housing in the draft strategy. The current definition of affordable housing is contained in the current Strategic Planning Policy Statement (SPPS) issued by the then Department for the Environment. In the SPPS affordable housing is defined as including social rented and intermediate housing.
3. The definition of social housing is widely accepted as housing provided at an affordable rent by the Northern Ireland Housing Executive (NIHE) or a registered housing association. It is provided to households which are in need and is offered under the common selection scheme. The definition of intermediate housing is defined to mean shared ownership.
4. It is important that the Draft Strategy acknowledges that a definition of intermediate housing will change over time. New intermediate housing products may be developed. Therefore, it is important that the definition may be expanded to support helping eligible households into intermediate housing. For instance, it is important that a definition of intermediate housing would include products like Rent to Own.
5. It is beneficial to recognise that there are other target groups for affordable housing, other than first time buyers. These can include those returning to the market, active older people, those with disabilities and potentially other groups in need of such housing. For instance, suitable affordable housing for older people also needs separate consideration as the barriers are slightly different - a lack of suitable accommodation and being a generation that is asset wealthy but cash poor.
6. At first glance it may appear that a section 76 agreement is a mere planning tool. However, there are a number of interested parties some of whom need to be involved and have an input into the negotiations under these agreements. It is important to note that each of these will be coming from different perspectives and so there needs to be an integration of purpose in the negotiation process.
7. The tenure mix of the affordable housing on the development is vital. It is important to know how many of the homes will be used for shared ownership and how many will be used for social housing. There may also need to be some flexibility given to the housing association involved as to the mix of homes which they will purchase from the developer.
8. It is generally thought preferable that shared ownership homes are pepper-potted throughout the development so that externally a shared ownership unit is no different from a market housing unit of the same specification. However, there is some thought that it is better if social housing units are clustered together so that it is easier and more cost effective for the housing association to manage. Therefore, the Draft Strategy should give the appropriate flexibility in relation to pepper-potting in a development of both apartments and houses. It would be preferable to state that "where possible and practical" the affordable housing units should be dispersed throughout the development.



9. The design specification of the units is relevant. The shared ownership properties should not be built such that they have a market value which is not affordable. Similarly, the cost of a social housing unit should be affordable. Having said this, there may be situations where the housing need in the area is such that there is need for four bedroomed units rather than three and even though the units will be more expensive, 4 bedroom units should be built.
10. The homes for shared ownership and social housing should be to a sufficient standard i.e. they should not have a lesser specification than the market housing. It is important that the homes are appealing to customers and are homes that they would want to live in. For instance, it may well be that the affordable homes should conform to lifetime homes standard (for social housing) or to current industry standards.
11. The issue of service charges in a development is a complex one. A unit which is otherwise affordable can become unaffordable if there is an abnormally high service charge attached to it. Therefore, a clause in the planning agreement should state that all service charges should be fair and reasonable.
12. The benefit of the input of Co-Ownership into planning agreements and any pilot schemes as a prelude to their introduction is its experience and credibility in dealing with key stakeholders such as developers, lenders, financial advisers, estate agents and the public at large. Furthermore, in the purchase of new build properties from builders (for equity sharing purposes, whether purchased directly or at the behest of a Co-Ownership customer) it has experience of the valuation and legal issues which arise in respect of properties to be purchased. Co-Ownership is also aware of the needs and requirements to attract private funding from an applicant's lender.
13. Co-Ownership believes that any new scheme designed to increase the supply and provision of affordable housing in Northern Ireland should have the following attributes:
 - Be uniform and consistent in approach
 - Provide adequate security for all the lenders involved
 - Provide adequate security for the public fund provider
 - Be easily understood by all clients and other stakeholders in the field
 - Provide value for money
 - Be able to react and adapt quickly to the demands of the market in which it operates
 - Be sustainable in the market place
 - Be Client focused
14. Co-Ownership is uniquely placed to play an expert enabling role in the delivery of more affordable homes through section 76 agreements throughout the process. We look forward to continuing to work with the Council in exploring and developing new and innovative schemes such as section 76 agreements to enhance the provision of affordable housing in the province.



INTRODUCTION

15. This paper is submitted on behalf of Northern Ireland Co-Ownership Housing Association Limited (Co-Ownership) of Murray House, Murray Street, Belfast, BT1 6DN by way of response to Mid and East Antrim's consultation on its Local Development Plan 2030 Draft Plan Strategy issued in September 2019.

Background to Co-Ownership

16. Co-Ownership is Northern Ireland's regional body for shared ownership and the organisation which runs Co-Ownership. It is an Industrial and Provident Society, a registered housing association regulated by the Department for Communities (DfC) and a charity registered with the Northern Ireland Charities Commission.

Our aim

17. The main aim of Co-Ownership is to promote and sustain the concept of shared ownership in Northern Ireland mainly as a means of facilitating home ownership. For over 40 years it has been the cornerstone of government's affordable housing initiative, assisting mainly first-time buyers and also returning home buyers in Northern Ireland to get on to the housing ladder. It has been very successful to date, having helped to provide over 29,000 homes of which over 20,000 households have moved on from Co-Ownership.

Co-Ownership product

18. Under the Co-Own product, a customer buys a share in a home, depending on how much they can afford. This is between 50-90% of the purchase price. Co-Ownership buys the remaining share in the property and the customer can increase their share at any stage until they own it outright. There can be several reasons why someone who aspires to home ownership cannot achieve this. It could be because of obstacles like a lack of deposit or affordability issues. Co-Ownership can help such persons. Further details are available at www.co-ownership.org.

Rent to Own product

19. Co-Ownership launched our Rent to Own product in April 2016. Operated by our subsidiary, OwnCo Homes Limited, this is a product for people who aspire to buy a home but aren't yet ready to do so. Since 2016 we have helped 55 households move into new build homes, which they rent for up to three years with an option to buy the home after one year. Rent to Own is currently funded by £12.5 million FTC funding to deliver 80 homes.

INTRODUCTORY COMMENTS

20. The purpose of this paper is to comment on the proposals outlined in the Local Development Plan Draft Plan Strategy on how the use of planning conditions or



planning agreements under section 76 of the Planning Act (NI) 2011¹ can be used to increase the supply of affordable housing in Northern Ireland and to examine the role which Co-Ownership can play in this. It will consider aspects of the framework under which section 76 planning agreements operate together with a comparison of the schemes in England. There are a number of parties who have a vital input into planning agreements. Their roles and perspectives will be considered. Some of the issues which may arise in the drafting of section 76 planning agreements will be explored, learning from the experience of section 106 agreements in England. Finally, the input of Co-Ownership into section 76 planning agreements will be examined.

21. Co-Ownership welcomes the Local Development Plan Draft Strategy, and in particular HOU 5 Affordable Housing in Settlements and HOU 16 Affordable Housing in the Countryside as it will add to the delivery of affordable housing in the Mid and East Antrim area. The use of developer contributions has worked in other jurisdictions in the British Isles to deliver affordable housing and, if instituted correctly, will operate to add to supply here.
22. The concept of developer contributions for affordable housing should not be considered in isolation from contributions for other aspects such as infrastructure provision. It is essential in a viability study that all contributions are taken into account to assess whether an individual development is feasible.
23. It is important, for the reasons given in this paper, that the Council devotes appropriate resources to the negotiation of such planning agreements given its role to co-ordinate the different organisations involved so that the agreements are negotiated and implemented in a timely manner.

THE DEVELOPER CONTRIBUTIONS FRAMEWORK

24. In the creation of the Local Development Plan it is important to consider the mechanism whereby affordable housing is delivered. It is noted that at 8.141 of the draft strategy that this may be secured by way of a formal planning agreement or a planning condition. It would be our view that planning agreements under section 76 of the Planning Act (NI) 2011 would provide a more suitable vehicle for the delivery of affordable housing as it provides the ability to provide more detail in relation to the provision of affordable housing. We note that supplementary planning guidance may be prepared in the future to provide clarity. We would welcome the opportunity to become involved in the development of this guidance.
25. In new developments in England section 106 of the Town and Country Planning Act 1990 (as amended) is used to ensure that developers applying for planning permission for housing contribute to affordable housing. Such agreements are often abbreviated to section 106 agreements.
26. The contribution towards affordable housing can take one or more of several forms:
 - Transfer of land
 - Building and transfer of homes
 - Transfer of fully or partially serviced sites
 - Off-site land transfer

¹ Formerly under article 40 of the Planning (NI) Order 1991 (as amended).



- Building and transfer of units off site
- Transfer of fully or partially serviced sites (off site)
- Payment of a commuted sum

27. In Northern Ireland, legislation in broadly similar terms to Section 106 of the Town and Country Planning Act 1990 currently exists in the form of section 76 of the Planning Act (NI) 2011. While this provision has successfully been used to secure developer contributions to provide roads and similar infrastructure, it has to date generally not been used in context of affordable housing.² Sir John Semple in his Review into Affordable Housing Interim Report noted:

“Given the current need for social and affordable housing, I believe that the use of A40s should now be brought into immediate use in NI.”

28. The Planning Act states that section 76 agreements with the landowner should be undertaken by the Council. However, this portrays a deceptively simple relationship and does not take account of the number of other interested parties which need to be involved at a strategic and operational level as soon as possible in connection with proposed section 76 negotiations. This point was emphasised in a research report entitled “Cascades: Improving certainty in the delivery of affordable housing for large-scale development”,³ published September 2007:

“Whilst the parties who sign the S. 106 are the LA [local authority] and the landowner/developer, it is important that all parties who will be involved in delivering, owning and managing the scheme (if appropriate or known) are involved from the outset in the pre-application discussions and formation of the scheme.

29. In England planning obligations under section 106 agreements must fulfil the three tests as set out in the Community Infrastructure Levy Regulations 2010 in that they must be:

- i) Necessary to make the development acceptable in planning terms,
- ii) Directly related to the development, and
- iii) Fairly and reasonably related in scale and kind to the development.

30. It is important that planning agreements have the necessary attributes of clarity, transparency and consistency. This is for the benefit of all stakeholders in the enterprise. In England a model form of section 106 agreement was launched in August 2006.⁴ Prior to this a number of local authorities had developed their own section 106 agreements all with differing terms. Some local authorities still use their own form of agreement. The difficulties this poses for lenders was pointed out by the CML in an article entitled “Section 106 planning agreements and low-cost home ownership lending:⁵

“The number of mortgages on properties with s. 106 agreements or other restrictive covenants is very small compared with the overall size of the market. Many different approaches are adopted by local authorities and the

² Per Semple, Review into Affordable Housing – Interim Report.

³ P13. The research was conducted by English Partnerships, the Housing Corporation and Atlas.

⁴ Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990. Prepared by the Law Society of England and Wales Planning and Environmental Law Committee and the Department for Communities and Local Government.

⁵ 2009. CML is now part of UK Finance.



lack of a standard agreement being used means that being involved on lending on LCHO [low cost home ownership], for those small number of lenders active in that market, has become increasingly time consuming and resource intensive.”

Therefore, it is important when section 76 agreements are introduced in Northern Ireland that lessons are learned from the operation of section 106 agreements in England and that there is a standard form of agreement (perhaps along the lines of the model section 106 agreement for use in England). This will encourage openness and transparency and encourage stakeholder buy-in to the process.

THE DEFINITION OF AFFORDABLE HOUSING

31. It is important that affordable housing is defined within the Local Development Plan Strategy or referenced to a definition elsewhere so that there is clarity as to what it means for all stakeholders. The definition of affordable housing is referred to in the current Strategic Planning Policy Statement (SPPS) issued by the then Department for the Environment. In the SPPS affordable housing is defined as including social rented and intermediate housing. This can be summarised as follows:

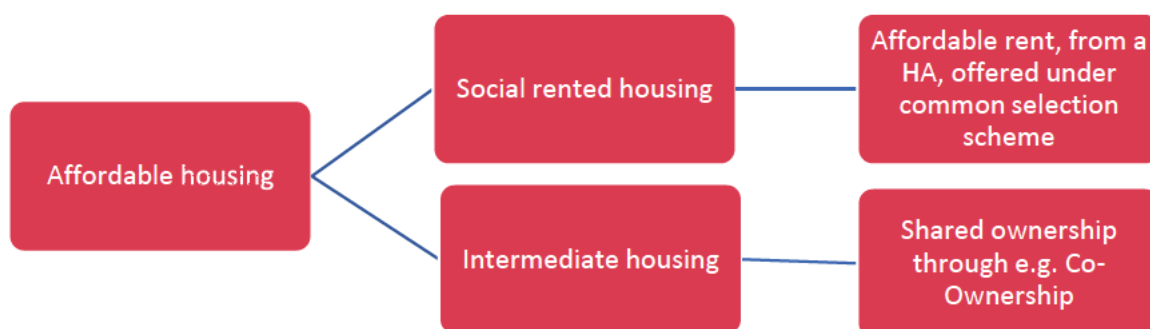


Figure 1 – Affordable Housing Definition

Social housing

32. The definition of social housing is widely accepted as housing provided at an affordable rent by the Northern Ireland Housing Executive (NIHE) or a registered housing association. It is provided to households which are in need and is offered under the common selection scheme.



Intermediate housing

33. The definition of intermediate housing, as used in the SPPS is somewhat more complex in that it can have different meanings in different contexts. For instance, sometimes it can be confused with affordable housing or sub-market housing. In this context affordable housing is used as an umbrella term to include social and intermediate housing.
34. It will be noted that on 24 June 2019 the Department for Communities issued a consultation paper on a new definition of affordable housing. Depending on the outcome of the consultation the definition of affordable housing may change and it will be important that the Local Development Plan Draft Strategy allows for this. We note that in the definition of the LDP it states “The NI definition of intermediate housing may change over time to incorporate other forms of housing tenure below market rates. Where this is the case, such additional products will be considered suitable to help meet affordable housing obligations of the policies in the LDP.” It will be important that the definition of affordable housing contained in the LDP is aligned to that definition which is approved by the Department for Communities.

Development of new products

35. Over time, new affordable housing products may be developed. Therefore, it is important that the definition may be expanded to support helping eligible households into intermediate housing. As new intermediate housing products are developed, they need to be recognised as falling within this category. For instance, it is important that a definition of intermediate housing would include products like Rent to Own.
36. Understanding the different barriers to having an affordable home is key to developing policy so the definition of affordable housing has to be sufficiently wide to incorporate the mitigation of different barriers to making housing affordable. For instance, in the homeownership arena, housing may be affordable (in terms of household income and expenditure) but not accessible because a person does not have sufficient deposit to enable them to purchase a property. Thus, affordability as a proportion of gross or net income is an important indicator, but in the current housing market it gives an inadequate understanding to the barriers people face. The nature of modern employment (the gig economy) places particular barriers for younger people that stops them getting access to mortgages because lenders regard them as too high risk. Living in expensive private rented properties makes it difficult to save deposits. Young peoples' levels of debt, which research shows is the direct result of variable hours employment, also make it difficult to get mortgages.⁶ In the private rented sector - rents could be high and therefore unaffordable, or there could be a lack of supply and this may present a barrier to having affordable accommodation. Effective policy development means that fitness, suitability and security of tenure must also be goals. People who rent in the private rented sector often live in poorer quality accommodation with the threat that the landlord can ask them to leave at relatively short notice. The policy goal should therefore be to increase the supply of good quality, affordable homes.
37. It is beneficial to recognise that there are other target groups for affordable housing, other than first time buyers. These can include those returning to the market, active older people, those with disabilities and potentially other groups in need of such housing. For instance, suitable affordable housing for older people also needs a

⁶ Stepchange, Held back by debt, (2015).



separate consideration as the barriers are slightly different - a lack of suitable accommodation and being a generation that is asset wealthy but cash poor.

- 38. Critical to a definition of affordable housing is that it should be 'suitable' affordable housing. There may be properties in an area which are of a lower value and would therefore otherwise be affordable but are not suitable for the customer. This could be due to the size of the dwelling or the household composition for instance.

THE INTERESTED PARTIES



Figure 2
The parties interested in a section 76 planning agreement



At first glance it may appear that a section 76 agreement is a mere planning tool. However, Figure 2 highlights the interested parties some of whom need to be involved and have an input into the negotiations under these agreements. It is important to note that each of these will be coming from different perspectives and so there needs to be an integration of purpose in the negotiation process.

39. *Council* - The negotiator with the landowner. However, the Council may have insufficient awareness of the housing need in the area in which the development is to be situated. For instance, there is no point in negotiating with a landowner to provide a number of affordable housing units if there is not an established affordable housing need in the area. In such circumstances it might be preferable if possible to negotiate that one of the other options outlined in paragraph 26 above is used instead. Therefore, it is likely on a particular planning application, that the NIHE as the determinant of housing need would need to establish the housing need in the area.
40. *Landowner* – section 76 of the Planning Act states that a planning agreement may only be entered into with someone who has an estate in the land. Therefore, the landowner needs to conclude the negotiations with the Council in relation to the agreement. The landowner may have a mortgage or charge over his or her property. This may mean that the lender has an interest in the land and may need to join in the planning agreement. Apart from this, the content of any planning agreement entered into by a landowner is important to a lender.
41. *Developer* – In many cases the landowner and the person who will develop the land are different. The developer may decide that he or she will build properties on the site under a building licence arrangement with the landowner. Under a building licence the developer enters into an agreement to build a property with the end purchaser and the landowner enters into a contract with the end purchaser that he or she will transfer the land to the end purchaser when the property is finished. It is a fundamental principle of Northern Ireland Planning Law that a person can apply for planning permission concerning land which he or she does not own. However, it would appear that a section 76 agreement can only be entered into with the landowner. Therefore, the developer needs to be involved in the negotiations at an early stage along with the landowner.
42. *Needs assessment* – It is important that the actual affordable housing need in the area in which the development is located is established. Ideally this will have been undertaken prior to negotiations being entered into in relation to a section 76 agreement. In England policies in relation to affordable housing are usually found in local development framework plans and other documents. We note that the LDP draft plan strategy states that “given the complexities around the delivery of affordable housing, supplementary planning guidance may be prepared in the future to provide greater clarity”.⁷ It is important for all interested parties that there is clarity as to what is expected from them.
43. *Co-Ownership* – As the strategic delivery mechanism for the provision of equity sharing in Northern Ireland it is important that Co-Ownership is involved at a very early stage of the negotiations. It can comment on intermediate housing need in the area and has the knowledge of how to sell properties to Co-Ownership customers under an equity sharing lease. Furthermore, knowledge of issues such as the detail of the landowner and the design specification of the scheme at an early stage will avoid any delays later on in the section 76 process.

⁷ Mid and East Antrim LDP Draft Plan Strategy para 8.1.42.



44. *Co-Ownership customer* – The Co-Ownership customer is interested in having a good quality home which is no different to that which he or she would expect had they purchased a market housing home. Similarly, the Co-Ownership customer's lender will expect the same.
45. *Housing Association* – The housing association which will purchase the social housing element of the development needs to be involved at an early stage to determine the design and the timeframe within which the housing will be completed. The Housing Association's Lender will similarly wish to be involved at this early stage.
46. *Housing Association's Tenant* – The tenant of a housing association will have an interest in the property being similar to the standard which he could expect if the property were itself built by a housing association. As the housing association's tenant will not be identified at the time when the section 76 agreement is entered into, the housing association will be responsible for ensuring that the design specification of the social housing provision is acceptable.
47. *Infrastructure providers such as DFI Roads and NI Water* – It is important that the interests of infrastructure providers such as DFI Roads and NI Water are considered in section 76 agreements so that any practical issues are resolved and that the terms of the agreement will work efficiently on the ground.
48. Given that there are a number of bodies involved in the negotiation of section 76 agreements representing different (and possibly competing) interests it is important that these issues are addressed and managed in a timely fashion. The Council needs to have sufficient resources to ensure that section 76 agreements are delivered. It needs to co-ordinate the role of statutory and other agencies in the process. It would be important that timeframes should therefore be set under which each of the interested parties are required to respond to the lead body.⁸

ISSUES TO BE CONSIDERED IN SECTION 76 PLANNING AGREEMENTS

49. It is important that careful thought is paid to the contents of a planning agreement. Seeking to learn lessons from the operation of section 106 agreements in England, some of the matters which need to be considered are set out and commented on below:
 - Obligations should fall within the planning agreement
 - Amount of affordable housing
 - The tenure mix
 - Location of the affordable housing units
 - Specification of the housing units
 - Standard of the units
 - The timing of the development
 - Service charges
 - Cascade mechanisms
 - Mortgagee in possession clauses
 - Continuity of occupation

⁸ The delay in negotiating section 106 agreements was referred to in research commissioned by the Ministry of Housing, Communities & Local Government entitled "The incidence, value and delivery of planning obligations and community infrastructure levy in England 2016-2017 (March 2018), p 8.



- Title to the property
- Commuted payments
- Effect on a section 76 planning agreement of an amended planning application

50. A planning agreement is a legal document which will bind the land and the developer and his or her successors in title. However, the obligations of the developer should be drafted so that they fall within section 76 of the Planning Act (NI) 2011. If any obligations fall outside the scope of the agreement there may be difficulties in enforcing the obligations against the developer's successors and indeed against the original developer. It is important that a standard template agreement is developed and that any requirements in relation to section 76 agreements for affordable housing are commensurate with the scale of the development.

51. The tenure mix of the affordable housing on the development is vital. It is important to know how many of the homes will be used for shared ownership and how many will be used for social housing so that the developer knows how many of each he or she is required to provide. However, there may also need to be some flexibility given to the housing association involved as to the mix of homes which they will purchase from the developer.

52. It is generally thought preferable that shared ownership units are pepper-potted throughout the development so that externally a shared ownership unit is no different from a market housing unit of the same specification. However, there is some thought that it is better if social housing units are clustered together so that it is easier and more cost effective for the housing association to manage. This can be especially so if the social housing is in the form of a block of apartments. However, it may be the case that in certain circumstances, given the layout of a particular site it would be preferable that clustering could also occur in relation to houses as well. It may therefore be useful to state that where possible and practical the affordable housing units should be dispersed throughout the development.

53. The design specification of the units is relevant. The shared ownership properties should not be built such that they have a market value which is not affordable.⁹ Similarly the cost of a social housing unit should be affordable. Having said this, there may be situations where the housing need in the area is such that there is need for four bedroomed units rather than three and even though the units will be more expensive, 4 bedroom units should be built.

54. The homes for shared ownership and social housing should be to a sufficient standard i.e. they should not have a lesser specification than the market housing. It is important that the homes are appealing to customers and are homes that they would want to live in. For instance, it may well be that the affordable homes should conform to lifetime homes standard (for social housing) or to current industry standards. The affordable housing element of the proposed development should not be easily distinguishable by means of its general design, materials or finishes from the general housing layout.

55. The timing of the development is crucial. This involves several elements.

- (a) the developer should be required to commence the development within a specified period of time and ensure that there is a proper supply of housing coming on stream within a known period of time.

⁹ For instance if the units were outside Co-Ownership Housing's current value limits.



(b) at least some of the shared ownership and social housing units should be started within a reasonable period of time. There is an understandable tendency for developers to complete the market housing units before the affordable housing. This can be due to cash flow requirements. The developer may have financed the development with a loan from a lender and may need to repay the loans from the sale of individual units. However, from an affordable housing perspective there is usually a requirement in a planning agreement that not more than x number of the market housing units shall be occupied until all or y % of the shared ownership units/ social housing units have been constructed in accordance with the planning agreement. We note that it is proposed that the approach to phasing of developments, that if this is to be the case then the concept masterplan should demonstrate the comprehensive planning of the site and how the full affordable housing obligations will be met. It is acknowledged that partial development may be permitted if the housing element can be secured by a section 76 agreement.

56. As the obligations in a planning agreement bind the land and also the successive owners of the land it is important that mechanisms are put in place to release the end user (the ultimate owner) from these obligations. For instance, if a shared ownership property has been built in the third year of the development yet the entire development has not yet been constructed it is appropriate for the Council to confirm: that the development has been started within any specified period. This is important as it goes to the marketability of the property. Of course, the Council would be in a position to reserve its rights of action against the developer should the development not be completed in accordance with the requirements of the section 76 agreement.
57. Similarly, if the planning agreement states that not more than X of the market housing units should be occupied until the shared ownership/ social housing units have been constructed then a purchaser of a market housing unit will wish to have written confirmation from the Council that this clause of the agreement has been complied with. It is therefore important when the planning agreement is negotiated that procedures are put in place to monitor the development so that it proceeds in the manner envisaged in the agreement. Furthermore, this will mean that any confirmations required in respect of the progress of the development can be given promptly.
58. The issue of service charges is a complex one. Service charges are charges which are usually paid to a management company for services such as insurance, maintenance and upkeep of common parts. They are usually encountered in apartment units and are increasingly to be found in developments of houses where there is an obligation to maintain open spaces. A unit which is otherwise affordable can become unaffordable if there is an abnormally high service charge attached to it. Indeed, these are something which local authorities in England are specifically asked to consider.¹⁰ Therefore a clause in the planning agreement should state that all service charges should be fair and reasonable.
59. The inclusion of cascade mechanisms in planning agreements is important. A cascade is a mechanism incorporated into planning agreements which sets out options for varying the affordable housing provision in terms of quantity, tenure and mix. For instance, a planning agreement may provide that a landowner is required to transfer constructed shared ownership units to Co-Ownership and social housing units to a housing association on certain specified terms. The exact mix of the housing may have to be flexible depending on the circumstances.

¹⁰ DCLG publication "Affordable Housing: Policy Objectives", November 2006.



60. Cognisance must also be taken of the fact that the lender may have a mortgage secured on the development land. Therefore, the lender will wish to have the ability to sell the property on the open market to obtain the best price reasonably achievable should the developer default on mortgage payments. Yet, attached to the land is a planning agreement which states that some of the housing units on the development can only be sold in a certain way e.g. through shared ownership or to a social housing provider. Therefore it is common for a lender to insist that a clause be inserted providing that if the lender seeks to sell pursuant to any default on the terms of a mortgage the lender shall give notice of its intent to dispose and thereafter if arrangements can be made within a specified (and usually short) time to secure the transfer of the units in such a way as to safeguard them for affordable housing then the lender will co-operate with such arrangements. If not, then the lender will be able to sell the units free of the restrictions set out in the planning agreement. Such a clause is important to ensure that a developer's lender participates in the process as otherwise the entire scheme may not be viable from a developer's perspective.
61. It is important that at the outset of negotiations with a developer under a proposed planning agreement that due diligence is undertaken on the landowner's title so that any issues are resolved before the planning agreement is concluded to minimise delays at a later stage.
62. It is important that the overall position of the developer in relation to developer contributions is considered. This is especially important if the developer has to contribute to infrastructure such as roads and sewers for the development as well as affordable housing on the site.
63. Thought should also be given to the effect on a planning agreement of the developer applying for an amended planning permission for the development. Care should be taken that there is no adverse effect on the planning agreement.
64. The benefit of the input of Co-Ownership into planning agreements and any pilot schemes as a prelude to their introduction is its experience and credibility in dealing with key stakeholders such as developers, lenders, financial advisers, estate agents and the public at large. This makes it ideally placed to be an integral part of this new venture given its over forty-year track record and its occupation of a unique place as interface between the public and private sectors in housing in Northern Ireland. Furthermore, in the purchase of new build properties from builders (for equity sharing purposes, whether purchased directly or at the behest of a Co-Ownership customer) it has experience of the valuation and legal issues which arise in respect of properties to be purchased. This experience has been developed by its own in-house valuation and legal teams in conjunction with its panel of external valuers and solicitors. Co-Ownership Housing is also aware of the needs and requirements to attract private funding from an applicant's lender.

CO-OWNERSHIP'S INVOLVEMENT IN SECTION 76 PLANNING AGREEMENTS



65. Turning to the future, Co-Ownership Housing believes that any new scheme designed to increase the supply and provision of affordable housing in Northern Ireland should have the following attributes:
- Be uniform and consistent in approach
 - Provide adequate security for all the lenders involved
 - Provide adequate security for the public fund provider
 - Be easily understood by all Clients and other stakeholders in the field
 - Provide value for money
 - Be able to react and adapt quickly to the demands of the market in which it operates
 - Be sustainable in the market place
 - Be Client focused
66. The use of Co-Ownership as a delivery mechanism for shared ownership under section 76 agreements can deliver in greater numbers of new build homes. It is important to consider the existing property market in tandem with the new build market as to focus on one to the detriment of the other may artificially distort the housing market.
67. Co-Ownership fulfils a key role in facilitating liaison between applicants and developers. It frequently provides information sessions to the public, community groups and other stakeholders, together with an education and marketing support service for individual builders/developers, estate agents and financial advisers. This ongoing liaison and support ensures a consistent and effective service for potential Co-Ownership clients provincewide, and will enhance the market appeal and appropriate uptake of the affordable housing provided.
68. If the main aim under section 76 agreements is to ensure an increase in the supply of affordable housing in Northern Ireland it is important that the timing of developments is established so that Co-Ownership Housing can profile any expenditure involved.

CONCLUSION

69. Co-Ownership is uniquely placed to play an expert enabling role in the delivery of more affordable homes through section 76 agreements throughout the process. It has demonstrated the capacity to identify what is needed to take the process forward as appropriate in liaison with the various interested parties, and to deliver a consistent product.
70. Co-Ownership Housing looks forward to continuing to work with the Council in exploring and developing new and innovative schemes such as section 76 agreements to enhance the provision of affordable housing in the province.