

COUNCIL
19th JANUARY 2022

Report of Director of Regeneration and Policy & Director of Housing

RURAL AREA DESIGNATION – S157 HOUSING ACT 1985

PURPOSE OF REPORT

To seek members' approval for the submission of an application to the Secretary of State for Rural Area Designation under s157 of the Housing Act 1985.

RECOMMENDATION

1. That the Parishes set out in Appendix 2 be subject to an application to the Secretary of State for designation as a Rural Area under Section 157 of the Housing Act 1985.
2. That a further report be presented to Members which sets out the outcome of the application for Rural Area designation.

WARDS AFFECTED

All outside the Peak District National Park

STRATEGIC LINK

Promoting housing development that meets the needs of the present and future population of the District a key strand of the Prosperity priority action in the District Council's Corporate Plan 2020-2024. Rural Area designation will provide the opportunity to delivery rural exception affordable housing to those residents in need, rather than First Homes which are unlikely to be as affordable to residents of Derbyshire Dales. As such it will contribute to achieving this aim.

1 BACKGROUND

- 1.1** Members at the Community and Environment Committee on 5th July 2021 considered a report on the introduction by the Government of a new tenure of affordable housing - First Homes. The report also advised Members of the national planning policy changes that were brought into effect in relation to First Homes from 28th June 2021. Finally it sets out a recommended approach to address the issues that the introduction has for the District Council, as local planning authority.
- 1.2** One of the aspects of national planning policy introduced as a consequence of First Homes was the concept of First Home Exception Sites. This is an exception site

(that is, a housing development that comes forward outside of local or neighbourhood plan allocations to deliver affordable housing) that delivers primarily First Homes. Such sites can come forward on unallocated land outside of a development plan.

- 1.3 First Homes Exception Sites cannot come forward in areas designated as Green Belt, or designated rural areas as defined in Annex 2 of the National Planning Policy Framework. In these areas, rural exception sites are the sole permissible type of exception site. First Homes Exception Sites should be adjacent to existing settlements, proportionate in size to them, and not compromise the protection given to areas or assets of particular importance in the National Planning Policy Framework, and comply with any local design policies and standards. A small proportion of market homes are allowed on such sites at the local authority's discretion, for example where essential to enable the delivery of First Homes without grant funding. Also, a small proportion of other affordable homes may be allowed on the sites where there is significant identified local need.
- 1.4 At the current time the revised national policy would allow both First and Rural Exception Sites to come forward in the area for which the District Council is the local planning authority.
- 1.5 Members were advised at the Community and Environment Committee in July that it was anticipated that First Homes Exception Sites may lead to higher land values as they could be more attractive to landowners than traditional rural exception sites, reducing the potential of what has been a very successful model for the delivery of affordable housing across Derbyshire Dales.
- 1.6 As such it is was resolved by Community and Environment Committee that as part of the review of the Derbyshire Dales Local Plan to consider whether there was benefit in making an application to the Secretary of State to designate any areas that meet the criteria as a Rural Areas under s157 of the Housing Act 1985. The effect of which would be to remove the potential for more speculative sites coming forward as First Homes Exception Sites, and thereby maintain the District Councils current approach of providing affordable housing through Registered Providers either for affordable rent, social rent or shared ownership.
- 1.7 Following consideration of this matter by Officers and discussion at the Local Plan Working Group on 13th October 2021 it is now considered appropriate to pursue such an application with the Secretary of State.

2 RURAL AREA DESIGNATION

- 2.1 Rural Area Designation as set out in S157 of the Housing Act 1985 can be utilised for three purposes:
 - 1) Rural Safeguards from the Right to Buy – Rural designation provides two rural safeguards from the Right to Buy. Either, the Local Authority has the pre-emptive right to buy back a home that has been sold under Right to Buy when it comes onto the market, or, at resale the home bought under the Right to Buy must be sold to someone with a local connection.
 - 2) Exemptions from the 10 dwelling threshold for securing affordable housing contributions - The National Planning Policy Framework (NPPF) and National

Planning Policy Guidance (NPPG) use this definition to define designated rural areas. In these areas, the NPPF states Local Planning Authorities can seek an affordable housing contribution on sites of five units or fewer.

3) To remove the ability of development to come forward through the First Homes Exception Sites route.

2.2 It is the latter two categories which the District Council would benefit from Rural Area designation. This would allow the District Council through the Local Plan to set a threshold of sites of 5 units or more, where the District Council would be able to seek to negotiate the delivery of affordable housing. This, in comparison to the existing policy which seeks to secure affordable housing on sites with a threshold of 10 units or more. Having a reduced threshold will increase the potential for the delivery of affordable housing both by on and off-site development.

2.3 In respect of the third category above, whilst First Homes may well widen the affordable housing model to include low cost ownership experience, on the basis of existing evidence with regards to house prices, and resident incomes, suggests that such a tenure may not be of significant benefit to the communities of Derbyshire Dales. By seeking Rural Area designation it is considered that the potential for speculative developments consisting of First Home Exception Sites would be minimized, thereby allowing the delivery of affordable homes on Rural Exception Sites by the normal partnership means.

2.4 The overall benefit of Rural Area Designation would be to increase the overall potential delivery of affordable housing across the more rural areas of the Derbyshire Dales local planning authority area.

2.5 A copy of the Rural Area designation criteria set out by MHCLG is attached at Appendix 1. This clearly sets out that the District Council can only apply for those parts of the local planning authority to be designated as 'rural', which meet the following criteria¹:

- A population density of no more than two persons per hectare
- Areas with more than 3,000 inhabitants are ineligible.

2.6 An assessment of the local planning authority area against these two criteria has been completed and is set out in Appendix 2 for Members consideration. The assessment that has been undertaken indicates that there would appear to be scope for it to apply in all Parishes within the local planning authority area with the exception of the following:

- Ashbourne
- Darley Dale
- Matlock Bath
- Matlock Town
- Northwood & Tinkersley
- Tansley
- Wirksworth

¹ Rural Area designation already applies to those parts of the District Council that are situated within the Peak District National Park by virtue of s157 Housing Act 1985

- 2.7** In these locations First Home Exception Sites would still be able to come forward, but the impact would not be as significant as in other more rural areas. In any event, because the value of a discounted First Home is based on the open market value of property, even with a substantial discount applied the values will still be significant. In addition, there is a danger that in adopting a substantial discount, there is not enough profit for the developer once they have paid for the cost of building the property. There is no state subsidy to make First Homes work in the same way that shared ownership benefits from Homes England grant. This creates an inherent risk for the developer that may naturally mean First Homes won't be viable in these settlements.

3 RISK ASSESSMENT

3.1 Legal Risk

Section 157 of the Housing Act 1985 enables landlords selling houses and flats to tenants under Part 5 of the Act (the right to buy) to impose conditions restricting resale by the purchaser where the property is in a designated rural area.

Achieving Rural Area designation will not have a negative impact on Right to Buy for those Registered Providers operating within Derbyshire Dales. Designation of Rural Areas under s157 does not exempt properties from the Right to Buy.

It does not impact on the ability of any eligible tenant to take up the Right to Buy; neither does it place any obligation on a social landlord to impose the conditions enabled by the rural designation - it is solely at their discretion.

The Legal risk at the current time in connection with this report, has been assessed as low.

3.2 Financial Risk

There is no additional cost to the Council for the application for Rural Area Designation nor for working up the necessary policy position as this will be covered through our work on the review of the DDLP and is covered by the salaries budget. As such, the financial risk is low.

3.3 Corporate Risk

- 3.4** Promoting housing development that meets the needs of the present and future population of the District a key strand of the Prosperity priority action in the District Council's Corporate Plan 2020-2024. Rural Area designation will provide the opportunity to delivery rural exception affordable housing to those residents in need, rather than First Homes which are unlikely to be as affordable to residents of Derbyshire Dales. As such it will contribute to achieving this aim. Failure to apply and achieve Rural Area designation could result in developers' seeking to deliver First Homes as opposed to that which is more suited to the residents of Derbyshire Dales.

4 OTHER CONSIDERATIONS

- 4.1** In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.
- 4.2** Climate Change
- 4.3** A full climate change impact assessment has not been undertaken because the recommendations would allow the Council to maintain the current successful approach to providing affordable housing despite recent legislative changes. Any impacts of subsequent affordable housing development in rural areas will be assessed through the determination of the relevant planning applications.

5 CONTACT INFORMATION

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6 BACKGROUND PAPERS

- 6.1** Report to Community and Environment Committee – 5th July 2021

7 ATTACHMENTS

Appendix 1 RURAL AREA DESIGNATION CRITERIA
Appendix 2 ASSESSEMENT OF SUITABILITY OF PARISHES FOR RURAL AREA DESIGNATION

APPENDIX 1 RURAL AREA DESIGNATION CRITERIA

Right to Buy –Rural Designation

Section 157 of the Housing Act 1985 provides that local authorities in certain areas can impose certain restrictions on the subsequent resale of homes acquired under the Right to Buy scheme. The areas concerned are (i) National Parks, (ii) Areas of Outstanding Natural Beauty, and (iii) areas designated by the Secretary of State as 'rural'.

Local authorities may apply to have specified areas designated as 'rural'. These areas might be a whole district or part of a district. When an application is submitted, an assessment is made for each parish in the area for which designation is sought. The criteria are that:

- There should be a population density of no more than two persons per hectare, and
- Towns with more than 3,000 inhabitants are ineligible.

The first criterion (the density test) can be applied flexibly. For example, some parishes just over these limits may be designated in order to avoid a 'patchwork' situation where some parishes are designated while others, broadly similar, are excluded.

Applications should be formally made to the Secretary of State and sent to the Right to Buy team, Department for Communities and Local Government, Eland House, Bressenden Place, London, SW1E 5DU.

They should include density and population figures for each parish seeking designation and also a plan (map) of the whole district showing;

- Its extent;
- All urban areas;
- The parishes to be considered
- Any National Parks and Areas of Outstanding Natural Beauty already designated for as 'rural' for this purpose.

Please contact the Right to Buy team on 0303 444 3798 if you require any further information.

APPENDIX 2 – ASSESSEMENT OF SUITABILITY OF PARISHES FOR RURAL AREA DESIGNATION