



**OPEN REPORT
COUNCIL**

Council - 26 January 2023

**SECTION 157 HOUSING ACT 1985 – RURAL AREA DESIGNATION:
AFFORDABLE HOUSING POLICY IMPLICATIONS**

Report of Director of Regeneration and Policy

Report Author and Contact Details

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Wards Affected

All Outside of the Peak District National Park

Report Summary

This report advises Members that those rural parishes outside the main built areas of Matlock, Ashbourne and Wirksworth have been designated as Rural Areas under s157 of the Housing Act 1985.

The report recommends that the District Council adopts a revision to Policy HC4 in the adopted Derbyshire Dales Local Plan which reduces the threshold for which the District Council can seek to negotiate the provision of affordable housing from ten dwellings or more to five dwellings or more.

Recommendations

1. That Rural Area designation under s157 Housing Act 1985 be noted
2. That the District Council approve the revisions to Policy HC4 in the adopted Derbyshire Dales Local Plan as set out in Para 2.7 of the report below.

List of Appendices

Appendix 1 Copy of Statutory Instrument No 1171 2022

Appendix 2 Equalities Impact Assessment

Background Papers

Report to Council 19th January 2022 & Minutes 242/21

Consideration of report by Council or other committee

None

Council Approval Required

Yes

Exempt from Press or Public

No

Section 157 Housing Act 1985 – Rural Area Designation: Affordable Housing Policy Implications

1. Background

- 1.1 Council on 19th January 2022 resolved to apply to the Secretary of State for Rural Area designation under s157 of the Housing Act 1985. (Minute 242/21)
- 1.2 The formal application was made to the Secretary of State on 13th May 2022. Following consideration of the application a [Statutory Instrument](#) was approved and laid before Parliament confirming the designation on 14th November 2022. Designation will come into force on 12th December 2022. A copy of the Statutory Instrument is set out in Appendix 1.

2. Key Issues

- 2.1 Confirmation of Rural Area designation has three consequences operationally for the District Council:
 - 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. It should be noted that the cost of buy back via the District Council will be significant with the open market value far exceeding the limit set within the council housing business plan.
 - 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 Bullet Points 1&3 above these can be implemented immediately without any need for a Council resolution.
- 2.3 At the current time the policy approach in the adopted Derbyshire Dales Local Plan mirrors that in National Guidance i.e. that the District Council can only seek to negotiate affordable housing on sites of ten or more dwellings. Rural Area designation allows the District Council as local planning authority to lower this threshold.
- 2.4 The National Planning Policy Framework sets out in Paragraph 64:

Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).

2.5 More detailed advice is set out in the Planning Practice Guidance:

In designated rural areas local planning authorities may instead choose to set their own lower threshold in plans and seek affordable housing contributions from developments above that threshold. Designated rural areas applies to rural areas described under section 157(1) of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty.

2.6 One possible interpretation of this advice would suggest that until a new policy is in place within the Derbyshire Dales Local Plan that a lower threshold when the District Council can seek the delivery of affordable housing should not apply. However, given the current timescales for the completion of the review of the Derbyshire Dales Local Plan such a new policy could be up to two years away from adoption.

2.7 In the interim housing affordability will remain a significant issue across the District Council. It is therefore considered that in order to maximise the opportunity that the designation provides and to avoid losing out on the delivery of much needed affordable housing that an interim policy position should be agreed that reduces the threshold upon which the District Council will negotiate to five units.

2.8 It is therefore recommended that the District Council adopt the following revision to Policy HC4 as set out in the adopted Derbyshire Dales Local Plan:

“The District Council will seek to maximise the delivery of affordable housing across the Plan area by working in partnership with the Homes and Community Agency, Registered Providers, Developers and Local Communities.

*In order to address the significant need for affordable housing across the Plan area, all residential developments of **5 dwellings** or more or with a combined floorspace of more than 1000 square metres should provide 30% of the net dwellings proposed as affordable housing*

The affordable housing provision should be in the form of 80% social and affordable rented accommodation with the balance being provided as intermediate housing or discount starter homes. These proportions may be varied in light of individual site circumstances and local considerations with the agreement of the District Council.

Where the proposed provision of affordable housing is below the requirements set out above, the District Council will require applicants to provide evidence by way of a financial appraisal to justify a reduced provision.

Affordable housing provision should normally be provided in the form of completed dwellings, designed as an integral part of the development site itself and in perpetuity. In exceptional cases, the Council may allow provision of affordable housing off-site or by means of a financial contribution of equivalent value or through the provision of serviced land or a combination thereof.”

3. Options Considered and Recommended Proposal

- 3.1 The only feasible alternative option considered was not to implement a reduced threshold until such times as the revised Derbyshire Dales Local Plan is adopted.
- 3.2 Such an approach would allow for the impact of such a policy to be tested in relation to the impact upon the viability of development and determine if a reduced threshold can be implemented without undue harm to delivery. However as set out above it is likely to be a further two years before a revised policy with reduced threshold could be legitimately brought into effect.
- 3.3 A number of factors, including national and local housing market conditions, will affect the extent to which the District Council would be able to benefit from a reduction in the threshold over which we would seek to negotiate the delivery of affordable housing. Given the current market conditions it is, however, not possible to exactly quantify how much additional affordable housing might be secured over the next two years.
- 3.4 Such a policy revision will, however, provide the District Council with the opportunity to secure more, much needed affordable housing, as part of its negotiations with developers on qualifying developments.

4. Consultation

- 4.1 The proposed revision to Policy HC4 in the adopted Derbyshire Dales Local Plan as set out above would be wholly consistent with the guidance set out in the NPPF and the Planning Practice Guidance. As it is recommended not to bring into force any new policy approach that would be inconsistent with National Policy and Guidance it is considered that no public consultation is required to enable the District Council to bring it into force.
- 4.2 Consultation on any further revisions to the policy would be undertaken as part of the review of the Derbyshire Dales Local Plan. Currently anticipated to be late 2023.

5. Timetable for Implementation

- 5.1 It is recommended that the introduction of a reduced threshold of five units to supersede the threshold set out in Policy HC4 in the adopted Derbyshire Dales Local Plan be brought into being with immediate effect.

6. Policy Implications

- 6.1 As set out in the report above.

7. Financial and Resource Implications

- 7.1 The proposed revision to Policy HC4 will be used in the determination relevant planning applications by Development Management staff. It is not anticipated that this will require any additional resources or costs.
- 7.2 The proposed revision to Policy HC4 may lead to some additional financial contributions being made under the auspices of Section 106 Obligations. It is however anticipated that this will be limited as the emphasis within the policy is on securing additional affordable housing on-site to meet local needs.
- 7.3 The financial risk is assessed as low.

8. Legal Advice and Implications

- 8.1 Should this motion be passed as recommended, there is a risk of challenge from those applications of between 5-8 dwellings which are caught by this threshold reduction.
- 8.2 The guidance in the NPPF infers that reduced thresholds should be introduced as part of the development of Local Plans. In legal terms the usage of the word “should” can be utilised to express a suggestion or a recommendation, while (in the alternative) “shall” can only be used to express a directive or a command. This however is a future argument and as there is some risk of challenge to the introduction of a reduced threshold of five dwellings, the legal risk has to be assessed as medium.

9. Equalities Implications

- 9.1 An Equalities Impact Assessment of the recommended changes to Policy HC4 in the adopted Derbyshire Dales Local Plan has been undertaken. A copy of which is attached at **Appendix 2**
- 9.2 The Equalities Impact Assessment identifies many benefits to adopting the proposed changes and no dis-benefits.

10. Climate Change Implications

- 10.1 At a strategic level it is considered that there are unlikely to be any direct climate change implications with the revisions to Policy HC4. However the specific climate change implications of new affordable housing secured by this policy revision will need to be determined on a case by case basis.

11. Risk Management

- 11.1 As the guidance in the NPPF infers that reduced thresholds should be introduced as part of the development of Local Plans there is some risk of challenge to the introduction of a reduced threshold of five dwellings. This could come in the form of a challenge on appeal in the circumstances where the use of the lower threshold has been a determining factor in the consideration of a qualifying planning application.

- 11.2 In such circumstances the impact of the interim policy, and the extent to which it is a material consideration will need to be carefully considered by Planning Committee in exercising their judgement over individual planning applications.
- 11.3 However in introducing an interim policy the District Council would be balancing any such risk against the continued need for affordable housing across the District Council and taking affirmative action to secure affordable housing for residents of the District Council area.

Report Authorisation

Approvals obtained from:-

	Named Officer	Date
Chief Executive	Paul Wilson	17/01/2023
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	11/01/2023
Monitoring Officer (or Legal Services Manager)	Kerry France	16/01/2023

APPENDIX 1 – STATUTORY INSTRUMENT SI1171/22

**The Housing (Right to Buy) (Designated Rural Areas and Designated
Regions) (England) Order 2022**

APPENDIX 2 – EQUALITIES IMPACT ASSESSMENT