Watford Borough Council

Affordable Housing: Developer Contributions Supplementary Planning Document (SPD)

Consultation Draft- February 2025

Contents

1. Introduction

1.1 This Supplementary Planning Document (SPD) comprises additional guidance on the implementation of Policy HO3.3, HO3.4 and HO3.6 of the Watford Local Plan (2021-2038) that was adopted by Watford Borough Council in October 2022. Figure 1 below shows how this SPD interacts and relates to the adopted Local Plan and the National Planning Policy Framework (NPPF).

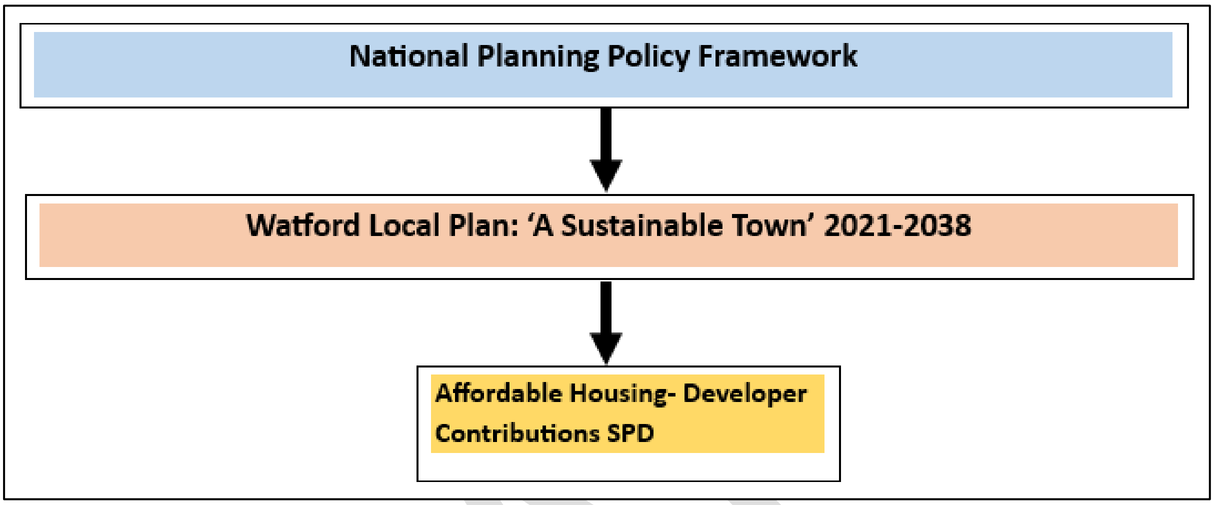

Figure 1: Watford Borough Council Affordable Housing Developer Contributions SPD Structure

1.2 The SPD is divided into two main parts, covering two main topics:

a) The approach that will be taken when determining the need for, and the calculation of, an off-site affordable housing contribution through a commuted sum;
b) The methodology that will be used when undertaking a late stage viability review to secure additional affordable housing contributions from substantially completed development that previously failed to meet policy compliance.

1.3 This guidance is to be used by council officers, members and applicants when developing and making decisions on schemes where an affordable housing contribution is required by national policy or by the Watford Local Plan.

1.4 Once adopted, this SPD will be a material consideration in the determination of planning applications and it will fully supersede the 'Watford Commuted Sums for the Provision of Affordable Housing SPD (Revised 2020)'.

2. Part A: Approach to Calculating Off-site Affordable Housing Contributions through Commuted Sums

2.1 National policy and Policy HO3.3 of the Watford Local Plan is clear that affordable housing should be provided on-site on all relevant schemes and that 'Provision in Lieu' through the payment of a commuted sum will not be supported other than in 'exceptional circumstances'.

2.2 This SPD sets out the Council's approach to defining exceptional circumstances in this regard and the methodology that will be used to determine the level of financial contribution that would be required in cases where exceptional circumstances have been demonstrated.

Policy Context

2.3 This section summarises the relevant national and local policy that provides the context for this SPD.

2.4 There is no set approach to calculating commuted sums, nor to the defining of exceptional circumstances sufficient to permit their use in national or local policy. This is why additional local planning guidance on these matters is considered necessary.

National policy

2.5 The most recently adopted National Planning Policy Framework (NPPF)[1] requires the delivery of homes that meet the needs of groups with different specific housing requirements and that these needs should be reflected in local planning policies. Paragraph 63 clarifies that this requirement includes those who require affordable housing.

2.6 Paragraph 64 of the NPPF states that policies should expect the required affordable housing to be met on-site unless:

- off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
- the agreed approach contributes to the objective of creating mixed and balanced communities.

2.7 Paragraph 59 of the NPPF states the following with regard to developer contributions required in local policies:

"Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage."

[1] https://assets.publishing.service.gov.uk/media/675abd214cbda57cacd3476e/NPPF-December-2024.pdf

It goes onto say:

"The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available."

2.8 Whether a proposal is delivering affordable housing on-site as required by national policy, or off-site having demonstrated exceptional circumstances, any deviation from providing a contribution equivalent to a policy compliant level[2] of affordable housing will need to be justified by a Viability Assessment. This assessment will be scrutinised by the Local Planning Authority (LPA) to ensure that the assumptions within it are reasonable.

2.9 Applicants can reasonably expect that any viability assessment information submitted, including with respect to late stage viability review mechanisms or calculating commuted sums, will be made publicly available unless the Council accepts that exceptional circumstances apply.

Local policy

2.10 The above requirements of the NPPF are reflected in the policies contained within the Watford Local Plan (2021-2038)[3]. Chapter 3 of the Local Plan provides additional detail on the provision of affordable housing on different types of housing scheme.

Policy HO3.3- Affordable Housing

2.11 Policy HO3.3 of the Watford Local Plan states that residential developments of 10 or more homes will be supported where they provide at least 35% of the scheme as affordable housing by habitable room.

2.12 The policy reiterates that affordable housing should be provided on-site and that off-site contributions through commuted sums will not be supported other than in exceptional circumstances where on-site delivery would not be feasible. This SPD provides additional detail on the implementation of this policy.

Policy HO3.4- Build to Rent

2.13 This policy confirms that affordable housing on Build to Rent schemes should be provided in accordance with the requirements of Policy HO3.3. This means provision of at least 35% by habitable room and that it should be provided on-site other than in exceptional circumstances.

2.14 The only difference in policy approach for Build to Rent schemes is that Discounted Market Rent will be accepted in place of other affordable rented tenures. These

[2] As determined by Local Plan policies
[3] https://www.watford.gov.uk/downloads/file/1264/watford-local-plan

Discounted Market Rent units should have a discount of at least 20% taking into account the most up to date Local Housing Market Needs Assessment or other relevant evidence.

Policy HO3.6- Student, Co-living and Non-Self-Contained Accommodation

2.15 This policy sets out requirements for purpose built shared living schemes including co-living.

2.16 These schemes do not provide a long term housing solution for those in housing need, particularly families. They do not deliver self-contained dwellings that meet national space standards. For these reasons, an affordable housing contribution will usually be required as an off-site financial contribution on these schemes rather than provision on-site.

2.17 This SPD seeks to clarify the approach that will be taken to calculating the off-site contributions required from shared living schemes.

2.18 Additional planning guidance is being produced by the Council specific to co-living and the standards and requirements that will be expected of such schemes, reflecting the growing market interest in the sector in Watford. These two SPDs are being produced in parallel, with the intention that, when adopted, they will provide a comprehensive policy approach to maximising the quality of co-living development and ensuring that they provide sufficient contributions towards affordable housing.

Exceptional Circumstances

2.19 National and local policy requires that affordable housing is provided on-site in all but exceptional circumstances. This applies to all forms of C3 residential development, including Build to Rent.

2.20 The below sets out the circumstances that may be considered as exceptional in this regard and that could therefore justify an applicant providing an affordable housing contribution as an off-site commuted sum rather than on-site.

2.21 They are intentionally high level and the list is not considered to be exhaustive. It does not preclude any decision the Council may make on whether a commuted sum would be acceptable on a case by case basis.

- There are demonstrable practical difficulties associated with providing affordable housing on-site that cannot reasonably be overcome.
- There is clear evidence that no Registered Provider would be interested in purchasing the affordable housing element of the scheme[4], and that there is no other feasible way of it being managed effectively on-site.
- Where an off-site contribution could secure a notably higher affordable housing contribution than could be secured on-site, that would better meet local needs on the housing register.

[4] This should include evidence of direct contact between the applicant and Registered Providers that are already operating in the area.

2.22 The responsibility for demonstrating exceptional circumstances lies with the applicant and any submitted evidence will be robustly assessed by the Council to ensure that non-delivery of affordable housing on-site is truly an exception.

2.23 To make proposals as attractive to Registered Providers as possible, applicants should design schemes that have separate entrances for affordable and market tenure units. Schemes should also not over-provide studio units.

Determining the Level of Contribution

2.24 In principle, the level of off-site affordable housing contribution should be equivalent to the difference in value between a developer providing affordable housing on-site and them not providing affordable housing on-site. This is, in part, to ensure that where the on-site component of market housing is increased as a result of the affordable contribution being provided as a financial contribution, it does not result in a higher assumed profit level for the market homes and therefore reduce the affordable housing contribution.

2.25 The maximum level of contribution will be capped in all cases, so that it cannot exceed the on-site policy target in Policy HO3.3 of the Watford Local Plan[5] and related tenure split requirements.

2.26 All applications seeking to provide a commuted sum in lieu of on-site affordable housing must provide a financial viability assessment. This assessment will be scrutinised by the Council to determine the maximum viable level of contribution the scheme can sustain. The Gross Development Value (GDV) of the proposal, as determined through this exercise, will be used to calculate the commuted sum contribution required.

2.27 The responsibility for calculating the contribution in line with the methodology set out in this document lies with the applicant. The Council may, at its own discretion, appoint an external expert to assess the submitted viability assessment and the calculation of the contribution carried out as well as the assumptions and evidence referred to in doing so. The reasonable costs of doing so must be met by the applicant.

Calculating the Contribution

2.28 Calculating the level of off-site contribution required will use the GDV of the proposed residential[6] element of the scheme[7] as the starting point. At its own discretion the Council may consider other factors when determining the specific starting point.

2.29 The estimated GDV proposed by the applicant will be thoroughly scrutinised on behalf of the Council to ensure that the starting point for calculating off-site affordable housing contributions is agreed upfront by all parties.

[5] 35% of all habitable rooms across the scheme
[6] On mixed use schemes, the off site affordable housing contribution will be based only on the GDV of the residential elements
[7] As demonstrated through a Viability Assessment

2.30 The financial contribution required will be a proportion of total scheme GDV. This proportion will be based on the difference between the amount of affordable housing being proposed on-site and the maximum viable amount of affordable housing that could be provided. To this an assumption is applied to account for the difference in value between market and affordable housing.

2.31 The intention is that using GDV as the starting point will increase certainty for both developers and Council officers and make the process for calculating off-site affordable housing contributions quicker and simpler. It will also ensure that the approach used is applicable to all types of scheme. The approach should minimise the need for considerable negotiation between developer and the Local Authority when establishing the basis for the level of contribution required.

Working out the Difference in Value Between Market and Affordable Units

2.32 Affordable Housing is usually delivered through a Registered Provider[8]. These organisations are able to self-fund a certain proportion of market value to purchase affordable housing units. The Registered Provider then relies on a subsidy from the developer to make up the remaining full market value of the units so they can be secured in a Section 106 Legal Agreement (s106) and delivered on-site.

2.33 The financial contribution required will therefore be equivalent to the amount of subsidy that would be needed to enable a Registered Provider to deliver affordable housing units on-site. This is on the basis that if a developer is not providing affordable units on-site then this subsidy would be kept by the developer as an additional uplift in value, and therefore an additional amount of profit, rather than being used to provide affordable housing.

2.34 Not all affordable housing tenures have the same value relative to market value. As such the level of subsidy needed to enable a Registered Provider to provide affordable units will vary depending on what tenure of affordable housing would be required.

2.35 In principle, the more ‘affordable’ a tenure is, the lower the financial value to a Registered Provider, meaning the proportion of market value a Registered Provider would viably be able to self-fund is lower. A higher subsidy is required from a developer to deliver tenures like social rent in comparison to shared ownership for example.

2.36 As a starting point, this SPD makes the following assumptions regarding the typical proportion of market value a Registered Provider would be able to fund and therefore what proportion would be required from a developer as a subsidy for the three main tenure types.

[8] Unless it is a residential investment scheme such as Build to Rent

- Social rented units- A Registered Provider would typically be able to fund 40% of market value
- Affordable rented units- A Registered Provider would typically be able to fund 55% of market value
- Affordable Home Ownership- A registered provider would typically be able to fund 70% of market value

2.37 It should be assumed that a provider of Discounted Market Rent homes would be able to fund a proportion of market value equivalent to the proportion that the discounted rent would be of market rent. In accordance with Policy HO3.4 this would be set at 80% unless more up to date evidence is provided.

2.38 These assumptions are based on an analysis of viability information for previous schemes in Watford, and the experience of the Council's housing team in terms of engagement with Registered Providers in the local area.

2.39 Where a viability assessment is agreed by the Council that identifies proportions that vary from those set out above, these can be adopted instead.

2.40 Table 1 shows how the above methodology and assumptions translate into a proportion of total GDV that would be required as an off-site affordable housing contribution[9].

Table 1: Proportion of total GDV required as an off-site affordable housing contribution, assuming provision of a single tenure

Tenure	Maximum viable level of affordable housing (A)	Proportion of market value that a RP would require as a subsidy from developer (B)	Formula to determine proportion of GDV required as an off-site affordable housing contribution	Proportion of total GDV required as an off-site affordable housing contribution (C)
Social Rent	35%	60%	A x B = C (0.35 x 0.60= 0.21)	21%
Affordable Rent	35%	45%	A x B = C (0.35 x 0.45 = 0.158)	15.8%
Affordable Home Ownership	35%	30%	A x B = C (0.35 x 0.30= 0.105)	10.5%

2.41 If there was some affordable housing provision being delivered on-site but not the full maximum viable amount then column A in Table 1 would be amended to reflect the remaining shortfall on-site relative to the maximum viable level identified. For example, if a scheme was delivering 10% on-site affordable housing, but a viability assessment showed that 25% would be the maximum viable, then an additional off-site commuted sum would be required based on an affordable housing contribution of 15%[10].

[9] This is shown on the basis that full policy compliance would be viable. Column A in Table 1 will vary based on the maximum viable amount of affordable housing determined in an agreed viability assessment.
[10] In this case, column A in Table 1 would be amended to 15%.

2.42 It is often the case that a mix of tenures is more desirable, and more viable, than delivering affordable housing of one single tenure. Policy HO3.3 of the Watford Local Plan suggests a tenure split of 60% social rent and 40% other tenures which could include affordable rent and affordable home ownership products. The specific tenure mix should be based on conversations with the Councils housing team with regard to how best meet local need.

2.43 In circumstances like this, the overall proportion of GDV required as an off-site contribution will be adjusted to reflect a mix of different tenure types and the assumptions in Table 1 with regard the different percentage value assumptions for each.

2.44 For example a scheme of 20% social rent tenure and 15% affordable home ownership tenure would result in an overall contribution equivalent to that shown in Table 2 below.

Table 2: Proportion of total GDV required as an off-site affordable housing contribution where a mix of tenure types is being proposed

Tenure	Maximum viable level of affordable housing, by tenure (A)	Proportion of market value that a RP could not self-fund and so would require as a contribution from developer (B)	Formula to determine proportion of GDV required as an affordable housing contribution	Proportion of total GDV required as an affordable housing contribution (C)
a) Social Rent	20%	60%	A (0.20) x B (0.60)= 0.12	12% (Ca)
b) Affordable Home Ownership	15%	30%	A (0.15) x B (0.30)= 0.045	4.5% (Cb)
Overall	35%		Ca (0.12) + Cb (0.045)= 0.165	16.5%

Build to Rent

2.45 The expectation is that affordable housing contributions from Build to Rent schemes will be provided on-site unless there are exceptional circumstances that would justify an off-site contribution instead. The fact that a scheme is Build to Rent is not, in itself, a sufficient justification.

2.46 Demonstrating exceptional circumstances on a Build to Rent scheme will be approached in the same way as on market schemes.

2.47 The mechanism by which affordable housing is normally provided within a Build to Rent scheme differs in two important ways from 'for sale' housing schemes.

- The affordable housing units are not normally transferred to a Registered Provider and are instead managed internally.

- National policy, and policy HO3.4 of the Local Plan, states that affordable housing on Build to Rent schemes can be provided exclusively as Discounted Market Rent tenure.

2.48 In exceptional circumstances, the process for determining the level of off-site contribution from a Build to Rent investment scheme will follow the same approach as that used on regular market housing schemes.

2.49 The GDV of Build to Rent schemes will be determined through a viability assessment and should take into account any specific operating costs associated with providing and managing a Build to Rent development.

2.50 These operating costs should be fully justified by robust evidence that will be scrutinised by the Council alongside all other assumptions in the viability assessment.

2.51 Discounted Market Rent should generally be assumed to be provided at a discount relative to market value that is equivalent to the proportion that the discounted rent would be to market rent unless there is further evidence to justify a greater discount. The starting point for calculating the required off-site affordable housing contribution against GDV should be an assumption that a Registered Provider would be able to self-fund 80% of market value. Table 3 shows how this would translate into the level of contribution required.

Table 3: Proportion of total GDV required as an off-site affordable housing contribution for Discounted Market Rent tenure

Tenure	Maximum viable level of affordable housing, by tenure (A)	Proportion of market value that a RP would require as a subsidy from developer (B)	Formula to determine proportion of GDV required as an affordable housing contribution	Proportion of total GDV required as an affordable housing contribution (C)
Discounted Market Rent	35%	20%	A (0.35) x B (0.2)= 0.07	7%

Student, Co-living and other Non-Self Contained Accommodation

2.52 Applications for purpose built shared living accommodation of the following types would be treated as an exception to the requirement for on-site affordable housing.

- Student accommodation
- Co-living schemes
- Other non-self-contained accommodation

2.53 Instead, affordable housing contributions from these schemes would usually be provided through an off-site financial contribution in accordance with Policy HO3.6 of the Watford Local Plan.

2.54 This is because these schemes do not provide self-contained C3 residential dwellings that meet national space standards or that provide a suitable environment for children. They do not therefore provide secure, long term, accommodation to meet housing needs on the register, particularly for families. As a result, the provision of affordable housing units on-site would not normally be considered appropriate. Any proposal to provide some form of on-site affordable housing on a shared living development will be considered on a case by case basis.

2.55 The calculation of a financial contribution for these types of schemes will follow the same process as for C3 residential schemes and will similarly be based on a proportion of total GDV. Unlike Build to Rent, there is no restriction on what tenure of affordable housing could be contributed towards and so the process can incorporate the assumptions made for social rent, affordable rent and affordable home ownership products set out in Table 1.

2.56 It is expected that an applicant will provide viability evidence, including an estimate of scheme GDV, for shared living schemes and that this estimated GDV will be the starting point for determining the level of off-site contribution required.

2.57 Co-living is a new and emerging housing sector across the country, and particularly in Watford. As a result, there is no single approach to calculating the GDV of such schemes and as such no preferred approach to doing so is put forward in this document. It is expected that the approach used will be clearly explained as part of any viability assessment and the assumptions that are made will be scrutinised as to whether they are reasonable.

2.58 Any assumptions made in determining GDV should take into account the specific requirements and features of a shared living scheme that could affect its value. These may include operating expenses, management and maintenance requirements, and the anticipated rental value of the units.

2.59 It is expected that the whole process by which shared living schemes provide affordable housing contributions will be kept under review to ensure that the approach being used is the most effective, and that it aligns with best practice examples from around the country.

Payment of Contributions

2.60 Financial contributions towards affordable housing should usually be provided as a lump sum upfront payment. Any alternative payment plan that is put forward by an applicant will be considered on a case by case basis. The specific triggers for payments will be clarified within the associated s106 agreement.

Spending of Contributions

2.61 100% of any payments received as a commuted sum will be ring fenced specifically to facilitate the increased delivery of affordable housing in Watford. This could either be through the provision of additional affordable housing units, or the increased affordability of units (e.g increasing the amount of social rented units).

Implementation and Monitoring

2.62 The contributions that are collected towards affordable housing as off-site developer contributions will be monitored annually to determine whether the methodology set out in this SPD is effective in both securing sufficient contributions and simplifying the process. This will be reported in the annual Infrastructure Funding Statement that is produced by the Council.

2.63 This SPD fully supersedes the previous 'Watford Commuted Sums for the Provision of Affordable Housing SPD (Revised 2020)' and it will be implemented immediately from the date of adoption.

2.64 For applications that are already sufficiently progressed in terms of calculating an off-site affordable housing contribution, the Council will take a common sense approach towards the transition to this new methodology and any resultant changes to the affordable housing requirements.

Worked Examples

2.65 Two worked examples to further demonstrate the commuted sum calculation process described above are provided in Appendix A.

3. Part B: Watford Borough Council's approach to undertaking a Late Stage Review

3.1 Watford Borough Council is keen to take advantage of every opportunity to maximise the level of affordable housing secured from new developments. Viability issues at application stage can however lead to the affordable housing contribution provided being below the Watford Local Plan target[11].

3.2 It is recognised that market circumstances can change over the course of scheme delivery which can in turn affect values and costs. This means values and costs may differ in reality from the assumptions that were made in the viability assessment at application stage and so the ability for a scheme to deliver affordable housing may also change.

3.3 In order to assess whether this is the case, a requirement to undertake a late stage review will be included within the relevant s106 agreement for those applications that fail to meet policy compliance at application stage.

3.4 These reviews reassess development viability once a scheme is substantially completed with a view to securing additional affordable housing contributions that were not viable at

[11] 35% of all habitable rooms

determination. This will help the Council to achieve the maximum public benefit possible from new development in Watford.

3.5 This guidance is intended for use by planning officers, members, applicants and developers. It will define a methodology for undertaking a late stage review process.

3.6 Given Watford's proximity to London and the associated familiarity many local developers will have with the approach to undertaking late stage reviews in London, it is considered beneficial and appropriate to broadly align Watford's methodology with London's current,[12] and where appropriate, draft guidance that was consulted on in May 2023[13].

Local Plan

3.7 Policy HO3.3 of the Watford Local Plan states that where a viability assessment[14] indicates that the requirement for 35% of all habitable rooms to be affordable housing cannot be met, a late stage review will be required to determine whether there had been any changes in circumstances that would mean a higher level of affordable housing would be possible.

3.8 This review would be triggered when 75% of the units in a scheme are sold or let, or at an alternative trigger point that has been agreed with the local authority. The trigger point for traditional C3 build for sale schemes should be when the relevant proportion of units are sold, whereas the trigger point for residential investment schemes such as build to rent, co-living and student development should be when the relevant proportion of units are let. The specific trigger point will be confirmed in the associated s106 agreement.

3.9 Where an additional affordable housing contribution is secured as a result of the review, the applicant will be required to provide the additional contribution (whether this takes the form of a financial contribution or on-site provision) to the Local Authority or Registered Housing Provider ahead of completion of the development. The s106 agreement should include a restriction on occupying all of the market tenure units until the contribution is made.

3.10 The level of contribution secured through the late stage review will be capped at the equivalent to the Local Plan target of 35% of habitable rooms. This will apply to the total amount of affordable housing across the scheme as a whole including any provision that was secured at application stage[15].

[12] Affordable Housing and Viability Supplementary Planning Guidance (SPG) | London City Hall
[13] Development Viability LPG - Draft for consultation (london.gov.uk)
[14] Undertaken in accordance with national planning policy and guidance.
[15] For example if a scheme provided 10% affordable housing by habitable room at application stage, the maximum that could be secured through a late stage review would be an additional 25% affordable housing by habitable room.

When is a Review Required?

3.11 All applications that are providing a contribution of less than 35% affordable housing by habitable room on-site, or the equivalent as a financial contribution off-site, will usually be required to undertake a late stage review within their s106 agreement.

The Review Process

3.12 A formulaic approach will typically be used when undertaking a late stage review. The process that is set out in this SPD is consistent with the approach currently applied in the Mayor of London's Affordable Housing and Viability SPG.

3.13 The late stage review mechanism is based on calculating the difference between;

- The actual build costs incurred and the estimated build costs of the development that were assumed at application stage; and
- The actual values achieved and the estimated values of the development that were assumed at application stage.

3.14 Build costs in this context should comprise the costs of constructing the development but should exclude:

(i) Professional, finance, legal and disposal and marketing costs;
(ii) All internal costs of the Developer including but not limited to project management costs, overheads and administration expenses

3.15 To ensure fairness to developers and ensure that there is an incentive to positively and accurately undertake the review, any surplus profit that is determined through the process will be split between the developer and the Local Planning Authority. This will be split at a proportion of 60/40 in favour of the local authority meaning 60% of the surplus profit would be provided as an additional affordable housing contribution, whilst 40% could be retained as additional profit by the developer.

3.16 The review process is a way of maximising the delivery of much needed affordable homes in the borough. It will therefore not be used to reduce the level of affordable housing contribution in any circumstances.

3.17 The Council's preference is that any additional affordable housing contribution, is delivered on-site in accordance with Policy HO3.3 and national policy[16]. It is recognised however that there may be practical reasons why this is not possible on a largely completed scheme and so a financial contribution towards off-site provision would be accepted if it were demonstrated that on-site delivery was unfeasible.

3.18 Providing net additional affordable housing units is the priority, however, any surplus contribution may also be used to increase the affordability of existing affordable housing

[16] Paragraph 64 of the NPPF

provision if this was considered preferable in the individual case. This could include, for example, increasing the number of social rent units. This would involve discussion with the Council's housing department as to what would be preferable on a case by case basis.

3.19 Any financial contribution secured through the late stage review mechanism will be ring fenced to delivering additional affordable housing and will not be used for any other purpose. This will be clearly stated in the relevant s106 agreement.

3.20 When the trigger point for a late stage review has been met, the onus is on the developer to provide the evidence required by this document and the Section 106 Agreement, to the Council. This information should be sent to any email addresses identified in the Section 106 Agreement.

3.21 At the Councils discretion it may be considered more appropriate for a late stage review to be based on a full review of scheme viability which would reconsider all development values and a wider range of development costs including professional fees and financial costs. Benchmark Land Value (BLV) and developers return should, however, continue to be determined at application stage and included within the s106 agreement to provide greater certainty, clarity and help avoid disputes when undertaking the review.

3.22 This alternative approach will be considered where there is significant uncertainty about some elements of the schemes values and costs, particularly on large scale phased developments. The Council will consider any requests to undertake the review process on this basis on a case by case approach.

Terms of the Late Stage Review

3.23 The specific terms of a late stage review should be set out clearly in the associated s106 agreement at application stage. These terms should, as a minimum, include details of the following:

- The trigger point at which the review should be undertaken;
- The data requirements to complete the review;
- Clarification of how any surplus profit identified through the review will be used and distributed between the Local Authority and the applicant.

Evidence required for a Review

3.24 Table 4 includes information that will typically be required in order for a late stage review to be undertaken. This information should be provided by the developer on commencement of the review following the trigger threshold being reached.

3.25 It should be assumed that all information will become publicly available on the same basis as the viability assessment at application stage.

Table 4: Information required to complete a late stage review process

Information type	Requirements
Gross Development Value (GDV) achieved for the residential elements of the scheme to date	Details of all revenue received to date supported by evidence such as receipts/accounts of all value received from sales and lettings that have taken place on the site up to the defined trigger point for the review.
Estimated GDV of the remaining residential elements of the scheme	The estimated market value of the remaining unsold and/or unlet parts of the development at the point that the review is triggered. This should be based on clear evidence, taking into account the revenue received from the sales and lettings that have taken place on the site up to the point of the review.
Average residential value per sqm of market dwellings	The average value of market dwellings across the scheme based on the evidence provided.
Average residential value per sqm of affordable rented dwellings	The average value of affordable rented tenure (affordable rent and social rent) dwellings across the scheme based on the evidence provided.
Average residential value per sqm of low-cost home ownership dwellings	The average value of low-cost home ownership dwellings across the scheme based on the evidence provided.
Average residential value per sqm of Discounted Market Rent units[17]	The average value of Discounted Market Rent dwellings across the scheme based on the evidence provided.
Actual build cost of the scheme to date	All costs incurred as a result of the development being constructed up to the point where the review commences. This should be supported by evidence of payments made or agreed. Evidence can include but is not limited to: (a) Details of payments made or agreed to be paid in the relevant building contract; (b) Receipted invoices; (c) Costs certified by the Developer's quantity surveyor, costs of consultant or agent The cost provided should be on the same basis as the build cost that was determined as part of the viability assessment at time of granting planning permission. No contingency should be applied to actual build costs identified.
Estimated build cost of the remaining parts of the scheme	Estimated cost to build the remaining elements of the development.

3.26 The above information will be assessed by the Council as to whether it is sufficient and reasonable. The Council may at its own discretion appoint an external expert to scrutinise

[17] This will be particularly relevant on build to rent schemes.

the information and carry out the calculation. The reasonable costs of doing so must be met by the applicant.

Determining the Level of Additional Contribution Required

3.27 The process of calculating what level of additional affordable housing contribution is required as a result of a late stage review involves two distinct stages.

- Stage One- Calculating the maximum level of contribution that could be required.
- Stage Two- Determining the cap that will restrict the level of contribution required to that which is equivalent to meeting policy compliance[18].

3.28 Formula 1 is stage one of the process and it assesses:

- The change in GDV of the scheme from the time permission was granted to the time of the review being undertaken;
- The change in build costs of the scheme between the time permission was granted to the time of the review being undertaken; and
- Additional profit arising from the change in GDV identified.

3.29 The result is then multiplied by an adjustment factor of 0.6 to reflect that 60% of any identified uplift will be used as an additional affordable housing contribution whilst the remaining 40% will be kept by the developer as additional profit.

3.30 The first part of the formula *(A + B) – C* assesses the change in GDV from the time permission was granted to the time of the review being undertaken.

3.31 Part 2 of the formula *(D + E) – F* assesses the change in build costs between the time permission was granted to the time of the review being undertaken.

3.32 An acceptable level of developer profit is then applied (G) to the difference between Part 1 and Part 2 of the formula and the resultant total is then multiplied by 0.6.

3.33 Achieved and estimated value and cost information should enable a fair and equitable comparison with the equivalent application stage GDV and build cost figures. For example, if an achieved receipt does not reflect the approach to assessing the GDV at application stage then the estimated GDV for that component should be used in its place in the formula.

3.34 Where the whole of or part of the scheme is delivered as build to rent, but the scheme was assessed at application stage as build for sale, the GDV-achieved figure (component A of the formula) should be adjusted to take account of any difference in profit requirement between the residential typology assumed at application stage and the residential typology delivered in reality. In this scenario, Component A should be

[18] 35% of all habitable rooms.

increased by the appropriate profit differential to reflect the lower risk associated with the whole or part of the scheme being sold in a single transaction[19].

Formula 1: The level of contribution possible:

Level of contribution = (((A + B) – C) – ((D + E) – F) – G) x 0.6

- A= GDV achieved on the residential units sold or let and the income from any non-residential elements of the scheme at the point of the review being commenced
- B= Estimated GDV for any elements of the development not yet sold or let
- C= GDV that was determined as part of the viability assessment at time of granting planning permission*
- D= Build costs incurred to date at the time of the review being commenced
- E= Estimated build costs for remaining elements of the development not yet carried out
- F= Total build cost that was determined as part of the viability assessment at time of granting planning permission
- G= (A + B – C) x H;
- H= Developer profit as % of GDV determined at time of granting planning permission

  * For residential investment schemes including build to rent, co-living and student schemes this should be the GDV less any purchasers costs adopted in the viability assessment.

Applying the cap to late stage review contribution

3.35 To ensure that the process is fair and reasonable, the level of contribution secured through a late stage review will be capped at a level equivalent to policy compliance. Again, the formulaic approach to calculating the contribution cap is closely aligned to that which is already used in the Mayor of London's Affordable Housing and Viability SPG.

3.36 The cap is based on the difference in the average value of market dwellings and the average value of affordable housing products per habitable room. This difference is then multiplied by the shortfall by habitable room of relevant tenures in the approved scheme compared to the Local Plan target.

[19] For example, where the assessment of viability at application stage assumed a build for sale scheme and the profit adopted was 16 per cent on GDV, but the GDV achieved was based on revenue received from a build to rent investor where a reasonable standard profit margin assumed would have been 12 per cent on GDV, then the Late Review Contribution should be increased by the application-stage GDV x 16 per cent less GDV achieved x 12 per cent.

Formula 2: The cap to be applied to the level of contribution that can be required from a developer:

Review Cap= (((I x L) – (J x L)) x M) + (((I x L) – (K x L)) x N)

- I= Average value of market housing per sqm
- J= Average value of affordable rented[20] tenure housing per sqm
- K= Average value of affordable home ownership housing per sqm
- L= Total Net Area of the residential units proposed divided by the number of habitable rooms in the scheme - sqm
- M= The shortfall on-site of affordable rented housing by habitable room relative to the Local Plan target [21]
- N= The shortfall on site of affordable home ownership housing by habitable room relative to the Local Plan target.

3.37 Overall, the level of contribution, as determined in Formula 1, cannot exceed the amount determined in Formula 2.

Determining the Level of Contribution on Build to Rent schemes

3.38 A review for a Build to Rent scheme will be undertaken following the letting of 75% of units, unless an alternative trigger is agreed between the developer and the local authority.

3.39 It will similarly be based on changes to the values and costs of the scheme between permission being granted and the point at which the review is undertaken. Formula 1 should be used to determine the level of contribution required on the same basis as it is used on build for sale schemes.

3.40 As part of the review, an up to date valuation of the units for rent will be required which should be based on the actual rental value of units that have already been leased, and an estimated value of the units not yet leased.

3.41 To apply a suitable contribution cap, Formula 2 above will be adapted for build to rent schemes based on the different tenure requirements of affordable housing on Build to Rent schemes[22].

3.42 For ease of use, an adapted version of Formula 2 that is specific to Build to Rent is shown below as Formula 3.

[20] Includes social rent and affordable rent as defined in the NPPF
[21] Criteria M and N within Formula 2 will normally be based on an assumption that 60% of all affordable housing by habitable room are social rented tenure as per Policy HO3.3 of the Local Plan. It will usually be assumed that the remaining 40% will be low-cost home ownership tenure.
[22] Entirely Discounted Market Rent tenure.

Formula 3: The cap to be applied to the level of contribution that can be required from a developer on a build to rent scheme:

Review Cap= (((I x L) – (J x L)) x M)

- I= Average value of market rental housing on a build to rent scheme per sqm
- J= Average value of Discounted Market Rent housing per sqm
- L= Total Net Area of the residential units proposed divided by the number of habitable rooms in the scheme – sqm
- M= The shortfall on-site of Discounted Market Rent tenure housing by habitable room relative to the Local Plan target

Determining the Level of Contribution on a Purpose Built Shared Living Scheme

3.43 Where a purpose built shared living scheme fails to meet the policy compliant level of affordable housing contribution at application stage a late stage review mechanism will be required through the s106 agreement to try and capture any additional contribution.

3.44 The review process will follow the same approach as that used for regular C3 housing schemes and will similarly use Formula's 1 and 2 above. It is distinct from the Build to Rent approach as the tenure of affordable housing that can be provided from a purpose built shared living scheme is not limited to Discounted Market Rent.

Providing the additional contribution on-site or off-site?

3.45 If the affordable housing contribution, as determined through a late stage review, is being provided on-site then the level of financial contribution will be translated into an equivalent number of on-site habitable rooms taking into account the value of affordable housing units of relevant tenures. Formula 4 below will be used to undertake this process.

Formula 4: Determine the extent of additional on-site affordable habitable rooms that could be provided as a result of a late stage review being undertaken:

$X= ((E*F) \div (A - B)) \div D$ *(To be used for Affordable Rented tenures)*

$Y= ((E*G) \div (A - C)) \div D$ *(To be used for Discounted Market Rent and Affordable Home Ownership tenures)*

- X= Additional Affordable Rented products housing requirement (habitable rooms)*
- Y= Additional Discounted Market Rent/Affordable Home Ownership Products housing requirement (habitable rooms)*
- A= Average value of market housing per sqm (£)
- B= Average value of Social Rent/Affordable Rent housing per sqm (£)
- C= Average value of Discounted Market Rent/Affordable Home Ownership housing per sqm (£)
- D= Average habitable room size for scheme (sqm)
- E= Surplus return available for additional affordable housing (as determined in late-stage review) (£)
- F= Percentage of surplus return available for additional affordable housing to be used for Social Rent/ Affordable Rent housing (%)
- G= Percentage of surplus return available for additional affordable housing to be used Discount Market Rent/Shared Ownership housing (%)

*Delete as relevant based on tenures required

3.46 The additional contribution, whether on-site, or being provided as a financial contribution off-site can be used to deliver additional affordable housing units or to increase the affordability of existing affordable housing.

Taking Deficit into account in a Late Stage Review process

3.47 A ‘deficit’ occurs when a viability assessment concludes that an application will result in a financial loss.

3.48 A deficit may be a result of:

- The development value being understated, and/or
- The development costs being overstated and/or
- The scheme being sub-optimally designed to not make best use of the land.

3.49 Normally, deficits identified at application stage will not be taken into account as part of a review mechanism process. Doing so could reduce the amount of affordable housing contribution that could be secured as a result.

3.50 Where a deficit is put forward, applicants will be expected to demonstrate how they would deliver the scheme if it was approved and this would need to be considered realistic by the Council. It would also be expected that the applicant would demonstrate that the deficit was not a result of the three criteria above.

3.51 In cases where a deficit is identified and accepted by the Council, the first option will be to reduce the developers expected profit margin to try and find a compromise position that could remove the deficit whilst still being within an appropriate profit margin for the developer.

3.52 In exceptional circumstances, where the above has been worked through and a deficit remains, an exercise could be undertaken that would allow a deficit to be taken into account. This would involve increasing values and reducing construction costs in an appraisal until a breakeven position is reached. The breakeven cost and value figures would then replace the application stage Gross Development Value and costs in the late stage review formulas.

Worked Example

3.53 A worked example to further demonstrate the process that has been described above is provided in Appendix B.

Appendix A: Commuted Sums Calculation- Worked Examples

The below shows two worked examples to demonstrate how an off-site affordable housing contribution would be calculated using the methodology set out in this SPD.

All assumptions are indicative and are provided merely for the purposes of these worked examples.

Example 1

Scheme for 100 flats for sale in a central location within Watford. A viability assessment has shown that 25% affordable housing would be viable on-site however exceptional circumstances have demonstrated that on-site affordable housing provision is not possible. An off-site contribution has therefore been confirmed as acceptable.

The GDV of the scheme has been calculated by the developer, and then agreed by the local authority. It has resulted in a total GDV of £30,000,000.

AH contribution (if on-site)= 25% of habitable rooms with a policy compliant tenure split of 60% social rent and 40% affordable home ownership. This results in the below tenure split relative to the whole development.

Social rent= 15% of all habitable rooms

Intermediate= 10% of all habitable rooms

Table 5: Worked example 1 calculation

Tenure	Maximum viable level of affordable housing (by % of habitable rooms)	Proportion of market value that a RP could not self-fund and so would require as a contribution from developer	Proportion of total GDV required as an affordable housing contribution
Social Rent	15%	60%	0.15 x 0.60= 0.09 (9%)
Affordable Home Ownership	10%	30%	0.10 x 0.30= 0.03 (3%)

9% of GDV= £2,700,000

3% of GDV= £900,000

Total contribution= £3,600,000 to be paid as a lump sum (Equivalent to 12% of GDV)

Example 2

Scheme for 200 build to rent flats in a central location in Watford. A viability assessment has shown that 30% Discounted Market Rent housing by habitable room would be viable on-site. This is on the basis that contributions will be provided as an upfront lump sum.

Exceptional circumstances have demonstrated that on-site provision would not be possible and so an off-site contribution has been confirmed as acceptable.

The GDV of the whole scheme has been calculated by the developer, and then agreed by the local authority. It has resulted in a total GDV of £45,000,000

AH contribution (if on-site)= 30% of habitable rooms with a tenure split of 100% Discounted Market Rent.

Table 6: Worked example 2 calculation

Tenure	Maximum viable level of affordable housing (by % of habitable rooms)	Proportion of market value that a RP could not self-fund and so would require as a contribution from developer	Proportion of total GDV required as an affordable housing contribution
Discounted Market Rent	30%	20%	0.30 x 0.20= 0.06 (6%)

Total contribution= £2,700,000 to be paid as a lump sum (Equivalent to 6% of GDV)

Appendix B: Late Stage Review- Worked Example

The below shows a worked example to demonstrate how a late stage review would be calculated using the methodology set out in this SPD.

All assumptions are indicative and are provided merely for the purposes of these worked examples.

Example

Scheme for the development of 100 one bedroom flats for sale in Central Watford. A Viability Assessment undertaken at determination stage indicated that no affordable housing would be viable at that stage. 75 of the 100 flats have now been constructed and sold to market and so a Late Stage Review process has been triggered as per a requirement in the schemes s106 agreement.

Formula 1 below is used to calculate the maximum amount of additional affordable housing contribution could be possible.

Formula 1: The level of contribution possible:

Level of contribution = (((A + B) – C) – ((D + E) – F) – G) x 0.6

- A= GDV achieved on the residential units sold or let and the income from any non-residential elements of the scheme at the point of the review being commenced
- B= Estimated GDV for any elements of the development not yet sold or let
- C= GDV that was determined as part of the viability assessment at time of granting planning permission
- D= Build costs incurred to date at the time of the review being commenced
- E= Estimated build costs for remaining elements of the development not yet carried out
- F= Total build cost that was determined as part of the viability assessment at time of granting planning permission
- G= (A + B – C)* H;
- H= Developer profit as % of GDV determined at time of granting planning permission

Part A- Determining the Maximum Level of Contribution Possible

- A= GDV achieved to date on the scheme- £20,000,000
- B= Estimated GDV of remainder of scheme yet to be sold or let- £5,000,000
- C= GDV determined as part of Viability Assessment- £20,000,000
- D= Build costs incurred to date on the scheme- £14,250,000
- E= Estimated build costs of remainder of scheme- £3,750,000
- F= Total build costs determined as part of the Viability Assessment- £17,500,000
- H= Developer profit- 15% (0.15)

Level of contribution = (((20,000,000 + 5,000,000) – £20,000,000) – ((14,250,000 + 3,750,000) – 17,500,000) – 750,000) x 0.6= £2,250,000

Part B- Determining the Cap on Late Stage Review Contribution

Formula 2: The cap to be applied to the level of contribution that can be required from a developer:

Review Cap= (((I x L) – (J x L)) x M) + (((I x L) – (K x L)) x N)

- I= Average value of market housing per sqm- £5,000
- J= Average value of affordable rented tenure housing per sqm- £2,250 (45% of market value for social rent)
- K= Average value of low-cost home ownership housing per sqm- £3,750 (70% of market value)
- L= Average habitable room size across the scheme in sqm- 50sqm
- M= The shortfall on-site of affordable rented housing by habitable room relative to the Local Plan target- 15 habitable rooms[23]
- N= The shortfall on site of low-cost home ownership housing by habitable room relative to the Local Plan target- 10 habitable rooms[24]

Review Cap= (((5,000 x 50) – (2,250 x 50)) x 15) + (((5,000 x 50) – (3,750 x 50)) x 10)= £2,687,500

In this case the amount of additional contribution would be capped at £2,687,500, whilst the level of contribution required by Formula 1 would be £2,250,000 and therefore below the applied cap.

[23] 60% of affordable housing requirement
[24] 40% of affordable housing requirement