

POSITIVE PLANNING DEVELOPMENTS

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It's not so long ago that many local authorities simply did not get BTR. They treated it in the same way as build for sale and expected the same amount and type of affordable housing delivered by a registered provider in the traditional way. The result? BTR developments were not viable and did not get built. Fortunately we've come a long way since then.

Central government has helped. The new National Planning Policy Framework, published in July 2018, recognises that BTR should be treated differently when assessing affordable housing requirements. The Glossary to the Framework, in defining "Affordable housing for rent" states that "for Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision" and must be at least 20 percent below local market rents. It adds that for BTR, the landlord of the affordable units need not be a registered provider.

National Planning Practice Guidance adds that 20 percent is "generally a suitable benchmark" for the level of affordable private rent homes to be provided in a BTR scheme and advises local authorities that, if they wish to set a different proportion, they should "justify this using the evidence emerging from their local housing need assessment, and set the policy out in their local plan". The guidance on viability allows developers to make a case for a lower amount of affordable units and in our experience the challenge of making the development viable means a viability appraisal is usually provided.

In London, the Mayor's draft new London Plan exhorts boroughs to take a "positive approach to the BTR sector" and recognises the positive contribution it can make to the delivery of new homes. It also accepts that the affordable provision can be entirely Discounted Market Rent (what the NPPF calls affordable rent) managed by the BTR operator without grant. It adds that DMR units should be fully integrated into the development with no differences between DMR and market units.

The Mayor's Housing SPG (August 2017) states that the fast track route (where 35% affordable without public subsidy is provided, meaning no viability appraisal and no questions asked) is not suitable for BTR, and that the viability of each scheme and the amount of affordable homes it can provide must be assessed, although that approach is not maintained in the draft London Plan which does allow a fast-track for BTR. In addition, an early stage viability review is required after two years from the date of the permission if an agreed level of progress hasn't been made with the development.

The policy also requires a late stage review following occupation of at least 75% of the market units, although that policy is now subject to intense negotiation with the

boroughs following the judgment of the High Court in *McCarthy and Stone v. GLA* that was handed down in May 2018. The judge found that the extant London Plan only allowed a late stage review if the development would take many years to complete, so that the trigger for a late stage review should be defined in terms of a time period specified in the section 106 agreement, and not in terms of the number of units sold, regardless of how soon that trigger has been reached. A clawback payment is triggered if BTR units are sold on the open market during the covenant period. Negotiating the detail of the viability formulas is now often the biggest obstacle to getting a permission granted quickly.

In local plans, there is still a dearth of detailed BTR policy. A notable exception is the Hammersmith and Fulham Plan, which recognises that "BTR is different to traditional, private market housing" with separate viability concerns. It adds that affordable housing for such schemes may be delivered using the London Living Rent as the council's preferred benchmark, and that covenants will be required to ensure developments are rental for at least 15 years, with a clawback mechanism that applies if units are sold as market units during the 15 year period.

So the BTR policy vacuum of a few years ago has largely been filled, but getting planning is still not plain sailing. BTR applications are not immune from the planning challenges that apply to all applications – under-resourced local authority planning departments, debates about need and housing land supply, and local objectors.

Planning is never simple!

