

Report to: Strategic Planning Committee



Date of Meeting 22 February 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

First Homes – Interim Guidance Note

Report summary:

The purpose of this report is to seek Members approval of the draft Interim Guidance Note: East Devon - First Homes, set out in Appendix A appended to this report, about the approach to First Homes in East Devon to be used when making planning decisions. This includes the introduction of additional local eligibility criteria about local connection and key workers. The Interim Guidance Note responds to the introduction by Government of First Homes as a new type of affordable housing ownership product for first-time buyers.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Strategic Planning Committee

1. **Recommends approval of the draft Interim Guidance Note: East Devon - First Homes**
2. **Recommends agreement to delegate authority to the Service Lead – Planning Strategy and Development Management in consultation with the Portfolio Holder for Strategic Planning, to make any minor changes to finalise the Interim Guidance Note and to publish that document on the Council’s website.**
3. **Recommends agreement to delegate authority to the Service Lead – Planning Strategy and Development Management to authorise the use of the Interim Guidance Note: East Devon - First Homes for development management purposes from the date of publication of the Note.**

Reason for recommendation:

To foster greater consistency when making planning decisions and to enable the Council to introduce the additional local eligibility criteria to ensure First Homes provided in the District are available to local people and key workers first.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications

- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure, and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk

Links to background information

[Written statements - Written questions, answers and statements - UK Parliament](#)

[First Homes - GOV.UK \(www.gov.uk\)](#)

[First Homes: Model Section 106 Agreement \(for developer contributions\) - GOV.UK \(www.gov.uk\)](#)

[Local Plan 2013-2031 - East Devon](#)

[Affordable Housing - East Devon](#)

Link to [Council Plan](#):

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
-

1. Policy context and introduction

- 1.1. First Homes are the Government's preferred discounted market tenure. Government introduced this new type of affordable housing product through a Written Ministerial Statement (WMS) published on 24 May 2021 which came into effect on 28 June 2021.
- 1.2. First Homes are a specific kind of discounted market sale housing that meets the definition of affordable housing for planning purposes. Based on qualifying and eligibility criteria set out in the Written Ministerial Statement, they are First Homes if they are:
 - Discounted by a minimum of 30% against market value, restricted at first sale such that the discount is passed on to subsequent purchasers, and for East Devon must be first offered at a price no higher than £250,000 after the discount is applied; and
 - Currently, they are available to purchasers meeting national and local eligibility criteria, including meeting the definition of 'first-time buyer' for stamp duty purposes, with a combined household income of less than £80,000 in the year preceding the sale, and with a mortgage or home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% of the discounted purchase price.
- 1.3. A policy compliant application will provide at least 25% of affordable units as First Homes, delivered by the developer through S106 planning obligations.
- 1.4. The Written Ministerial Statement sets out the Government's changes to planning policy, introducing the First Homes product. Government also published a Planning Practice Guidance (PPG) on First Homes on 24 May 2021. This was updated on 23 December 2021.
- 1.5. Both the WMS and the PPG are material considerations for planning decisions, where relevant to proposed development. They set out new planning policy and guidance which impact on planning decision making and plan-making in East Devon. There is therefore a

clear policy requirement to deliver First Homes but departures from policy can be granted where other material considerations are considered to outweigh the policy requirement.

- 1.6. The Written Ministerial Statement states that local planning authorities should use the most appropriate method available to them to set out how the requirements set out in the Statement impact on their affordable housing tenure mix policies.
- 1.7. An Interim Guidance Note is the most appropriate method available to the District Council at this time. In due course it is anticipated that emerging East Devon Local Plan policy and a new Supplementary Planning Document, produced through the plan-making processes and adopted, will replace this Note.
- 1.8. **Appendix A** to this report (appended) is the draft East Devon District Council Interim Guidance Note: East Devon - First Homes. It sets out the proposed approach that the Council would apply to First Homes, in response to the recent changes to Government policy, to foster greater consistency when making planning decisions.
- 1.9. The draft Interim Guidance Note shows how the new national planning policy on First Homes impacts on the affordable housing tenure mix policy currently in the adopted East Devon Local Plan 2013-2031, notably Policy Strategy 34. The Note also provides guidance about:
 - Qualifying and eligibility criteria, including local eligibility criteria
 - The circumstances where First Homes are not required
 - How First Homes should be delivered (eg discount level, price cap, open market value)
 - The method for calculating the number of First Homes required
 - On site provision
 - Relief from CIL for First Homes
 - First Homes Exception sites
 - The role of neighbourhood planning in influencing delivery of First Homes.
- 1.10. This report to Strategic Planning Committee focuses on First Homes regarding the following key issues relevant to the production of the draft Interim Guidance Note:
 - Circumstances when First Homes will not be required
 - Options for assessing the impact of First Homes on affordable housing mix
 - National and Local Criteria – including Local Connection options and Key Workers
 - Development Management, Planning Obligations and CIL
 - First Homes Exceptions Sites
 - Neighbourhood planning
 - Resources
- 1.11 The first planning application which includes First Homes has already been registered, with the development management process underway. The draft Interim Guidance Note is the recommended Council approach in response to Government planning policy and PPG. The draft Note makes clear that if a planning application for housing development is not exempt from First Homes provision and the proposal does not meet national planning policy on First Homes, this would weigh against the application when a decision is made. The alternative approach is not to produce an Interim Guidance Note. That is, do nothing. This is not recommended because then the Council would lack guidance to assist decision making and implementation locally for development management purposes or for the related First Homes processes. There would be a higher risk of inconsistent decisions or lack of clarity on processes.

2. Circumstances when First Homes will not be required

2.1. The new planning policy requiring delivery of First Homes as a percentage of affordable homes secured through planning obligations applies to housing development proposals in East Devon except in circumstances when First Homes will not be required. Those circumstances are listed in Appendix 1 of the draft Interim Guidance Note. They derive from the WMS and PPG. Some relate to transitional arrangements for plan making and decision making, as follows:

a) Plan Making

2.2. Some local plans and neighbourhood plans that have reached advanced stages of preparation benefit from transitional arrangements. Local plans and neighbourhood plans submitted for examination before 28 June 2021, or that reached publication stage by 28 June 2021 and were subsequently submitted for examination by 28 December 2021, will not be required to reflect the First Homes policy requirement.

b) Decision Making

2.3. The new First Homes policy requirement does not apply in circumstances that are set out in WMS and PPG. These are listed in draft Interim Guidance Note Appendix 1, and include:

- i). Sites with full or outline planning permissions already in place¹
- ii) Sites where a submitted application creates a right of appeal against non-determination before 28 December 2021.
- iii) Applications for full or outline planning permission where there has been significant pre-application engagements which are determined before 28 March 2022
- iv) Where a proposal has been agreed by the council before 28th March 2022 - but is subject to the completion of a section 106 agreement
- v) Sites where local or neighbourhood plans are adopted/made under the transitional arrangements as set out in WMS and PPG (see paragraph 2.2 of this report).

2.4. Emerging local and neighbourhood plans that do not meet the date criteria listed in paragraph 2.2 in this report are not covered by the transitional arrangements. WMS and PPG are also interpreted to mean that local or neighbourhood plans adopted before 28 June 2021 are not covered by those transitional arrangements. So for example, for decision making purposes, neither the East Devon Local Plan 2013-2031 (adopted 28 January 2016) nor the emerging East Devon Local Plan are covered by transitional arrangements.

2.5. The transitional arrangements in paragraph 2.3 b) v) apply to the emerging Cranbrook Plan Development Plan Document (DPD), as well as to two neighbourhood plans (listed in draft Interim Guidance Note-Appendix 1)². In those cases, First Homes requirements will be not applied when considering planning applications in the relevant plan area until such time as requirements are introduced through a subsequent update of that plan.

2.6. The new First Homes requirement applies to housing development proposals unless exemptions listed in Appendix 1 of the draft Interim Guidance Note are applicable.

¹ PPG explains that the First Homes policy does not apply to applications made under section 73 of the Town and Country Planning Act 1990, to amend or vary an existing planning permission unless the amendment or variation in question relates to the proposed quantity or tenure mix of affordable housing for that development

² This is because they had either been submitted for examination/ Regulation 15 stage by 28 June 2021, or reached Publication stage/Regulation 14 stage by 28 June 2021 and then submitted by 28 December 2021

3. Options for assessing impact of First Homes on affordable housing mix

- 3.1. Development value provides the means to deliver affordable housing through planning obligations. Some types of affordable housing, such as social rent, need more contribution through the development than others, for example shared ownership depending on the proportion of the home owned. The mix of affordable housing types delivered on a site impacts on development viability and constrains the overall amount of affordable housing that a site can deliver.
- 3.2. Policy Strategy 34 in the adopted East Devon Local Plan 2013-2031 sets out the requirement for affordable housing to be provided on residential developments, subject to provision targets, tenure percentages, site size thresholds, exemptions, and subject to viability considerations. Over the period of the Local Plan (2013 to 2031) the following affordable housing tenures are sought:
 - 70% social or affordable rent
 - 30% intermediate or other affordable housing.
- 3.3. The mix of tenures in the adopted Local Plan pre-dates current requirements in the NPPF (paragraph 65) that decisions should expect at least 10% of the total number of homes on major developments and some smaller developments to be available for affordable home ownership. When this is taken into account, it alters the mix of affordable housing on East Devon sites compared to current Local Plan policy. The Affordable Housing SPD November 2020 (paragraph 4.6) acknowledges the 10% requirement in national policy, which is a material consideration for decision making, and this informs S106 negotiations.
- 3.4. Discounted market sale housing, including First Homes, falls within the 30% intermediate or other affordable housing.
- 3.5. The new planning policy on First Homes in the Written Ministerial Statement further impacts on the mix of affordable housing tenures. It introduced the requirement for at least 25% of affordable housing delivered by developers through planning obligations. This reduces both the percentage of rented affordable housing and the percentage of other forms of affordable home ownership that can be achieved from a development.

Appendix B - Options for calculating the mix of affordable housing

- 3.6. Appendix B of this report shows two options for calculating the potential mix of affordable housing types when First Homes are included. They use examples to illustrate whether proposals are policy compliant with WMS and NPPF policy.
- 3.7. Compared to the requirements of Strategy 34, both options reduce the percentage of social or affordable rent housing that would be delivered but increase the percentage of intermediate or other affordable housing (including First Homes). This is directly the result of WMS requirement for 25% affordable housing being First Homes and the NPPF requirement for at least 10% of major housing development and some smaller sites to be affordable home ownership.

OPTION 1 results in

- 60% social or affordable rent
- 40% intermediate or other affordable housing (25% being First Homes)

OPTION 2 results in

- 52.5% social or affordable rent
- 47.5% intermediate or other affordable housing (25% being First Homes)

- 3.8. Providing First Homes significantly reduces the amount of other intermediate market housing delivered. This is primarily Shared Ownership housing, which to date has been important for cross subsidising the delivery of other types of affordable housing within development.

Radically reducing the amount of Shared Ownership would potentially have significant impacts on site viability, and could lower the total amount of affordable housing delivered.

- 3.9. The Interim Guidance Note needs to set out examples of how the mix of affordable housing will be calculated to inform future decision making process. Appendix B of this report (appended)
- 3.10. At first sight, Option 1 seems preferable, mindful of the Council Plan's priority action to deliver more social housing. However, Appendix B of this report demonstrates the radical reduction in shared ownership housing under this Option. This is expected to impact adversely on development viability, undermining the delivery of social rent or affordable rent housing. In contrast, Option 2 provides a higher percentage of shared ownership (22.5%) compared to Option 1 which would have only 15% at most. The latter is a very significant reduction compared to the adopted Local Plan policy and recent delivery.
- 3.11. **Option 2 is therefore recommended** as a more realistic, deliverable starting point for negotiations, similar to the position referred to in paragraph 3.3 of this report. The calculation examples in draft Interim Guidance Note Appendix 3 are based on this recommendation.
- 3.12. Policy change introduced by the Written Ministerial Statement does not require housing proposals to maintain the amount of affordable housing when First Homes are included, compared to the Council's current policy. Instead it only requires that a policy compliant planning application should seek to capture the same amount of value as would be captured under the Local Authority's up to date published policy, when providing a minimum of 25% of affordable housing units on site as First Homes. Section 5 of this report looks at the evidential implications for decision making resulting from this policy change.

Social rent housing

- 3.13. The Written Ministerial Statement makes clear that once the 25% First Homes are secured a local authority should prioritise securing their policy requirements on social rent. Whilst adopted Local Plan policy Strategy 34 requires social or affordable rent housing it does not specify the percentage of affordable housing to be social rent housing. Most planning obligations offered by developers focus on affordable rent which is the lower cost option. However, the Affordable Housing SPD allows for the use of local housing need evidence. This has helped the Council to negotiate including social rent in the affordable housing mix.
- 3.14. Consequently, the District Council will rely on local need evidence for social rent where available, until the emerging East Devon local plan can revisit housing mix policy, supported by new evidence, and for this to be tested through the plan-making process.

4. National and Local Criteria for First Homes in East Devon

- 4.1. As well as national criteria, the Written Ministerial Statement allows the Council to consider the use of additional restrictions relating to First Homes through applying local criteria. The potential use of local criteria are considered in this section of the report to Members.

Percentage Discount

- 4.2. The Written Ministerial Statement sets out national criteria relating to First Homes but it allows Local Authorities to establish the percentage discount at 30%, 40% or 50% below market value. The market value and level of discount for a First Homes property will require evidence from an independent source. The Council will be reviewing the percentage discount through the emerging Local Plan but evidence is not yet available from the Local Housing Needs Assessment update or from evidence which is yet to be commissioned from an overall viability assessment of the emerging local plan.

- 4.3. **It is therefore recommended that the Council relies on the national criteria of 30% discount at this time.**

Price Cap

- 4.4. The Written Ministerial Statement sets the price cap at £250,000, after the discount is applied, for the first sale of a First Home in areas outside of Greater London. The price can be higher at resale but the percentage discount does not change.
- 4.5. The WMS allows the Council to set a lower price cap for First Homes as local criteria, but this cap would be time limited and only apply for the first three months of marketing, after which the national price cap for this area then applies for the First Home.
- 4.6. The Council will review the price cap through the emerging Local Plan but evidence is not yet available to justify a setting a lower price cap. In higher value areas of East Devon the initial discounted price of the home will not be able to exceed the £250,000 price cap (after discount) regardless of the market value before the discount was applied. This may therefore encourage the developer to offer the home at a deeper discount to remain within the cap.
- 4.7. **It is therefore recommended that the Council relies on the national criteria of the £250,000 initial price cap at this time.**

Local Eligibility Criteria

- 4.8. The Written Ministerial Statement sets out national eligibility criteria for who can purchase a First Home but it allows Local Authorities to establish local eligibility criteria relating to:
- Household income cap
 - Occupier eligibility.
- 4.9. Local eligibility criteria result in additional restrictions. Under the Written Ministerial Statement these local restrictions would be time-limited. They only apply for the first three months after the start of marketing on the First Home. After 3 months from the start of marketing, the local criteria fall away and the default national criteria apply to the First Home.

Income Cap

- 4.10. First Homes must be prioritised for first-time buyers. The national income cap for a household's combined gross annual income is £80,000 in the tax year immediately preceding the year of purchase. Lowering the price cap for East Devon would require additional evidence, not available at this time. The Council can consider a lower price cap through the plan-making process and evidence for the emerging Local Plan.
- 4.11. The household income cap of £80,000 is consistent with the income eligibility for shared ownership. The median gross annual workplace based earnings by local authority for East Devon in the year 2020 is £27,866 with a lower quartile of £20,365. Whilst the income cap of £80,000 does seem high compared to average earnings it is consistent with other forms of affordable home ownership.
- 4.12. **It is therefore recommended that the Council relies on the national criteria of £80,000 as set out in WMS at this time, to maintain consistency.**

Occupier Eligibility

- 4.13. **This report to the Strategic Planning Committee recommends the use of two types of local occupier eligibility criteria to restrict First Homes purchase in East Devon :**
- a) Local connection
 - b) Key workers.

- 4.14. **It is also recommended that the two types of restriction are separate.** This means that purchasers would need to meet one but not both criteria. These criteria would apply to both first sale and resales of the First Home, subject to the local criteria in operation at the time.
- 4.15. Other alternative approaches are not recommended. Prioritising Key workers ahead of local connection not only means that the local community is not prioritised, it also relies on a cascade approach. Prioritising Key workers provided they meet a local connection test would mean that a part of the local community is not prioritised, and may limit the consumer base making it more difficult to sell the First Home before the 3 month time limit ends. Excluding key workers from being eligible purchasers or requiring key workers to meet the 3 year time period in the local connection employment criteria could constrain the ability for communities to be supported by essential services.

a) Local connection

- 4.16. The WMS allows the Council to add local connection restrictions to the eligibility criteria for First Homes purchasers. They are in addition to the national eligibility criteria. They may include but are not limited to, current residency employment requirements, family connections or special circumstances. The application of these discretions needs to be administered carefully and ensure that they do not limit the eligible consumer base to the point that homes become difficult to sell.
- 4.17. The Council has an opportunity to consider which local connection criteria to use to restrict purchasers' eligibility for First Homes. These local criteria only apply for the three months from the start of marketing of the First Home. After that initial period the local criteria do not apply and the eligibility test reverts back to national criteria. Three potential options for local connection criteria are being considered, as follows:

OPTION 1 - Affordable Housing SPD local connection criteria

- 4.18. In order to ensure that First Homes are delivered to meet the local needs of our communities we could apply the SPD local connection criteria. This would ensure that First Homes are in line with other tenures of affordable housing.
- 4.19. The adopted Affordable Housing SPD paragraph 7.9 provides commentary on local connection. Due to high demand for affordable housing and limited supply to meet local housing needs, current practice is that local connection criteria to the parish in which the affordable housing is located will be applied, in a priority order. In the event that no-one satisfying the criteria can be found within the parish where the affordable housing is being provided, the process will be repeated considering persons from the following areas, in the following priority order:
- i. Neighbouring parishes
 - ii. Elsewhere in East Devon
 - iii. At strategic sites in the West End, those with a connection to Exeter
 - iv. Those with a connection to the county of Devon.
- 4.20. A cascade approach may not be practical because of the 3 month time limit.
- 4.21. These criteria do not apply to Rural Exceptions sites under Strategy 35 where the Local Plan sets out a different local connection criteria. Rural Exception sites are exempt from having to provide First Homes.

OPTION 2 – East Devon connection

- 4.22. It is likely that a significant amount of delivery of First Homes will be in the West End growth areas and Cranbrook, where local connection at Parish level is too restrictive. Current practice for local connection for affordable units at both Cranbrook and the West End is an East Devon connection and due to proximity to Exeter an Exeter connection is also permitted.

4.23. Having local connection criteria that differ depending upon the location of the First Homes unit is not practical. An overly restrictive local connection criteria on any form of discounted housing can also cause problems and does not necessarily help those seeking an affordable home to buy. An East Devon connection is simpler to administer than Option 1. However, Option 2 criteria are relatively narrow and may not be practical because of the 3 month limit.

OPTION 3 – Devon Covenant

4.24. Another approach to local connection is to apply a similar approach to ex-local authority properties restricted through S157 of the Housing Act 1985, sometimes referred to as the 'Devon Covenant'. This is designed to ensure that local people have access to housing which remains affordable and serves a local need. It requires a local connection to Devon. The local eligibility criteria are wider than Options 1 and 2, and it is not a cascade mechanism.

4.25. The local connection criteria set out below would be applied to First Homes:

- i. Being permanently resident in Devon for a continuous period of a least 6 months out of the last 12 months or for a continuous period of three years out of the last 5 years immediately prior to the reservation of or 'offer accepted' on the First Homes unit; or
- ii. Being formerly permanently resident in Devon for a continuous period of five years at some point in the past; or
- iii. Having his or her place of permanent work (normally regarded as 16 hours or more a week and not including seasonal employment) in Devon for 3 years immediately prior the reservation of or 'offer accepted' on the First Homes unit; or
- iv. Having a connection through a close family member (normally mother, father, brother, sister, son or daughter) where the family resident is currently resident in Devon and has been so for a continuous period of at least five years immediately prior to the reservation of or 'offer accepted' on the First Homes unit.

4.26. Option 3 is consistent with the Devon Covenant and has the highest level of flexibility of the three Options, mindful that local connection criteria are time limited.

4.27. **Option 3 is therefore recommended for inclusion in the Interim Guidance Note, as the local connection criteria for East Devon.**

4.28. There will be an opportunity to consider local connection criteria further through the Local Plan making process. Neighbourhood plans can also consider local connection criteria, see Section 7 of this report.

b) Key workers

4.29. In addition to a local connection, the WMS and PPG also enable the Council to include local eligibility criteria that would allow key workers to be eligible for First Homes in East Devon. Key workers would not be subject to the local connection criteria restriction.

4.30. A Key Worker is a person in employment providing an essential service to the community and who therefore needs to live in close proximity to their place of work. It is considered that this could include people whose key worker role is based outside of the district but serves the community of East Devon. The Draft Interim Guidance Note lists the categories that would be used to define employment providing an essential service to a community. These have been drawn up to be clear and concise and include:

- Health and social care
- Public safety, national security and border control, including Police, Prison Service, Fire Service, Ambulance Service
- Education and child care

Members attention is drawn to the tight definition that has been applied and that a broader definition could be applied if Members considered this to be appropriate. It should be noted

that the criteria would only apply for the first 3 months of marketing after which the national criteria would apply and so it is considered appropriate to draw a tight definition that prioritises only the most essential of key workers.

- 4.31. **Those categories of essential service to the community listed in the draft Note are recommended for inclusion in the Interim Guidance Note to define key workers.**

5. Development management, planning obligations and CIL

- 5.1. The introduction of First Homes has consequences for the processes of determining planning applications, managing planning obligations and Community Infrastructure Levy.

a) Evidential requirements

- 5.2. The introduction of First Homes by national policy adds to the evidence required to support decision making and management for S106 purposes. Some of the evidence such as viability and residual value, will be required to be submitted with planning applications, and as part of the planning obligations negotiations. Other evidence such as Open Market Value and First Time buyer, household income and local connections /employment is needed to meet requirements set out in the S106 agreement so that the Council can be satisfied that purchasers for the first sale and subsequent resales meet the eligibility criteria.
- 5.3. The need to require, manage, check and use additional evidence from applicants, developers, estate agents, solicitors/licensed conveyancers (on behalf of buyers and sellers) will add to the work undertaken for the Council by housing services, development management, legal services, finance services, and planning policy including neighbourhood planning.

Viability

- 5.4. To demonstrate that a planning application is policy compliant, the application should seek to capture the same amount of value as would be captured under the Local Authority's up to date published policy, when providing a minimum of 25% of affordable housing units on site as First Homes. This requires evidence about viability and the residual value available for affordable homes. It applies to all major residential development where affordable housing is required, subject to exemptions in NPPF. It also applies to small sites of 5 to 9 dwellings where off site contributions for affordable housing can be sought. The onus is on the developer to provide this information to the Council through the planning application process.
- 5.5. When submitting a planning application, the applicant has to demonstrate that the requirements set out in the East Devon District Council Validation Document are met. One of these requirements is for the submission of an Affordable Housing Statement for relevant planning applications. It would be appropriate for the Council to consider updating the requirement for the Affordable Housing Statement in that document, to include the provision of evidence and explanation of how the value for the contribution for affordable housing is maintained when First Homes are required. A review of the validation document is due to be undertaken this year and will be brought forward to include this requirement at a meeting of the committee in the near future.

Establishing Open Market Value

- 5.6. The draft Interim Guidance Note sets out how the developer for the first sale and homeowners for subsequent resales of a First Home evidence will need to demonstrate the home's market value. The Council needs this evidence to confirm that the sale complies with the criteria set out in the Section 106 Agreement. The onus is on the developer to provide this information to the Council through the planning application process, and on owners at resale. To ensure resale values do not increase to the point the home is not affordable to eligible persons at future re-sale, national income caps will be monitored.

Marketing and Eligibility/Local Connection/Key Worker

- 5.7. The draft Interim Guidance Note considers how eligibility criteria are applied and checked. It sets out the expectations for initial marketing of First Homes, and information from conveyancing processes for subsequent resales. The S106 agreement is the means to ensure that the developer and subsequent sellers are responsible for informing the Council about the commencement of marketing of First Homes, and to ensure active marketing and advertising is undertaken. The S106 is also the mechanism for requiring evidence regarding purchaser eligibility including local connection and key worker criteria, so that the Council can issue 'Authority to Proceed', Eligibility Certificate, 'Authority to Exchange', and the Compliance Certificate so that the conveyancer can register the First Homes restriction and the transfer of ownership of the unit with HM Land Registry, enabling the First Home sale to be completed. Appendix 2 of the Note provides more detail.

On site/off site provision of First Homes

- 5.8. First Homes will be secured through a S106 agreement and are expected to be delivered on-site unless off-site delivery or financial contribution is considered to be justified. Where a mixture of cash contributions towards affordable housing and on-site units are secured, 25% of the overall value of affordable housing contributions should be applied to First Homes
- 5.9. Where off-site financial contributions are agreed a minimum of 25% of these contributions should be used to secure First Homes. This could be achieved by, for example, acquiring additional First Homes from market development, paying the developer a sum to offset the discount from market price, and securing the tenure through S106 planning obligations which will be considered by the Council on a case-by-case basis to ensure that off-site contributions meet the local need.

b) Planning Obligations - S106 Agreements

- 5.10. A legal agreement is the mechanism for securing the affordable housing, including First Homes, through developer contributions. This will include the means to ensure that the percentage discount against market value on First Home units should remain in perpetuity. A developer should enter into a S106 agreement which secures the delivery of the First Homes and ensures that a legal restriction is registered onto the First Homes title on its first sale that will be applied to subsequent sales.
- 5.11. On 23rd December 2021, Government published a model S106 Agreement for developer contributions regarding First Homes.
- 5.12. **It is recommended that the Council use Model S106 Agreement in combination with the approach to S106 agreements for affordable housing matters as set out in the East Devon Affordable Housing SPD.**

c) Community Infrastructure Levy

- 5.13. CIL regulations (November 2020) make provision for authorities to grant exemptions from the levy and thus developers of First Homes will be allowed to claim an exemption from the requirement to pay CIL.
- 5.14. PPG Community Infrastructure Levy paragraph 65 makes clear that social housing relief can apply to First Homes. To be eligible for mandatory social housing relief, a planning obligation must be entered into prior to the first sale of the dwelling designed to ensure that any subsequent sale of the dwelling is for no more than 70% of its market value.
- 5.15. PPG CIL paragraph 73 provides guidance about what happens if the First Home no longer qualifies for relief from CIL, for example when a developer is unable to secure a suitable buyer for the First Home after active marketing and advertising. The home cascades out as

an open market dwelling. Under CIL clawback provisions the developer is then liable for CIL when the home is sold for the first time. Clawback does not apply to resale of a First Home if the criteria for a First Home cannot be met at the time of the resale of the home.

6. First Homes Exceptions sites

- 6.1. The Written Ministerial Statement introduces policy on First Homes Exceptions sites which deliver primarily First Homes on unallocated land outside of a development plan. First Homes Exceptions sites cannot come forward in Areas of Outstanding Natural Beauty, nor in designated rural areas. In East Devon there are only four areas not covered by these criteria (maps of these areas are on Pages 41 to 45 of the East Devon Affordable Housing SPD) at:
- Exmouth
 - Honiton
 - Seaton
 - Sidmouth
- 6.2. The draft Interim Guidance Note provides more detail about the criteria for First Homes Exceptions sites. Applicants are encouraged to engage with the Council to discuss the proposals, to ensure the site is 'proportionate', the evidence justifies any small amount of market housing and other affordable housing allowed on this type of site, and the site location is adjacent to an existing settlement and accords with WMS criteria.
- 6.3. Members are advised that Rural Exceptions sites are a separate type of exception site, subject to specific NPPF and PPG criteria, and Local Plan policy. They can come forward in AONBs and designated rural areas. They are not the same as First Homes Exceptions sites.

7. Implications for Neighbourhood Plans

- 7.1. Policy in the Written Ministerial Statement also has implications for
- Neighbourhood plan making
 - Whether or not Neighbourhood Plans are the subject of transitional arrangements for planning application decision making purposes. The Interim Guidance Note sets out further information
- 7.2. The Council supports Neighbourhood Planning. Neighbourhood Plan groups may need separate technical support on evidence relating to First Homes, particularly where they are considering the development of local criteria to include in Neighbourhood Plan policy.

8. Resources

- 8.1. The need to use resources in relation to evidence regarding First Homes is considered in section 5a) of this report. Resources will also be needed to provide pre-application advice, and housing enabling officer advice at subsequent stages, to provide advice for neighbourhood planning, as well as the preparation of legal agreements, and for undertaking development management processes and monitoring, and financial management.

i) Pre-application advice

- 8.2. PPG sets out that where significant pre-application engagement has taken place, the First Homes policy will not apply to planning applications for full or outline permission which are determined before 28th March 2022. The PPG First Homes paragraph 021 states that significant pre-application engagement "means any substantive discussions between the local planning authority and the applicant relating to the proposed quantity or tenure mix of affordable housing contribution associated with that application".
- 8.3. The Council provides a pre-application advice service (for which there is a charge). The Council considers that submission of a formal pre-application inquiry and payment of fee, where the Council and the applicant then discuss the scheme's affordable housing (amount

and tenure). Where this is the case, and subject to the national criteria regarding pre-application engagement, the First Homes requirement will not apply.

- 8.4. The Council can offer advice to developers for large and small scale proposals, but this advice is charged for. Future pre-application advice including First Homes matters, will continue to be available through the current East Devon District Council pre-application advice service, in accordance with the customer charter.

ii) Housing enabling officer advice at subsequent stages

- 8.5. Once a planning application is submitted, further advice on First Homes should be sought from the Housing Enabling Officer. We can anticipate questions about the calculation of housing mix, and how to resolve the issues about 'partial' dwellings that result from the calculations, particularly on smaller sites.

- 8.6. Application of proportions generated by the calculations for housing mix, generates small numbers of units (whole and partial), particularly on smaller sites, The Council recognises the challenges of providing a small number of dwellings, particularly given the split over the affordable typologies. Applicants considering making planning applications are to be recommended to contact the Housing Enabling Officer at an early stage to discuss their proposals. Furthermore, where the percentage proportion of affordable housing calculation results in a partial dwelling this will need to be rounded up or down to create whole unit or converted to a financial contribution. The draft Interim Guidance Note sets out more detail.

iii) Neighbourhood planning officer advice

- 8.7. Section 7 of this report considers the implications of First Homes for Neighbourhood Planning.

iv) Legal services/housing service/land charges administration

- 8.8. The introduction of First Homes imposes new roles and tasks for Council services. These relate to processes such as:

a) Buying and selling a First Home

- 8.9. Appendix 2 of the Interim Guidance Note provides guidance for buyers and sellers on the process of buying and selling a First Home. It draws on information in Early Delivery Programme application pack forms provided by DLHUC. Appendix 2 also includes two diagrams provided by DLUHC in December 2021. These illustrate the steps relating to initial sale and to resale of a First Home and roles/tasks for the different participants in the process at each step. They include the Local Authority's roles and tasks.

- 8.10. Members are advised that the resale steps apply to each First Home every time the home is sold, in perpetuity unless and until it can no longer be sold as a First Home and is disposed of on the open market. There is no policy setting a time period before a First Home can be resold. Some first time buyers may remain in their homes for some time, others may move up the housing ladder swiftly.

- 8.11. The Local Authority will have roles every time a First Home is sold, including exempt disposals³, as set out in the S106 agreement. The mapping, defining and assignment of those roles needs to be agreed corporately, but are likely to encompass the following:

Potential housing roles such as:

- Providing online advice – directing builders, mortgage advisors, conveyancers, sellers and purchasers to the Interim Guidance Note and other documents

³ - Such as disposal to a spouse or civil partner : upon the death of the First Homes Owner; in accordance with the terms of a Court order, divorce settlement or other legal agreement; or disposal to a trustee in bankruptcy prior to sale of the dwellings. There will still be a need for the transfer process (which may require conveyancing) to evidence and confirm that whether the transfer is an 'exempt' disposal; subsequent transfers will still be subject to the S106 agreement regarding the First Home.

- Negotiating, in conjunction with Development Management, with developers about affordable housing mix, including First Homes,
- Receiving notifications of intention to sell a First Home from the home-owners and then issuing instructions to the owners for marketing the First Homes
- Producing application packs to be available online to builders/estate agents for purchasers to complete
- Receiving completed application packs, checking criteria (including marketing and eligibility) are met, and liaising with Legal team

Potential legal and land charges/administrative roles such as:

- Preparation of the S106 Agreement including matters relating to First Homes, following instruction from Development Management team
- Production of conveyancer pack; and issuing them after completed application packs have been checked for meeting criteria
- Preparation of Eligibility and Compliance Certificates
- Issuing Authority to Proceed and Eligibility Certificates
- Receiving/checking conveyancer's legal undertaking-transaction is compliant
- Issuing Authority to Exchange and Compliance Certificate
- Receiving confirmation of completion
- Updating records of completions (sales/transfer of ownership of First Homes). As well as for maintaining legal records, these also provide evidence about First Homes sales and resales for planning monitoring purposes.

b) Disposing of a First Home other than as a First Home

8.12. To avoid First Homes being unsold then there is a process for removing the First Homes restrictions from the property title so the house can be sold without restriction⁴. This process is included within the S106 agreement. The owner of a First Home (i.e. the developer or any First Homes seller of the unit) applies to the Council so that the unit can be disposed of other than as a First Home.

8.13. The Council's roles and tasks in this process include:

- Ensuring that S106 agreements include provisions about conditions to allow removal of the title restriction
- Checking evidence that the site has been actively marketed for six months
- On receipt, consider an application to dispose of the unit other than as a First Home and if satisfied that the relevant grounds have been met, confirm in writing so that
 - the unit can be disposed of to the Council as a First Home at discount market price; or
 - other than as a First Home (if the Council confirms that it does not wish to acquire the dwelling)
- When the Council receives from the owner the Additional First Homes Contribution from the proceeds of the sale, the Council then provides a completed application, enabling removal of the restriction on the title, which the conveyancer submits to HM Land Registry; and the Council applies all monies received from this Contribution towards the provision of affordable housing
- Processing any CIL liability relating to an initial sale of a First Home other than as a First Home.

8.14. It is the conveyancer who, after exchange of contracts, registers the First Home restriction at HM Land Registry and subsequently informs the Local Authority of the transfer of ownership i.e. the sale of the First Home is complete or registers the removal of the First Home restriction

⁴ In the definition used for assessing stamp duty land tax, it specifies that potential purchasers will only be eligible to buy a home under the scheme if they have never purchased or owned an interest in a property in the United Kingdom or anywhere in the world, and if they intend to occupy the property as their primary residence.

on the unit and the transfer of ownership. Such steps are necessary for ownership transfer through sale or resale but they cannot be undertaken until the Council has completed the relevant roles and tasks at each step, in a timely way.

- 8.15. The Council will need to consider whether it should acquire First Homes if the circumstances arise through the process of disposing of First Homes other than as a First Home, and how acquisition would align and support the Council Plan and the East Devon Housing Strategy. There is also an opportunity to consider the use of commuted sums for First Homes.
- 8.16. The Council will also need for to monitor the governance of the First Homes processes, in order to:
 - Assess whether the process is working
 - Ensure effective feedback loop throughout; and
 - Ensure responsibility for compliance is understood.

9. Conclusion

- 9.1. The draft Interim Guidance Note: East Devon - First Homes, set out in Appendix A appended to this report responds to the introduction by Government of First Homes as a new type of affordable housing ownership product for first-time buyers. The Note, including its introduction of additional local eligibility criteria about local connection and key workers, is the appropriate approach to First Homes in East Devon to use when making planning decisions.

Appendix A : Draft Interim Guidance Note : East Devon – First Homes February 2022

Appendix B : Options for the Calculation of the Number of First Homes

Financial implications:

The new roles and tasks placed upon council services that are discussed within the report will be covered by existing employees in the relevant services through current budget allocations. Any cash contributions made to the council, where appropriate, should be recorded using the current S106/CIL systems and processes.

Legal implications:

If adopted the interim guidance note shall be regarded as a material consideration by the Council when determining planning applications. There are no legal implications other than as set out within the report and guidance note.

OPTIONS FOR CALCULATING THE NUMBER OF FIRST HOMES

Two options are shown below for calculating of the number of First Homes required from a housing development that is required to provide First Homes. They are both for a proposed housing development scheme for 100 dwellings in total, with the affordable housing to be secured through planning obligations. The scheme is not exempt from NPPF requirement for 10% of the scheme to be affordable home ownership (for NPPF Paragraph 65 purposes).

Both options require the following:

- the provision of 25% affordable housing; that is 25 affordable dwellings; and
- 25% of those 25 affordable dwellings to be First Homes; that is 6.25 dwellings.

OPTION 1 – Significant reduction in Shared Ownership

1. The 25 affordable dwellings reflect the mix set out in the adopted East Devon Local Plan – Policy Strategy 34, based on:
 - a. 70% as social or affordable rent where $25 \times 70\% = 17.5$ dws
 - b. 30% as shared ownership or other affordable housing where $25 \times 30\% = 7.5$ dws

2. The 30% of shared ownership or other affordable housing is split into
 - i. 25% First Homes
 - ii. 5% Shared Ownership

That is First Homes = $25/30 \times 7.5 = 6.25$ dwellings (meeting the requirement)
 Shared Ownership = $5/30 \times 7.5 = 1.25$ dwellings

3. The 30% from First Homes and Shared Ownership is then checked to see whether it meets the requirement of NPPF paragraph 65 that at least 10% of the overall number of homes should be affordable home ownership products.

The affordable home ownership products are 7.5 dwellings (First Homes 6.25 dwellings plus 1.25 dwellings in shared ownership). That is, 7.5% of the site total. This does not meet the 10% target.

4. To meet the 10% target:
 - a. The number of shared ownership dwellings is increased until the 10% requirement is met. The number of shared ownership dwellings is increased by 2.5 dwellings to a total of 3.75 dwellings
 The total number of affordable home ownership products is therefore 10 dwellings
 i.e. $6.25 + 3.75$.
 - b. For the total number of affordable dwellings to be 25, there has to be a corresponding reduction of 2.5 dwellings in the number of social or affordable rent dwellings i.e. down from 17.5 to 15 dwellings.

5. Consequently the overall balance in the mix of affordable housing types becomes:

- Social or Affordable Rent = 15 dws = 60% of affordable housing
- First Homes and Shared Ownership = 10 dws = 40% of affordable housing

OPTION 2 – Smaller reduction in Shared Ownership

1. 25% of 25 affordable dwellings are First Homes = 6.25 dwellings
(meets the First Homes target)
2. 75% of 25 affordable dwellings are for all other affordable dwellings = 18.75 dwellings
3. Based on Local Plan Policy Strategy 34 mix, these 18.75 dwellings are split between
 - 70% social or affordable rent = $18.75 \times 70\% = 13.125$ dws
 - 30% Shared Ownership or other affordable housing = $18.75 \times 30\% = 5.625$ dws
4. The 75% for all other affordable housing is then assessed to check if this, in combination with the First Homes, meets the requirement of NPPF paragraph 65 that at least 10% of the overall number of homes should be affordable home ownership products:
 - a) 6.25 First homes = 6.25% of the site total number of dwellings.
This is less than the NPPF 10% target for affordable home ownership
 - b) There are 5.625 dwellings from the affordable housing typology that includes Shared Ownership.
 - c) Adding the 6.25 First Homes dwellings to the 5.625 Shared Ownership, results in 11.825 dwellings in affordable home ownership.
That is, 11.825%, which meets the 10% requirement.
5. Consequently the overall balance in the mix of affordable housing types becomes:
 - Social or Affordable Rent = 13.125 dws = 52.5% of affordable housing
 - First Homes and Shared Ownership = 11.875 dws = 47.5% of affordable housing