

ACTVaR

**AFFORDABLE HOUSING
PRACTICAL GUIDE**

FIRST EDITION

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ACTVaR AFFORDABLE HOUSING PRACTICAL GUIDE (FIRST EDITION)

FOREWORD

Affordable Housing is a key issue for all Councils within the ACTVaR sub-region as community leaders and employers. Similarly, as Housing Authorities and Planning Authorities, Councils have a crucial role to play in the delivery of Affordable Housing.

In initiating the Affordable Housing Group ACTVaR sought to make a very practical contribution to tackling the issues implicit in the achievement of Affordable Housing. I hope that all Councils will find this Practical Guide a useful tool in the evolution of their approach to Affordable Housing.

The Team consisted of Councillors: Bruce Allen (Buckinghamshire County Council), Gareth Barnard (Bracknell Forest Council), Biddy Hudson (Oxfordshire County Council), Angela Lawrence (Vale of White Horse District Council), Ron Sibley (Slough Council) and Cec Tallack (Milton Keynes Council) and the following representatives from Councils and other organisations: Alison Bailey (SEERA), Andy Blaxland (Basingstoke Borough Council), Barry Deller (ACTVaR), Paul Fellowes (GOSE), Sheila Franklin (Aylesbury Vale District Council), Marcia Gillings (Housing Corporation), Jeff Hanna (Reading Borough Council), Alison Latimer (Basingstoke Borough Council), Ian Manktelow (Wycombe District Council) and Malcolm Morley (South Oxfordshire District Council).

I would like to thank all members of the Group who made a significant input into the Practical Guide. The Group had a wide range of experience and knowledge to both draw upon and to challenge taken for granted assumptions and practice.

Writing the Guide was a challenging experience. I hope that it will contribute to both the practical provision of Affordable Housing and the on-going evolution of the joined-up approach required for the creation/maintenance of sustainable communities and the improvement of the life chances of individuals.

Malcolm Morley
Chair
ACTVaR Affordable Housing Group

ACTVaR AFFORDABLE HOUSING PRACTICAL GUIDE (FIRST EDITION)

EXECUTIVE SUMMARY

Affordable Housing consistently features as a top priority within communities and Councils within the Thames Valley. This recognises the challenges being faced by all sectors of the economy with the recruitment and retention of staff, the difficulties being experienced by individuals finding and affording housing to meet their needs, the changing social infrastructure with increasing numbers of new households being created, the impact that poor housing has on health/quality of life and the sustainability of communities as young people are unable to afford housing locally.

This Practical Guide seeks to recognise these challenges and the changing statutory framework in which Councils operate as both Housing and Planning Authorities. Such is the dynamic change being experienced that inevitably parts of this First Edition of the Practical Guide will soon be out of date. It will, consequently, be updated periodically to ensure that it remains relevant.

In developing the Practical Guide ACTVaR is seeking to provide all Councils with a central reference point to help with the practical achievement of Affordable Housing. It will, of course, be for Councils to decide what is appropriate for their local circumstances.

The Practical Guide is different to other publications dealing with Affordable Housing and fully explores the different roles of Councils (Strategic, Enabling, Planning, Land Owner and Influencer). It concludes that the process of influencing both regionally and locally is of growing importance for Councils. It also recognises that the skills to influence are in short supply within Councils and skill development/acquisition is an issue for Councils.

The Rules of the Development Game are identified as:

- a) Influence investment strategies.
- b) Work with strong RSLs.
- c) Work closely with planners and be proactive in making land available for development.
- d) Communicate early with funders about prospective developments.
- e) Offer value for money.

Affordable Housing and Key Workers are defined.

Affordable Housing is defined as:

Affordable housing is subsidised housing that is made available for people in housing need who cannot afford either to rent at market rents or to buy on the open market and which:

- a. **Is provided on an on-going basis for rent at a cost within the Housing Corporation Target Rent for that dwelling type in the Council's area, or**
- b. **Is provided for purchase at a cost within the Housing Corporation Total Cost Indicator for that dwelling type in the Council's area.**

Key Workers are defined as:

A Key Worker is an individual in housing need who is unable to afford to meet their needs without some subsidy and whose employment is of particular importance to their local community.

Recognising the reality of the housing market the Guide goes on to explore and provide guidance on the development mix (land, planning consent, subsidy and development partners), the negotiation and content of Section 106 Agreements, the selection of development partners, risk management and what happens during and after development.

The negotiation of Section 106 Agreements requires Councils to:

- a) Get organised early and ensure that the Council has a 'joined-up' approach both politically and managerially.
- b) Ensure that it's clear about the Council's priorities.
- c) Ensure that it can justify its requirements based upon an assessment of needs.
- d) Recognise that the 'cake' is only so big.
- e) Adopt a practical and flexible approach recognising the need to achieve a portfolio of service provision to meet different needs.
- f) Ensure it's clear about what's got to be included and what can be negotiated.
- g) Establish credibility in negotiations and recognise if specialist input is required.

At the end of each section of the Guide a Key Question is posed to seek to stimulate Councils to consider their approach to the provision of Affordable Housing. A consistent message from the Guide is the need to assess housing needs in a consistent and credible way and then, through internal and external partnership working, to ensure that the future provision of Affordable Housing recognises both local needs and commercial realities.

The Guide concludes that Affordable Housing will remain a key issue for local communities and many public and private sector organisations throughout the Thames Valley. Access to the resources necessary for the delivery of Affordable Housing will increasingly require recognition of regional priorities and the ability to influence at regional level. ACTVaR has a key role to play in this process.

ACTVaR AFFORDABLE HOUSING PRACTICAL GUIDE (FIRST EDITION)

1. INTRODUCTION.

a) The Context

Affordable Housing is seen to consistently feature high in the priorities of Councils throughout the ACTVaR sub-region. It is seen as being fundamental to the protection and evolution of sustainable communities.

Changes in central government policy have resulted in the transfer of a significant number of Council's housing stocks to Registered Social Landlords (RSLs) within the ACTVaR sub-region. They have also prompted the shift in the resources available for investment in Affordable Housing away from Councils. This has meant that irrespective of whether or not a Council has retained its housing stock Councils wanting to pursue their priority regarding Affordable Housing have had to do so principally through their Strategic Enabling Role.

The Strategic Enabling Role, however, has recently been the subject of significant change with the introduction of Sustainable Communities: Building for the Future. Under the new arrangements Local Authority Social Housing Grant (LASHG) has been abolished and the allocation of Government resources will increasingly focus on addressing regional priorities determined by a Regional Housing Board with an emphasis on ensuring that there is integration with planning and economic development priorities for the region.

Ministers have decided that Government resource allocation will be viewed in the context of an aggregation of three regions, East of England, London and the South East. This means that individual Councils will have a significant task in promoting their areas for the allocation of Government resources unless they have been identified by the Government as 'Growth Areas'. The status quo is not an option.

It is vitally important that Councils within the sub-region work together through ACTVaR to seek to identify priorities for investment in the sub-region, to promote the case for investment within the sub-region and to influence the 'Rules of the Development Game'.

The challenges being faced by Councils in seeking to achieve the local provision of Affordable Housing are significant. This Practical Guide seeks to help Councils to identify and address key issues in that provision.

The average price of housing within the South East Region reached £198,948 (HM Land Registry September 2002) with the average price for a terraced house being £147,518. This compares with £231,512 and £171,177 respectively in the ACTVaR sub-region. The ACTVaR sub-

region has high housing prices and average figures mask particular hotspots where house prices are significantly higher than the average.

These average house prices mean that a primary school teacher seeking to buy a terraced house with a £10,000 deposit and able to afford/obtain a mortgage based upon 3.5 times income would have a shortfall of approximately £75,000 (New Earnings Survey 2002, HM Land Registry). These figures underline the challenges being faced by Councils, as both employers and enablers of housing provision, and by the other employers in both the public and private sectors.

Recognising the above and the need to respond to the challenges being faced by Councils in trying to support and evolve sustainable communities, Government announced on 5 February 2003 a £22 billion investment programme. The Deputy Prime Minister described the new programme, Sustainable Communities: Building for the future, as:

"... essential to tackle the challenges of a rapidly changing population, the needs of the economy, serious housing shortages in London and the South East and the impact of housing abandonment in the North and Midlands".

The challenges being faced in the South East and within the ACTVaR sub-region contrast sharply with the north. This is confirmed by the identification of four key areas for major growth: Thames Gateway; Milton Keynes/South Midlands; Ashford; and London-Stansted-Cambridge. Whilst these areas are likely to see significant increased Government investment for the provision of Affordable Housing it is less clear how Councils outside of these areas will fair.

The increasing household formation rates, the limited supply of housing and the lack of affordability of housing within the ACTVaR sub-region coupled with the planning constraints in rural areas create major challenges for all Councils within the sub-region. ACTVaR has a significant role to play to ensure that these issues for *all* Councils within the sub-region are not lost.

b) The Practical Guide's Objective

It is vitally important that all Councils, even those designated as growth areas, have strategic and enabling processes that are efficient and effective and based upon best practice. ACTVaR is committed to identifying and sharing knowledge and best practice. This Practical Guide to Affordable Housing seeks to help Councils to do this and to be a reference document for the practical delivery of Affordable Housing.

The objective of this Practical Guide is to seek to identify key issues in the delivery of Affordable Housing and to proffer ways to address them. As always ACTVaR recognises that the diversity of Council's areas and the financial and policy commitments in place will mean that individual

Councils will need to determine what is most appropriate and timely for their local context.

ACTVaR also recognises that legislative and market changes in the future could have significant implications for the achievement of Affordable Housing. This Practical Guide is therefore Edition One. The Guide will be updated periodically to ensure that it remains relevant and continues to provide practical help to Councils seeking to respond to/influence the prevailing policy and resource contexts in which they seek to achieve Affordable Housing for the communities they serve.

2. AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES.

When Councils seek to address the needs of the communities they serve Affordable Housing is not the whole answer it is merely part of the answer. Councils seek to support and facilitate the evolution of sustainable communities. Affordable Housing has to be put in context of the needs of those communities, the people within them and the people that need to be in them.

Sustainable Communities: Building for the future addresses the question of what makes a sustainable community as follows:

“Some of the key requirements of sustainable communities are:

- *A flourishing local economy to provide jobs and wealth;*
- *Strong leadership to respond positively to change;*
- *Effective engagement and participation by local people, groups and businesses, especially in the planning, design and long term stewardship of their community, and an active voluntary and community sector;*
- *A safe and healthy local environment with well-designed public and green space;*
- *Sufficient size, scale and density, and the right layout to support basic amenities in the neighbourhood and minimise use of resources (including land);*
- *Good public transport and other transport infrastructure both within the community and linking it to urban, rural and regional centres;*
- *Buildings - both individually and collectively - that can meet different needs over time, and that minimise the use of resources;*
- *A well-integrated mix of decent homes of different types and tenures to support a range of household sizes, ages and incomes;*
- *Good quality local public services, including education and training opportunities, health care and community facilities, especially for leisure;*
- *A diverse, vibrant and creative local culture, encouraging pride in the community and cohesion within it;*
- *A "sense of place";*
- *The right links with the wider regional, national and international community.”*

Sustainable communities are complex interactions between people and physical infrastructure, governance structures, economic activity, public services etc. Housing is an important element, but not the sole element, in the creation and evolution of sustainable communities.

As the Deputy Prime Minister states:

“While decent housing is vital to a community, the provision of housing alone does not make a 'sustainable community'. Sustainable communities also require a flourishing economy, engagement of local people in decision making, well designed public and green space, good access to public amenities such as education facilities and hospitals plus a feeling of safety and liveability.”

Councils, in seeking to provide Affordable Housing, need to consider the broader implications of its contribution to (and the demands it creates on) the other elements that contribute to a sustainable community in which it is to be provided. Affordable Housing must be part of a multi-organisational approach to supporting sustainable communities.

KEY QUESTION:

Is the Council's approach to the achievement of Affordable Housing part of a multi-organisational partnership strategy to support sustainable communities?

3. THE ROLES OF COUNCILS.

All Councils have a role to play in the provision of Affordable Housing. District and Unitary Councils, as Housing Authorities, have five principal roles impacting the provision of Affordable Housing. These are the Strategic Role, the Enabling Role, the Planning Role, the Land Owner Role and the Influencer Role. County Councils have two important roles namely as land owners and influencers.

Taking each of these roles in turn:

The Strategic Role:

The terms “strategic” and “enabling” have frequently been used interchangeably in the context of Councils and Affordable Housing. Whilst the two terms have elements that overlap they are different. In this Practical Guide “strategic” relates to the development of the Council’s Housing Strategy. “Enabling” relates to the process and activities necessary to implement the Housing Strategy.

The production, monitoring and review of the Housing Strategy are key processes in the Strategic Role for the provision of Affordable Housing.

The Strategic Role requires Councils to take an external view of the whole strategic context in which the Council operates and to put Affordable Housing and the Council's resources and objectives within that context. Input is required from those for whom the strategy is being developed and many partners need to be given opportunities to contribute.

The strategy process followed, in common with the development of many strategies, requires strategic analysis and evaluation skills that might not be acquired from traditional professional roles within Councils. It also requires the willingness and ability to challenge taken for granted assumptions about housing markets, how those markets work, corporate priorities and partnership working and the options for addressing housing need.

Councils need to consider and plan for the acquisition of the skills required to undertake their Strategic Role. They also need to consider the systems necessary to acquire the broad range of information required to enable them to both develop and review performance against specific, credible, ambitious and measurable objectives.

It is vitally important that the Strategic Role involves systems that identify changes in the national, regional and local contexts and constantly evaluates them. In this way the Council will have a greater ability to influence events and to respond to positively to challenges and changes in the 'Rules of the Development Game'. Similarly the Strategic Role involves the identification of best practice and innovation that can be adopted/adapted for the Council.

The Strategic Role is not restricted to the provision of Affordable Housing but must establish links with other plans/strategies such as the Community Plan, the Procurement Strategy, the Health Improvement Strategy, the Economic Development Strategy, the Rural Strategy etc and the Local Plan. The product of the Strategic Role is a relevant, dynamic and effective Housing Strategy.

KEY QUESTION:

Has Affordable Housing been put within the strategic context of the overall needs of the communities served by the Council and the Community Plan?

The Enabling Role:

The Enabling Role is based upon the implementation of the Housing Strategy. The Housing Strategy sets the context and objectives for the Council in pursuing the provision of Affordable Housing and must be seen to be implemented in practice. The strategy is only as good as its implementation and the systems in place to keep it relevant.

Key activities involved in the Enabling Role are:

- a) Working with landowners, RSLs and others to identify potential sites for development for Affordable Housing.
- b) Working with Planners to negotiate Affordable Housing allocations on development sites consistent with the Local Plan.
- c) Working with the Housing Corporation to influence the allocation of Social Housing Grant (SHG).
- d) Undertaking housing needs surveys.
- e) Working with Parish/Town Councils and local communities to gain input into proposed Affordable Housing schemes.
- f) Determining the appropriate balance between tenure types in Affordable Housing schemes.
- g) Working with RSLs and others to evaluate proposed Affordable Housing schemes.
- h) Manage the input of the investment of the Council's own resources in Affordable Housing schemes.
- i) Making nominations to RSL Affordable Housing schemes.
- j) Promoting Affordable Housing and the role of the Council.
- k) Partnership development with public, private and voluntary sector organisations.
- l) Reviewing RSL performance, the contribution RSLs make to sustainable communities and the operation of nomination agreements.
- m) Reviewing the outputs/outcomes from Affordable Housing schemes.
- n) Project management.
- o) Liaison with service providers and other Councils.
- p) Land assembly and initiating compulsory purchase of land where appropriate.

The Enabling Role is demanding and complex requiring the ability to balance the competing needs and expectations of stakeholders with the Housing Strategy and the economic reality of available resources for Affordable Housing.

Given the limited number of people with the knowledge and skills required to carry out the Enabling Role and the changing resource base available within Councils to contribute financially to the provision of Affordable Housing it is appropriate for Councils to consider sharing their staff or entering into contracts with third parties for the provision of these services. Partnership working for the provision of the Enabling Role can provide Councils with access the specialist skills/experience required whilst at the same time facilitating a reduction in overhead costs.

KEY QUESTION:

Does the Council have access to the mix of skills/experience necessary to carry out the Enabling Role and the corporate capacity to deliver Affordable Housing?

The Planning Role:

The relationship between Housing Strategies and the Local Plan/Local Development Framework and the County Structure Plan are dealt with in the section below. Similarly the role of Section 106 Planning Agreements is covered in a dedicated section below. This section deals with the Planning Role of Councils in relation to specific development proposals for sites.

Affordable Housing cannot be provided unless there is a planning consent in place. District and Unitary Councils, as Planning Authorities, have a vital role to play in the delivery of Affordable Housing in terms of the granting of planning consents.

It is imperative that the Housing and Planning Services within Councils work together in the creation of the policy framework, Supplementary Planning Guidance and Development Briefs for the provision of Affordable Housing and in considering specific proposals for the provision of Affordable Housing prior to the formal application for planning consent. In this way planning concerns about proposed sites and developments can be identified and proactively addressed in the context of the housing needs to be met.

A clear framework for internal partnership/corporate working within Councils between Housing and Planning Services should be in place to ensure different professional groups/services fully understands the requirements of each other's services and that clear and timely communication channels are open and used. In this way credible developments can be proposed, the housing needs to be addressed can be illustrated and the economic realities of development can be understood.

Whilst it is desirable that planning applications for Affordable Housing are made with the full knowledge and involvement of the Council's Housing Service from a very early stage, this is sometimes not the case. Where this occurs the Planning Service should be proactive in seeking the advice of the Housing Service.

Planning consent has a major impact on land values and on the ability of Councils to play a full and active role in addressing housing needs. The Local Plan provides the policy framework for the consideration of planning applications. Negotiations with developers, however, often take place to agree the nature, location, density and extent of Affordable Housing to be provided on individual sites. These negotiations should involve both the Planning and Housing Services.

In rural areas there is often a fine balance to be drawn between the provision of additional housing to meet local housing needs, maintaining a sustainable community and the development envelope drawn around settlements. Indeed, Affordable Housing in rural areas can often only be provided on 'exception' sites outside of the development envelope.

In these circumstances it is vital that the Planning and Housing Services work together to achieve a development solution that achieves a locally determined balance between the pressure to meet local housing needs and the pressure to protect the rural environment. Achieving this balance can be informed by the engagement of local people in development proposals (See section below on Community Engagement).

In the past the Planning Role was regarded by many as a separate and quasi-judicial role within Councils. If Affordable Housing is to be achieved in practice it is important for the Planning Role to be seen and operated within the strategic context, objectives and priorities of the whole Council. Where this is the case it will make a major contribution to the achievement of Affordable Housing as part of sustainable communities.

KEY QUESTION:

Is there an effective partnership for the achievement of Affordable Housing between the Housing and Planning Services within the Council?

The Land Owner Role:

Some Councils own land that is capable of being developed for a variety of uses. All Councils are under a duty to review their land holdings and the use of their land. Given the financial pressures that Councils are under and the competing demands for resources there is often a pressure on land owning Councils to maximise the disposal value of their land. This is common across the public sector.

Councils should review their land holdings within the context of their Strategic Objectives and priorities. A General Consent for disposal of land to RSLs (subject to conditions) at less than open market value is given by the ODPM under section 25 of the Local Government Act 1988. The ODPM also issued a draft General Consent for consultation (which closed March 2003) designed to enable Councils to dispose of any interest in land under the Local Government Act 1972 which they consider will contribute to the promotion or improvement of the economic, social or environmental well-being of the area for less than best consideration provided that the undervalue does not exceed £2,000,000.00. This is very similar to the Section 2 of the Local Government Act 2000 well-being power. Clearly if Councils do seek open market value or development of their land for non-housing purposes their rationale for so doing should be explained.

Land is a vital part of the development mix for the provision of Affordable Housing. Council owned land can act as an important pump primer for the provision of Affordable Housing and in contributing to the achievement of increased affordability. The Housing Service of a District Council should be fully involved in the review of District Council Asset Management Plans to identify Council owned sites that could contribute to the achievement of Affordable Housing.

Where the Council is a land owner it has a significant amount of influence on the development of the land. This influence can determine by whom the site is developed, what is developed on the site and any conditions that might reasonably be applied to the development of the site and its future use/ownership. Councils should seek to exercise the maximum amount of influence possible to ensure that its objectives are met. This includes ensuring that the development adds to, rather than detracts from, the sustainability of the community in which it is situated.

County Councils often own significant amounts of land. In developing its Asset Management Plan the County Council should involve the District Council Housing Service to identify the potential to contribute to the provision of Affordable Housing from proposed disposals of land. County and District Councils should work together in a spirit of partnership to illustrate a joint commitment to Affordable Housing and the roles they can play in making it a reality.

KEY QUESTION:

Has the Council reviewed its land holdings within the context of its desire to achieve Affordable Housing to ensure that clear objectives exist for each site?

The Influencer Role:

Councils are community leaders and have an important role in influencing other organisations (particularly land owning public bodies) and individuals for the benefit of the communities that they serve. This is particularly important in the context of Affordable Housing.

As community leaders Councils have to recognise that it is sometimes necessary to influence/convince local communities of the appropriateness of Affordable Housing in their location. This is an area of influencing that is covered in the Community Engagement Section later in this Guide.

The achievement of Affordable Housing is a complex inter-connected process requiring access to land, planning consent, subsidy and developers. Councils need to put themselves in a position to be able to influence each element of this Development Mix (the Development Mix is considered in greater detail later in this Guide).

As a land owner Councils will be able to exert maximum influence over the provision of Affordable Housing on its own land. It should also, however, seek to identify and influence other land owners (particularly public bodies suffering from difficulties in recruiting and retaining Key Workers) to recognise the contribution they can make in meeting local housing needs.

This is particularly important in rural areas where appropriate 'exception' sites may be the only option for the provision of Affordable Housing. In these cases land owners may need to be influenced to make land available when the financial returns will be low and there will not be an opportunity to commercially develop part of the sites made available to create the potential for higher returns. The provision of evidence of the local housing needs to be met, the reasons why the site is considered to be the best alternative for development for Affordable Housing, the contribution to local sustainability the site could make and illustration of the support of the local community are key elements in influencing land owners in these circumstances.

In working with landowners proposing to develop land for housing within development envelopes Councils should seek to influence the development through the Section 106 Agreement negotiations. Similarly, other developments within development envelopes may also be capable of being influenced to contribute to the provision of Affordable Housing. This is particularly the case for public sector organisations, such as Primary Care Trusts, and for economic development sites where there are issues in relation to the ability to recruit and retain employees.

In all cases influencing landowners requires the recognition of the needs/perspectives of those landowners and the ability to negotiate outcomes for mutual benefit.

Influencing the achievement of planning consent has been covered in the section above. The key issue is the willingness and ability to get all parties to work in partnership recognising the constraints and flexibilities available and the Strategic Objectives and priorities of the Council.

Influencing the provision of subsidy is of prime importance. Subsidy is available in a number of forms but the most important form is SHG. The changes in the means of allocating SHG and the move to a Regional Housing Strategy being created by a Regional Housing Board (currently without Council representation) means that the previous influencing role of Councils over the allocation of SHG has been undermined.

Councils, however, should still work closely with the Housing Corporation and seek to influence the recognition of their priorities for their areas. As the democratically elected local government for their area each Council has a legitimate right and role to play in seeking to influence the investment decisions of other bodies.

It is also important that this influencing role is operated by Council's working together, through ACTVaR, to ensure that sub-regional needs are recognised and understood. Councils acting together are more likely to influence macro resource allocations than if they act solely as individual organisations.

The final element of the Development Mix is the developer. Irrespective of the size and type of developer (private sector, RSL etc.) the Council has a role to play in influencing the proposed development and the contribution that it makes to the achievement of Affordable Housing. This influence will be tied largely to the planning process and the negotiations that take place to agree a development that is satisfactory in planning terms and which meets local housing needs. In this case it is important that Council staff fully understand the commercial realities driving the development and that negotiations are credible. The Council is only likely to achieve Affordable Housing where all parties win.

Influencing and negotiating require the ability to put Affordable Housing and local housing needs within the context of the objectives of other organisations and individuals. It requires a sound base of commercial knowledge to compliment traditional local government professional knowledge and the willingness and ability to make agreements that can be delivered in practice.

Key issues that need to be considered in seeking to influence are:

- a) Get organised before starting (know the business case, be clear about the limits of acceptability for the Council, know what you can and can't deliver, get all key internal people on side and try to understand the other organisation's perspective/needs).

- b) Be clear about the Council's priorities within the context of the Community Plan.
- c) Work out the approach to be used (different situations often require different approaches and different emphases to be made).
- d) Be practical (the cake is only so big).
- e) Be prepared to be flexible (influencing is the art of the possible).
- f) Don't let minor issues get in the way of the bigger picture.
- g) Remember its about people (nobody likes to lose or to feel that they're being coerced).
- h) Establish credibility as soon as possible and recognise if you need specialist input.
- i) Communication needs to be on-going.
- j) Don't be put off by a set-back, keep going and don't let it become personal.
- k) Acknowledge things that are agreed and build on them.

The process of influencing is increasingly important for Councils in the achievement of Affordable Housing and many other aspects of Council's work. Not everyone has the skills to undertake this role and it may be an area that Councils need to address as part of their training and development needs assessments of staff.

KEY QUESTION:

Does the Council have clear objectives and priorities to ensure that it can have maximum impact through influencing other key stakeholders in the achievement of Affordable Housing?

4. HOUSING STRATEGIES AND THE LOCAL PLAN/LOCAL DEVELOPMENT FRAMEWORK.

A Council's Housing Strategy should illustrate clearly that the Council and its partners fully understand local housing markets, the housing demand and needs that exist and the supply of housing in all tenure types and sizes. (Housing need is discussed later in this Practical Guide.) It is also important that the boundaries for local housing markets are recognised in real terms rather than just by the geographical boundaries of Councils.

Housing developments in one Council's area can have a significant impact on the housing market and housing need in a neighbouring Council. To illustrate the point it is hard to see how the major programmed growth for Milton Keynes and the South Midlands will not have an impact on housing need and demand in neighbouring parts of the ACTVaR sub-region.

The development of a Housing Strategy is well documented and advice is available both on-line at www.odpm.gov.uk, from the Government Office – South East (GOSE) and from a range of other organisations. This Practical Guide will not duplicate this advice. Three key issues can usefully be stressed, however, from a practitioner's perspective. These are:

- a) The need to work in partnership for the development of the Housing Strategy.
- b) The need for on-going data collection.
- c) The need for on-going review of performance against the strategy.

Taking each in turn:

a) The need to work in partnership for the development of the Housing Strategy.

Whilst Housing professions should lead the development of the Housing Strategy a number of other professionals within Councils have a full and legitimate role to play in the development of the strategy. Similarly, as the Housing Strategy needs to have an external focus it is important that individuals and groups from outside the Council are encouraged and facilitated to have a positive input to the strategy development process.

This partnership approach should extend to the development of the housing needs assessment and to the evaluation of the housing needs identified. In this way understanding and commitment to the Council's Housing Strategy is more likely to be achieved across sectors and between departments within the Council.

Housing has a fundamental role to play in improving quality of life and the sustainability of communities. The Housing Strategy must reflect that role and be developed through a partnership approach based upon a shared commitment to the practical achievement of housing within communities and the role that it plays within those communities.

b) The need for on-going data collection.

Communities, housing markets and housing needs change over time. It is vitally important that the Housing Strategy remains a dynamic document and relevant to the Council's objectives and the communities that it serves. This can only be achieved if systems are established to provide on-going

data collection about community needs, housing markets and housing needs.

The collection of data, however, is but one part of the process. The data collected needs to be put into context and to be used to inform the on-going evolution of the Housing Strategy. It is vital that this is not done in isolation but as part of the overall Strategic Role of the Council.

c) The need for on-going review of performance against the strategy.

Strategies are useless unless they lead to tangible improvements in performance. Housing Strategies should contain performance targets that are specific, credible, ambitious and measurable and related directly to the objectives contained within them. Performance should be reviewed against those targets throughout the year and action taken as appropriate. This performance review should be part of the corporate performance review process.

It is also important that performance is reviewed from the end user's perspective. Councils and their partners should seek to learn from the end user (both the occupants of the housing and the communities in which they are provided). In this way future developments can be improved both in terms of the construction process, the involvement of local communities and the process of allocation and support provided to the occupants.

KEY QUESTION:

How will the Council ensure that the Housing Strategy remains relevant to key stakeholders and makes an on-going measurable difference in practice?

The Housing Strategy and the Local Plan/Local Development Framework

At the time of writing it is proposed to replace Local Plans with Local Development Frameworks. This section therefore refers to both of these as the issues remain the same.

The Local Plan/Local Development Framework provides an important piece of the context for the provision of Affordable Housing by identifying development policies and areas of acceptable development. A Council's Housing Strategy should be informed by and inform the development of the Local Plan/Local Development Framework. This is consistent with the broad role that housing plays and the partnership approach to the achievement of the Council's objectives in practice.

This Practical Guide does not seek to replicate the advice available from other sources about either the development of Local Plans/Local Development Frameworks or the relationships of them to Housing Strategies. Instead two issues are mentioned briefly. These are the definition of Affordable Housing and the proportion of Affordable Housing to be sought in developments.

This Practical Guide seeks to provide a definition of Affordable Housing that it is hoped will inform the review and development of Local Plans/Local Development Frameworks and provide certainty throughout the ACTVaR sub-region for communities, developers and Councils.

The proportion of Affordable Housing to be sought from developments is less capable of being standardised. This proportion by necessity needs to be locally determined and is subject to the economic reality of development in different areas at different times. It is important, however, that the proportion determined to be included within Local Plans/Local Development Frameworks is consistent with the objectives and needs identified within the Council's Housing Strategy. It is also important that information about the 'negotiated' Affordable Housing achieved in practice is shared between Councils, wherever possible, to enable them to develop an on-going understanding of economic conditions and the ability to achieve Affordable Housing through negotiation.

Other Housing Strategies

At the time of writing it is proposed to dis-continue the production of Structure Plans by County Councils to reflect the Government's commitment to regional government and a modernised/streamlined planning system. Regional Spatial Strategies will be statutory documents with sub-regional components.

This changing context of regional roles and accountabilities underlines the importance of ensuring that a Council's strategy process identifies and evaluates national and regional policy initiatives for their potential impact on their areas.

Under the new arrangements for the Government's investment in Affordable Housing a Regional Housing Strategy will be produced by the Regional Housing Board. It is vital that each Council's Housing Strategy is reviewed and developed in the context of the Regional Investment Strategy. This is underlined by Government being committed to ensuring that its resource investment mirrors its priorities.

Councils must work together to ensure that individually and jointly their Housing Strategies are within the regional context and reflect the realities of both regional resource allocations and the local economic reality of development.

KEY QUESTION:

Are the Housing Strategy and the Local Plan consistent, relevant to local communities and delivering measurable improvements in Affordable Housing provision?

5. THE RULES OF THE DEVELOPMENT GAME.

In every sector of the economy the effectiveness and success of organisations is determined in part by their ability to recognise, influence, change and/or work within the rules. These rules are sometimes explicitly stated as with statutes and sometimes implicitly applied. These rules have become known across sectors as ‘The Rules of the Game’. Councils must recognise ‘The Rules of the Game’ and seek to both work within them as well as to influence/change them if they are to achieve their objectives.

The Government’s Sustainable Communities: Building for the Future initiative has effectively changed the way Councils, RSLs and developers need to approach the provision of Affordable Housing. The Rules of the Development Game have been changed. This section seeks to identify what Councils need to do to seek to influence these new rules and to maximise their potential for achieving Government investment for their areas.

The following “rules” for local authority enablers take account of what the various players require.

a) Influence investment strategies

Funding is now being allocated according to strategic priorities rather than simply housing need. Enablers should seek to ensure that their local issues and priorities are reflected in the investment strategies that guide the funding allocators of the Regional Housing Board (RHB), the Housing Corporation and the Government Office.

Capital Funding for Affordable Housing Grant is now in a “single pot.” The Regional Housing Board will produce the Housing Investment Strategy for the region setting out the broad spatial distribution of funding and the regional priorities. Government agencies providing funding will have annual targets to meet and based on these priorities they will allocate to individual schemes. Councils can influence the Regional Housing Investment Strategy by:

- Attending the Regional Housing Forum (RHF) consultation events.
- Joining a sub-group of the RHF and getting involved in contributing to writing the strategy.
- Making sure the members of the RHB understand the local or sub-regional issues. Main members include representatives from GOSE, the

Housing Corporation, South East of England Development Agency and the South East of England Regional Assembly. Contact should be on-going rather than a one-off annual event. Invitations to Council Housing Strategy Review events is a good starting point.

b) Work with strong RSL developers

Strong developer RSLs are, by definition, financially strong with large development programmes. (This does not mean excluding small specialists). Not only can they bring more grant to a Council's area, they can provide their own subsidies to meet housing need through grant free schemes, landbanking and economies of scale. Because of their ability to "forward fund" schemes (starting them before grant is available) they can also seize funding opportunities when they arise. For example, Reading Borough Council won £18M of Housing Corporation grant funding for the year 2003/4 via the strong developer RSL's that are its preferred partners.

Councils which are successful at winning funding in the ACTVaR sub-region usually have preferred partner arrangements with the strong developing RSLs. Selection is by competition and is open and transparent. Mutual benefits come from continuity of relationship in terms of sites for the RSL and funding for the Council.

c) Work closely with planners and be proactive in making land available for development

Housing professionals should liaise closely with their planning colleagues on the various activities connected with bringing sites forward. Such close working is essential to:

- Improve the progress of site planning applications.
- Ensure that Members fully appreciate the housing needs issues in their area so that more affordable housing applications are successful. Politicians are usually concerned about the local community's reaction to affordable housing proposals and they need to have the information to balance competing interests. Likewise, the local community should be consulted about potentially contentious schemes before planning applications are made. The work of local Rural Enablers, consulting with Parish Councils and local communities on proposed schemes is a good example of this pro-active working.
- Identify potential sites for housing and investigate measures which could bring them forward, such as, compulsory purchase, and site assembly.
- Jointly produce clear and robust Supplementary Planning Guidance and S106 agreements, that stand up to challenge from developers.
- Ensure urban capacity studies are done to identify all potential residential sites. There is a shortage of suitable residential sites in the South East and RSLs have to compete with private developers who are not restricted by the Housing Corporation's Total Cost Indicators or by rent restrictions. There is increasing reliance on Councils to deliver land for affordable housing through discounted land prices or planning gain.

d) Communicate early with funders about prospective developments

Government agencies providing funding have annual targets to meet based on the priorities in their investment strategies. Consequently, funders such as the Housing Corporation look for schemes that will achieve those targets. Councils and RSLs should make sure that the Housing Corporation knows about important and/or large sites well in advance of bidding. A bidding strategy should be worked out with the Housing Corporation to provide some certainty for the project. Private developers are concerned with reducing risk and ensuring profitability. Where they are providing affordable housing through S106 agreements which involve grant funding, it helps to reduce the developer's risk if they know very early in the process that this funding will be available. Many projects are negotiated on the assumption that grant funding will be available. Should the bid be unsuccessful, the developer may fail to deliver the affordable homes by not proceeding with the scheme.

e) Offer value for money

Approved Development Grant funding applications to the Housing Corporation were five times the amount of grant available in 2002. With insufficient grant to go around central government wants to get the most it can from the amounts provided. This means making sure that every source of subsidy is employed to render bids good value for money. The following guidance should help to make grant go further:

- Negotiations with developers should be based on clear Supplementary Planning Guidance about the cost and quality of homes they provide with S106 agreements, stating any discounts required
- Provide free or discounted land to RSL developers where possible.
- Work with financially strong developing RSLs that can cross-subsidise schemes, provide grant free schemes and offer economies of scale.

Councils should appraise the total programme of schemes in terms of tenure mix to maximise grant as well as meet local housing need. Sale and sub-market rent schemes require little or no grant. Clear and up-to-date housing needs assessments will be necessary to support requirements in Supplementary Planning Guidance and to understand the 'Rules of the Development Game' to ensure that Councils understand the practical issues from the perspectives of central government, the Housing Corporation, RSLs, communities and private developers.

KEY QUESTION:

Does the Council work in partnership within ACTVaR to influence the Rules of the Development Game?

6. DEFINITION OF AFFORDABLE HOUSING.

Throughout the ACTVaR sub-region the demand for Affordable Housing outstrips the supply of that housing. Many attempts have been made to define Affordable Housing but none have proved capable of general adoption. A key test of any definition of Affordable Housing is whether or not it enables any stakeholder to answer the fundamental question:

What is Affordable Housing?

This section seeks to enable any stakeholder to answer this question.

In considering any definition of Affordable Housing, one issue is clear. It cannot be provided without some form of subsidy. Subsidy, which can take several forms, is required to facilitate the reduction of the cost of housing to levels below open market levels if it is to qualify as Affordable Housing.

Economic reality dictates that there are limits to the level of subsidy available to be invested in the provision of Affordable Housing irrespective of the source of that subsidy. Reality also determines that Affordable Housing is about more than just subsidy. Any definition of Affordable Housing needs to balance the following:

- a) The cost of the supply of housing provided;
- b) The nature, level and location of housing need to be met;
- c) The ability of those in housing need to afford housing to meet their needs.

Dealing with each in turn:

a) The cost of the supply of housing.

Affordable Housing by its very nature is housing that is provided at a cost below the prevailing open market levels in the area it is situated. This means that it has to be provided with a subsidy. The sources of this subsidy could be from The Housing Corporation in the form of SHG, from developer contributions (discounted land and/or a financial contribution), from Councils (discounted land and/or grants), from other land owners (discounted land), from employers (discounted land and/or grants) or from other sources.

The level of the subsidy available is limited. There are limits to the grant available from the Housing Corporation and even if land is provided free the cost of construction of the housing and the infrastructure to support it still costs money. Negotiations with developers to provide a subsidy for Affordable Housing have to be based upon economic reality that recognises that the overall development of a site needs to make a profit.

Affordable Housing also needs to be differentiated from 'Low Cost Housing' that is open market housing provided by developers to meet the needs of specific market segments. This is generally smaller, lower specification housing provided for a profit (or as a loss leader) as part of a portfolio of housing on sites. (Whilst it is acknowledged that 'Low Cost Housing' is sometimes considered as part of the Affordable Housing portfolio, this Guide does not deal with the provision of 'Low Cost Housing' and concentrates solely upon the achievement of social rented and shared equity housing within the context of Affordable Housing.)

Any definition of Affordable Housing needs to recognise that the subsidy available is limited whilst creating a maximum cost of the housing that will be affordable to those in housing need for which the housing is provided.

Affordable Housing is generally provided in two tenure types, for rent and for shared equity purchase. The cost of the supply of housing therefore has to refer to the cost of housing for rent and for shared equity purchase.

There is a maximum level of rent that can be afforded by people in housing need. This level will vary according to the income of those in housing need. Given this variability and the recognition that the subsidy available for Affordable Housing is limited, a maximum level of rent has to be determined for Affordable Housing within a Council's area. (Wherever possible rents should be below this maximum level.)

Rent levels for Affordable Housing are determined by three main factors, the cost of the provision of the housing, the cost of providing for future maintenance and the management costs of the landlord. All of these factors need to be managed if rent levels are to be at or below the maximum level of rent that can be afforded locally by people in housing need.

The Housing Corporation, as the major provider of grant for Affordable Housing, has recognised these three variables and determined local Target Rents for different types/sizes of rented housing using its grant in all areas of England. These Target Rents are based upon an assessment of local land prices, construction rates, local affordability etc. and are used to inform the allocation of SHG by the Corporation. It is therefore possible to use the Housing Corporation's Target Rents for different types/sizes of housing to determine the **maximum rent levels** for the cost of supply of Affordable Housing in each Council's area.

Similarly the Housing Corporation has set Total Cost Indicators for the provision of SHG for the development of different types/sizes of Affordable Housing for shared equity sale in all Council's areas in the country based upon research into land prices, construction costs, local affordability etc. Each Council's area has been allocated a Total Cost Indicator Band which effectively determines the maximum cost levels for the provision of different types/sizes of Affordable Housing for shared equity purchase.

It is sensible to use the Housing Corporation's Total Cost Indicators to set the local **maximum levels** at which different types/sizes of Affordable Housing for shared equity purchase are defined. (It should be noted that the Housing Corporation may agree a local limit over 100% of the Total Cost Indicator for a Council's area for the provision of SHG to reflect local conditions. Where this is the case this enhanced figure should be the maximum level for the purposes of the definition of Affordable Housing.

The above recognises the major role the Housing Corporation plays in achieving the provision of Affordable Housing and ensures consistency of approach. It also provides a clear target for negotiations with developers for the provision of Affordable Housing.

Where Councils do not have access to SHG or other grant aid they may still be able to negotiate the delivery of Affordable Housing on development sites. In these cases Councils, using the definition, would be able to negotiate a higher level of subsidy per dwelling for fewer dwellings from the developer. Councils might consider it better to achieve less Affordable Housing rather than none at all.

Negotiations with private developers require the development of trust and the willingness of those developers to open up their accounts for specific schemes to enable costs and profits to be assessed. In this way a clear picture can be gained of the amount of money that can reasonably be expected to be made available for the provision of Affordable Housing etc.

Unfortunately developers are not often prepared to approach negotiations in this open way. This lack of trust and openness can lead to an adversarial type of relationship developing.

Councils must ensure that they have access to the knowledge, skills and experience necessary to negotiate effectively with developers on the basis of an economic assessment of commercial developments. This may mean engaging consultants/surveyors with commercial experience to negotiate on behalf of the Council. The costs of these consultants may be significant and Councils need to make appropriate budgetary provision.

The cost of the supply of Affordable Housing is not just about the original cost of provision but about the on-going cost of that provision to meet local housing needs. This is a key issue for many Councils and its achievement is often frustrated by the loss of that housing through tenants of RSLs having the "Right to Acquire" and the owners of shared equity housing often have a right to 'staircase' to full ownership of their house.

Where statutory rights are conferred on individuals Councils can do nothing to frustrate them. They can, however, individually and collectively seek to influence the Government and to encourage it to review the legislation that leads to the loss of Affordable Housing.

Where Affordable Housing is retained it is important that the cost of that housing remains affordable. The use of the Housing Corporation's Target Rents as the maximum to qualify housing as Affordable Housing satisfies this requirement. Target Rents will continue to be reviewed annually by the Housing Corporation and will ensure that retained Affordable Housing is provided on an on-going basis at affordable levels for the locality in which it is provided.

b) The nature, level and location of housing need to be met;

All Councils should have a Housing Nominations Policy which provides the criteria to be applied to assess housing need, which identifies any weighting of those criteria and the points available for allocation to reflect the assessment of the nature, level and location of housing need. The application of these criteria should allow the equitable and transparent allocation of points to determine the relative priority of people to be nominated for Affordable Housing.

The weighting of the criteria for the assessment of housing need and the points available are matters for individual Councils to determine. Some Councils, for example, might determine that where two applicants have the same level of housing need a higher points allocation should be made for local connection to the Parish/Town/Ward in which the Affordable Housing is provided. It is for Councils to determine how they apply their criteria etc. and to ensure that the process is equitable and transparent.

In determining housing need there are benefits for Councils to use standard criteria. This provides consistency and enables the application of local weightings and points allocations to be transparent.

With this in mind it proposed that housing need should be determined based on the Reasonable Preference Categories in the Allocation of Accommodation: Code of Guidance for Local Housing Authorities issued by the ODPM, November 2002.

Housing need should therefore be determined by whether people forming (or part of) a household fall within one or more of the following categories:

- 1) People who are homeless (within the meaning of Part 7 of the Housing Act 1996); this includes people who are intentionally homeless and those not in priority need;
- 2) People who are owed a homeless duty by any other housing authority, or those who are occupying accommodation secured by any housing authority as a result of their homelessness application;
- 3) People occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;

- 4) People who need to move on medical grounds; and people who need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or to others).
- 5) Other categories of people where the Council determines that housing need exists.

This last category provides Council's with the ability to reflect local priorities and will be referred to particularly in relation to Key Workers later in this Guide.

c) The ability of those in housing need to afford the housing to meet their needs.

The ability of those in housing need to afford Affordable Housing relates to two things, income levels and the cost of the supply of the housing. The cost of the supply of Affordable Housing is dealt with in (a) above where it is recognised that there are economic limits to the subsidy available and consequently to the cost of the supply of the Affordable Housing.

This section seeks to deal with the income levels of those in housing need. Some people in housing need will be able to afford to rent or buy housing in the open market. Affordable Housing is not designed for these people. Any definition of Affordable Housing needs to qualify housing need with the lack of ability to afford to rent or buy housing in the open market.

Whether or not people in housing need can afford to buy or rent in the open market should be determined by reference to the following:

A household is unable to afford to buy in the open market if:

- a) The household cannot raise sufficient funds to buy a home to meet the household's housing needs.

A household is unable to afford to rent in the open market if:

- b) The rent required for a dwelling to meet the household's housing needs is greater than 30% of the household's net income.

These criteria are based upon the experience of Councils and are generally used to determine whether or not those in housing need can afford to buy or rent housing in the open market.

In perpetuity?

Councils are concerned that Affordable Housing provided today will not be affordable or even available in the future. The reference to Target Rents will provide ensure that rented Affordable Housing will continue to be affordable in the local context into the future. The reference to Total Cost

Indicators will similarly ensure that the provision of new shared equity housing will be affordable.

The provision of Affordable Housing by RSLs is subject to the statutory Right to Acquire where tenants have the right to acquire their homes unless they are situated in communities with a population of less than 3,000. Where the Right to Acquire exists no guarantee can be given that the housing will be available for people in housing need in the future.

In the case of shared equity housing the tenure is designed to enable individuals to 'staircase' up to full home ownership. Where this occurs there will be a loss of the ability to achieve the retention of Affordable Housing.

In certain cases (see the Section 106 Agreement section of this Guide) it may be possible to inhibit the loss of Affordable Housing. Statute, however, has priority and consequently it is not possible to guarantee that Affordable Housing can be provided in perpetuity. Consequently the definition of Affordable Housing in this Guide does not refer to the provision of housing in perpetuity. It is, however, implicit that Councils will seek to achieve Affordable Housing that is available on an on-going basis to meet local housing needs.

The definition of Affordable Housing

Drawing all of the above together the definition of Affordable Housing is:

Affordable housing is subsidised housing that is made available for people in housing need who cannot afford either to rent at market rents or to buy on the open market and which:

- a. Is provided on an on-going basis for rent at a cost within the Housing Corporation Target Rent for that dwelling type in the Council's area, or**
- b. Is provided for purchase at a cost within the Housing Corporation Total Cost Indicator for that dwelling type in the Council's area.**

This definition puts housing need in context and recognises that the achievement of Affordable Housing in practice is about the cost of supply as well as the ability of those in housing need to afford access to it. Importantly it provides clarity for all stakeholders and enables the fundamental question to be answered: What is Affordable Housing?

KEY QUESTION:

Does the Council have a definition of Affordable Housing that works in practice in their area?

7. AFFORDABLE HOUSING AND KEY WORKERS.

There are three categories of Affordable Housing; General Needs, Special Needs and Key Worker. General Needs Housing is housing provided to meet the general requirements of people in housing need. Special Needs Housing is housing designed or adapted for people with disabilities. Key Worker Housing is housing provided for workers who fall within the definition of Key Worker.

Key Worker Housing has received a lot of attention in the recent past with the launch of the Starter Home Initiative. Under the Starter Home Initiative Key Worker was defined by reference to public sector occupations. These include teachers, the police and health sector workers.

In launching Sustainable Communities: Building for the future the Deputy Prime Minister said:

“And most importantly these communities need key workers, nurses, teachers and police working and living locally. They are integral to thriving communities and must be provided for.”

The question is: Are Key Workers limited to public sector occupations?

The answer has to be no. Key Workers need to be defined by reference to the needs of communities. Whilst recognising that the availability of resources may lead Councils to prioritise their support for investment in the provision of Affordable Housing for only public sector Key Workers, the definition of Key Worker should reflect the wider needs of local communities.

Sustainable communities require vibrant private sector economic activity as well as effective public services. Additionally, a significant number of public services are provided by private sector workers.

Many private sector companies within the ACTVaR sub-region are experiencing significant recruitment and retention difficulties for particular types of staff. These recruitment and retention difficulties create major challenges for an increasing number of organisations and may lead to a re-location of businesses in order to secure the services of the staff they require. One of the major reasons for these difficulties is the cost of housing.

Whilst companies have an important role to play in ensuring that the salaries they offer are competitive, they cannot have a major influence on the housing market. Any definition of Key Worker must therefore recognise the reality of the needs of the private sector as well as the public sector.

The definition of Key Worker:

Drawing all of the above together the definition of Key Worker is:

A Key Worker is an individual in housing need who is unable to afford to meet their needs without some subsidy and whose employment is of particular importance to their local community.

Council's should consider Key Worker Housing within the context of the definition of Affordable Housing and seek to pursue the provision of housing for them in the context of the needs of their local communities.

The definition of Key Worker refers to housing need. Housing need should be determined as for the definition of Affordable Housing with reference to the Reasonable Preference Categories. Councils may wish to use Category (5) in particular in relation to Key Workers. Category (5) states:

Other categories of people where the Council determines that housing need exists.

Councils should decide the housing need to be included in this category relevant to Key Workers. The criteria for affordability remain the same as for the definition of Affordable Housing as does the need for subsidy to enable the housing needs of Key Workers to be met.

Using the definition of Key Worker:

The definition of Key Worker should be used to identify the categories of workers which are to be classified as Key Workers. A process also needs to be adopted for prioritising the Key Workers to be supported.

The process for identifying/prioritising the importance of Key Workers to their local community and determining the priority for meeting the needs of Key Workers should be as follows:

- a) The Local Strategic Partnership identifies the high priority community/ economic activities necessary to support its objectives in the Community Plan for a sustainable local community and economy.
- b) The Local Strategic Partnership identifies Key Employers within the Council's area consistent with (a) above.
- c) The Council initiates independent research to identify the posts that the Key Employers classify as Key Workers.
- d) The Council initiates independent research to quantify the current and projected shortfall of Key Workers in each of the categories identified in (c) above.

- e) The Council initiates independent research to identify the nature, level and location of the housing needs of existing Key Workers in each of the categories in (c) above.
- f) The Council prioritises the Key Workers that it will seek to meet the needs of based upon the above.

Having prioritised the Key Workers Councils should work with employers, Government, funding agencies, financial institutions, developers and RSLs to identify options to meet the needs of the Key Workers. Bids by RSLs for Starter Home Initiative funding should be supported on the basis of the priorities identified by the Council.

It would be preferable for LSPs and Councils to work together across the ACTVaR sub-region to reflect the inter-connected economy, cross-Council community needs and the reality of regional/sub-regional resource allocations for SHG and monies under the Starter Home Initiative. In this way regional/sub-regional priorities could be influenced and a more effective case made for the allocation of Government resources to the sub-region.

Negotiations with developers for the provision of Affordable Housing on specific sites should seek to balance the provision of housing for the three categories of Affordable Housing based upon an assessment of housing need. Whilst this balance can only be determined locally it is likely that developers will prefer to fulfil their Affordable Housing requirements by providing housing for Key Workers. Councils need to ensure that this is not done at the expense of the identified needs for other categories of Affordable Housing.

KEY QUESTION:

Does the Council work in partnership to identify and prioritise categories of Key Workers?

8. HOUSING NEED AND COMMUNITY ENGAGEMENT.

a) Housing Need Assessments:

This Guide does not seek to replicate the advice provided adequately elsewhere by the Office of the Deputy Prime Minister (Local Housing Needs Assessment: A Guide to Good Practice 2000) and by the Local Government Association/Countryside Agency (Rural Housing Signposts 2003).

Every Council's Housing Strategy should be based on an up-to-date assessment of aggregate housing needs in their area. Similarly, the Local Plan sections relating to Affordable Housing rely upon up-to-date housing

needs assessment data.

There is a hierarchy of housing needs assessments relevant to the ACTVaR sub-region. This hierarchy starts with the Government Office for the South East (GOSE) Region and is followed by the County, District Council and then Parish/Town for specific sites. There is a gap in this hierarchy. This gap is represented by the sub-region.

The GOSE Region is very large, geographically dispersed and varied in terms of its housing needs. There is a danger that the ACTVaR sub-region (and the Councils within it) get lost within the GOSE Region. It would be beneficial to have an ACTVaR tier in the housing needs assessment hierarchy to ensure that the housing needs in the sub-region are identified consistently, promoted and acted upon.

The benefits of including ACTVaR in this hierarchy are underpinned by the uncertainties that exist in relation to the robustness of the regional housing needs data. Different local research methods and concerns about the aggregation of data at the regional level have led to the robustness of the regional data being weakened. A consistent approach to housing needs assessment within ACTVaR would increase confidence in the data at a regional level and enable a stronger case to be made for resource allocation to the region/sub-region.

Whilst there is no single right way for carrying out housing needs assessments, there are benefits of having a consistent methodology across the ACTVaR sub-region. Consistency of approach would provide a stronger case for supporting the aggregate assessment of housing need throughout the sub-region and provide greater certainty for all involved in seeking to achieve Affordable Housing.

Increased confidence in the assessment of housing need across the ACTVaR sub-region would increase the likelihood of support for the allocation of Government funding. It is also less likely to be capable of being successfully challenged by developers. Joint procurement of housing needs assessments across ACTVaR would bring the additional potential benefit of economies of scale. A triple benefit of increased consistency, an increased perception of reliability on which to base Government resource allocation decisions and reduced costs of data collection.

KEY QUESTION:

Are the housing needs in the Council's area assessed consistently with neighbouring Councils and put within the context of the sub-region?

b) Housing Need, Development Proposals and Community Engagement:

Specific development proposals for Affordable Housing often create significant local interest. This is particularly the case in rural areas where developments are proposed on 'Exception' sites. It is also the case in most situations where Special Needs Housing is proposed. It is vitally important that proposed developments of Affordable Housing are justified in terms of the number of dwellings, tenure types and size of dwellings on the basis of local housing needs assessments.

Where Affordable Housing is being provided as part of the development of a site within the development envelope of a settlement it is vital for negotiations with developers to be able to justify the number etc. of Affordable Housing to be provided. The Affordable Housing should be 'pepper-potted' throughout the development and the design standards applied should mean that there is little, if any, difference between the Affordable Housing and the open market housing.

Where Affordable Housing is being provided on an 'Exception' site in a rural location, the justification of the number etc. of Affordable Housing is only part of the challenge to be faced. There is frequently a range of views regarding the provision of Affordable Housing in rural locations.

It is important to seek community engagement with the provision of Affordable Housing. Rural Enablers can play a useful role in this process working with Parish Councils and local groups from a very early stage and involving them in the assessment of housing needs and the identification of appropriate sites for the Affordable Housing.

The production of information on the housing needs assessment, the sites being considered and proposals for the provision of Affordable Housing plays an important role in gaining community engagement for the provision of Affordable Housing. Councils and their development partners should also invest time in holding 'Housing Fairs' in the village etc. where proposals are displayed and staff are available to discuss concerns/provide factual information. The views of local people should be sought and where possible built into the proposed design etc. In these ways community engagement with the provision of Affordable Housing will be built

In the case of Special Needs Housing it is frequently the case that concerns are raised without a clear understanding of either the proposed development or the special needs to be met. An implicit and prejudiced evaluation of the proposal is triggered in some people's minds without factual knowledge or understanding of the needs to be met.

As with 'Housing Fairs' for the provision of Affordable Housing in rural areas Councils need to invest time in raising awareness of the proposed development, the needs to be met and the issues of local people before a planning application is made. In this way issues can be surfaced and addressed, the scheme's design can respond (if appropriate) to local suggestions and local concerns can be assuaged. This approach is more likely to achieve community engagement with the proposed provision of Special Needs Housing than relying on a planning application to stimulate local objections.

KEY QUESTION:

Does the Council invest sufficient time and effort to achieve community engagement with proposed Affordable Housing developments prior to the submission of planning applications?

9. THE DEVELOPMENT MIX:

The Development Mix consists of those primary elements required to achieve Affordable Housing in practice. They are land, planning consent, subsidy and development partners. Each is explored in turn below:

a. Land.

Planning considerations regarding land are covered in the next section. This section deals with finding and evaluating the suitability of land. The Council's role as landowner has already been covered in this Guide.

Without land there is no development of Affordable Housing. This simple statement has featured in the Deputy Prime Minister's comments in relation to the Government's initiatives for tackling the Affordable Housing crisis in the South East. Growth areas have been identified in the South East with Milton Keynes designated as the growth area within the ACTVaR sub-region.

The issue for Councils in the ACTVaR sub-region is what happens outside of the Milton Keynes growth area?

There is a continuing and significant Government emphasis on re-developing previously developed land. In considering such land a major issue is the degree to which it is contaminated with substances that are likely to be harmful to health and the environment. District and Unitary Councils have a register of contaminated land which should indicate the categorisation of the land according to the level of risk.

These categories at this point in time are often indicative and based upon desk research. Specific site investigations are often required to be undertaken to establish the nature, level and location of contamination.

These investigations cost money and take time. Similarly any works of remediation can cost significant amounts of money and take time. Increasingly these costs and time will need to be considered as part of the evaluation of the suitability and value of sites.

In rural areas land within development envelopes is at a premium and very expensive to purchase. The use of this land for Affordable Housing generally relies on seeking a proportion of the land area or an agreed proportion of the number of dwellings to be built as per the Local Plan. *As with non-rural areas the value of the land for Affordable Housing is less than that for open market housing because of the constraint that it can only be developed for Affordable Housing.*

Outside of development envelopes in rural areas there is often a significant challenge to find landowners willing to sell land at a small multiple of agricultural value for Affordable Housing. 'Hope' value often attaches itself to land outside of development envelopes. Landowners also mistakenly believe that they will be able to do a trade off to allow them to sell land for open market housing if they sell land for Affordable Housing.

'Exception' sites in rural areas must be sustainable in that they must not contribute to rural social exclusion through lack of public transport, access to shops, health services, employment, education services etc. They can of course contribute to the sustainability of communities through introducing new families to support local schools, shops etc.

Government has identified Affordable Housing in rural areas as one of its priorities. The development of small rural 'Exception' sites, however, is often expensive due to the small number of dwellings built. Councils have a significant role to play in working with Parish/Town Councils, local communities and RSLs to seek to identify and aggregate rural 'Exception' sites to seek both to gain development economies of scale and SHG allocations. The Housing Corporation is more likely to allocate SHG to schemes delivering higher numbers of dwellings at lower unit costs across a number of sites than smaller schemes at higher unit costs on single sites.

The provision of Affordable Housing in rural areas has often been opportunistic based upon RSLs identifying potential sites and putting forward development proposals. Where this has been the case the development programme has not necessarily reflected the housing need priorities in the Council's Housing Strategy and has sometimes led to the provision of Affordable Housing in locations where the housing need is not the highest priority.

Whilst accepting that the provision of any Affordable Housing is better than none, it is important that Councils take a strategic view and seek to proactively work to identify sites to reflect the priorities in their Housing Strategies. Opportunistic site identification needs to be put within the

context of the Council's priorities. If this is not done development becomes ad hoc and is site led rather than needs led.

A way of moving from an opportunistic approach to a more strategic/needs led approach is by the use of Compulsory Purchase Orders (CPO's). Councils should actively consider the use of CPO's for the acquisition of land where there is an identified housing need that cannot be met through agreements to buy land from land owners. Whilst the process of achieving CPO's is currently lengthy and involved their use will send a clear message to all landowners and communities that the Council intends to use the powers available to it to achieve Affordable Housing. Government is currently reviewing the use and processes associated with CPO's and it is hoped that their use will become simpler and shorter.

In some urban areas there is a concentration of Affordable Housing. Councils may consider that the provision of further Affordable Housing in that area would not be desirable. In these exceptional circumstances Councils may wish to negotiate a developer contribution in lieu of the provision of Affordable Housing on the site.

The key issue is that it is not a unilateral developer decision whether to provide a contribution rather than provide Affordable Housing on a site. Developers would frequently prefer not to provide Affordable Housing pepper-potted throughout their sites as they believe that this may detract from the saleability and prices/profit they can achieve from the properties provided for open market sale. Any decision regarding the appropriateness of a developer contribution (and the size of any such contribution) should result from a negotiation and agreement between the Council and the developer.

In considering whether or not a developer contribution is appropriate Councils need to determine whether alternative sites will be available for the provision of Affordable Housing. In rural areas in particular it might prove extremely difficult to identify such sites.

Given the sub-regional nature of housing markets some Councils might feel it appropriate to contribute the developer contributions from a site within their area to a development in an adjoining area. This would be appropriate where site identification in the Council's area is problematic.

KEY QUESTION:

Has the Council identified all potential development sites for Affordable Housing within its area?

b) Planning consent.

i. Background:

The Local Plan provides the framework for the availability of land for development for Affordable Housing. It identifies the land that would normally be available within the development envelopes of settlements and the criteria that have to be met for consideration of developments on 'Exception' sites. It also provides a framework for the criteria of acceptable development in terms of design quality, environmental impact, sustainability etc. These criteria, particularly where developments are proposed in conservation areas, can add significantly to development costs and the need to ensure that planning issues are fully addressed before a formal application is made.

The approach to obtaining planning consent should, wherever possible, be based upon a partnership approach with Housing Services and its development partners involving the Planning Service as early as possible. In this way planning concerns and requirements in relation to proposed developments can be highlighted and addressed. This is also the case in relation to the involvement of local communities.

The value of land is a product of the planning consent attached to it. Land owners, developers, Councils, RSLs and local communities often have different views about the value that should attach to land. Planning consent and the Affordable Housing that it delivers is often a negotiated outcome. These negotiations culminate in a Section 106 Agreement.

Whilst recognising that local negotiations result in local Section 106 Agreements there is merit in seeking to have as much consistency as possible in the format and content of them. This Guide seeks to go some way towards this in the following section and Appendix One.

RSLs and developers are increasingly working in more than one Council's area. This results in individual negotiations. It would be extremely useful if Councils shared information about what they have been able to achieve under these local negotiations. Councils would be in a much more informed position when entering negotiations if they knew that what they were proposing had been accepted by RSLs and developers in another Council.

ACTVaR is proposing to launch an Information Exchange for Affordable Housing. It is hoped that Councils will co-operate, within the constraints of confidentiality, in providing information about good practice and what has been negotiated under Section 106 Agreements.

ii. Section 106 Agreements:

The details below explore the role and content of Section 106 Agreements and their negotiation:

The legal definition of a Section 106 Agreement:

An agreement created under Section 106 of the Town and Country Planning Act as amended by Sections 106A, 106B and 106C of the Planning and Compensation Act 1991.

What do they do?

Section 106 agreements create planning obligations to be generally performed as a consequence of the grant of planning permission. They fall into four categories:

- 1) restricting the development or use of the land in any specified way
- 2) requiring specified operations or activities to be carried out in, on or under or over the land
- 3) requiring land to be used in any specified way – *i.e. for affordable housing*
- 4) requiring sum or sums to be paid to the authority on a specified date or dates or periodically – *i.e. contributions in lieu of the provision of affordable housing*

Hence, the commonest method of securing the provision of affordable housing associated with the grant of planning permission is the use of the 'Section 106' agreement.

Who can enter into an agreement?

The agreement is usually between the Local Planning Authority (LPA) and any party with an interest in the land. Occasionally a party with an interest in the land will covenant to perform planning obligations without involving the LPA using unilateral agreements.

It is best practice to always join in the freeholder of the land even if the applicant is a leaseholder so anyone subsequently purchasing the property is bound by the agreement. This is particularly important for the provision of affordable housing.

Providing a developer has an interest in the land, a conditional contract to purchase subject to planning permission is sufficient, they too can be bound into the agreement. This is important if the developer intends to construct the affordable housing for an unidentified RSL.

How do they work?

A Section 106 agreement is a contract between those parties to the agreement but once created, the obligations bind the land so any successors in title to the interest of the original parties are also bound by the obligations until they are discharged.

The obligations are enforceable by the LPA using an injunction or by the LPA undertaking any works required by an obligation entering onto the land.

Early Preparation is the Key to Success:

A criticism often levelled at LPAs by developers is a haphazard approach to the identification of planning obligations during the planning application process.

The early identification of all community infrastructure contributions is key to a strong LPA negotiating stance. Presenting the applicant with a complete schedule of requirements at the outset of negotiations, together with a draft form of Section 106 agreement indicates the LPA is commercially minded and knows what it wants.

Identifying Sites to Provide Affordable Housing:

Potential sites will be those identified in the Local Plan and 'windfall' sites.

It is important with windfall sites for the LPA to assess quickly the potential of such sites for the provision of housing or whether a contribution in lieu of affordable housing will be appropriate.

Individual authorities will have their own individual planning policy created either through their Local Plan or Special Planning Guidance to determine the above but key to future provision is close working with RSLs if sites come forward unexpectedly.

The LPA will need to know what the likelihood of funding is as this will impact on the form and extent of affordable housing to be provided and partner RSLs will be able to assist in such an assessment.

Working Internally Within the Council:

Upon receipt of a pre-application enquiry or a planning application which will attract community infrastructure contributions including the provision of affordable housing, it is important to identify and determine the extent of the planning obligations required in accordance with Circular 1/97.

Mechanisms should be in place to facilitate this and one suggestion to assist is the use of regular '**Scoping Meetings**' where sites are discussed internally with appointed representatives from Planning, Housing, Leisure, Transportation, Legal etc so officers are aware of the sites and forthcoming proposals, their impact and can create 'Heads of Terms' for a Section 106 Agreement for specific sites.

For affordable housing it will be appropriate at this stage to establish whether the provision is to be on or off site or no provision. If on site the

type and tenure and location of the affordable housing and if off-site the likely level of contribution sought.

Advising the applicant of the required 'Heads of Terms' of a Section 106 at the early stages of the planning process can result in a draft Section 106 agreement being agreed and merely awaiting consideration by Committee before being issued for signature.

Additionally, regular Officer meetings to discuss sites that are being promoted by RSLs are also helpful to identify potential planning difficulties and issues in advance of applications.

Working with Partner RSLs:

Working with RSLs to assess the appropriateness of sites and the type of accommodation required will be key to the successful delivery of the affordable housing. The Council should seek to be the intermediary in negotiations with RSLs and land owners/developers to ensure the delivery of affordable housing where needed most.

Working with the Landowner or Developer:

Landowners and developers should be actively introduced to RSLs by the Council. Issues concerning provision of Affordable Housing should be identified early on. Sites may involve high land assembly costs or be the subject of costly infrastructure. Whilst such factors ought not to impact upon the provision of affordable housing they may impact on the overall economic viability of a site and early identification of such issues will enable early evaluation of a site and the appropriate provision of affordable housing.

Establishing at the outset the requirements and the issues to be overcome to provide affordable housing allows a developer to fully assess the cost of provision and to understand the needs of the Local Authority. Early dialogues with a preferred RSL will facilitate the design of a scheme that meets their requirements as well as those of the developer and LPA.

At Appendix One are details of what should be included in a Section 106 Agreement.

iii. Supplementary Planning Guidance (SPG):

An increasing number of Councils have prepared SPG for Affordable Housing. SPGs provide information for developers, landowners, RSLs and the public on how the planning policy on Affordable Housing will be operated.

SPGs are useful not only because they provide greater clarity on the operation of the Local Plan but also because they provide a material consideration in planning law.

An SPG generally cover the financial implications of Affordable Housing provision, usage of developer contributions, mechanisms for securing long term affordability, design issues, RSL partner issues and issues in relation to the negotiation of 'Exception' sites. They cannot be used to extend the Local Plan policy and generally apply to the whole of a Council's area. This is in contrast to Development Briefs which provide site specific guidance.

KEY QUESTION:

In preparing for Section 106 Agreements does the Council:

- a. Get organised early and ensure that the Council has a 'joined-up' approach both politically and managerially.
- b. Ensure that it's clear about the Council's priorities.
- c. Ensure that it can justify its requirements based upon an assessment of needs.
- d. Recognise that the 'cake' is only so big.
- e. Adopt a practical and flexible approach recognising the need to achieve a portfolio of service provision to meet different needs.
- f. Ensure it's clear about what's got to be included and what can be negotiated.
- g. Establish credibility in negotiations and recognise if specialist input is required.

c) Subsidy.

This is an area of substantial change as Government seeks to ensure that its major source of subsidy, SHG, follows its priorities. This concentration of resources on the Government's areas of priority is witnessed by the proposed prioritisation of SHG for the regional growth areas.

A further significant change in the availability of subsidy is the change in policy to ensure that debt free Councils do not have the benefits of being able to re-cycle capital receipts through the Local Authority Social Housing Grant (LASHG) route.

This focusing of SHG means that Councils are very much in the hands of the Housing Corporation and the Regional Housing Board for accessing the SHG to meet local housing needs. Whilst some might argue that this has always been the case for Councils with debt, the real change is the increased competition for SHG now that debt free Councils do not have the ability to provide LASHG.

Whilst debt free Councils, under certain conditions, will have the ability to invest in social housing (without being able to recycle this investment via the LASHG route) it is likely that they will seek initially to support bids by RSLs and others to access SHG for Affordable Housing developments.

Competition for the available SHG (and its successor) will therefore increase. The basis of this competition will be governed by the 'Rules of the Development Game' e.g. regional priorities and the level of confidence in the ability of the RSL/developer to deliver Affordable Housing in practice.

Government has indicated that the overall level of investment in SHG will not diminish within the region. The focusing of this SHG, however, may mean that the investment levels of SHG in some Council's areas will reduce. This re-inforces the need for Councils to ensure that they both seek to influence the 'Rules of the Development Game' and seek alternative forms of subsidy actively.

It will be increasingly important for Councils to work with RSLs and other providers of Affordable Housing to seek to reduce the costs of housing provision. With all other criteria being the same it is more likely that SHG will be allocated for schemes providing the greatest value for money.

Councils may wish to pursue schemes on the basis of '**Additionality**' where Affordable Housing is provided as part of commercial developments on the basis of no subsidy being provided by the public sector. 'Additionality' will only be possible, however, where the economics of development stack up and Councils agree that it is an acceptable option to pursue. This may mean accepting the provision of less than the indicative Local Plan proportion of commercial developments being provided as Affordable Housing.

The reality of development dictates that there is a limit to the money capable of being negotiated for investment in Affordable Housing from the commercial development of sites. Councils, in the absence of SHG for a site, may determine that it is better to have some Affordable Housing rather than to have land with little prospect of gaining the subsidy required for its development. This decision can only be made locally and negotiations need to reflect local conditions.

The negotiation of developer contributions has been covered in the section above on Section 106 Agreements. Similarly, the negotiation of developer contributions in lieu of the provision of Affordable Housing on a specific site has been covered in the Land section above.

Other non-SHG subsidies include reduced land values, grant aid to the individual and employer contributions. It is for individual Councils to determine the acceptability of each form of subsidy and to play a proactive role in pursuing them.

Land values below the open market value may be capable of being achieved from landowners where they believe that they will contribute to the provision of Affordable Housing. This is different to the value of land created by a planning consent as in the case of 'Exception' sites and land constrained to development only for Affordable Housing. Regrettably

there are few community benefactors prepared to accept less than open market value for land.

Grant aid to the individual is seen in the form of the Starter Home Initiative where Key Workers (defined for the Starter Home Initiative as certain groups of public sector workers) receive interest free loans. Councils may want to pursue this option as employers and to encourage other employers to provide such subsidy to their employees. The tax implications of these schemes for the individuals concerned need to be understood before undertaking them.

Employers can also contribute in the form of making interest free loans or grants available to RSLs for the development of Affordable Housing. The employer could take an equity stake in the dwelling equivalent to the loan based upon the value of the dwelling when purchased or a negotiated equity stake based upon a net present valuation of the interest forgone over an agreed period where an interest free loan is provided.

The changes to the SHG financial regime require Councils, RSLs and other providers of Affordable Housing to become more innovative in their approach to securing the finance to provide Affordable Housing. If Councils do not play an active role in this process they could find themselves sidelined.

KEY QUESTION:

Does the Council have a strategy for securing Affordable Housing without SHG (and its successor)?

d) Development partners.

The main development partners are landowners, the commercial developer, the RSL, the Housing Corporation, financial institutions and the Council. A complex mix of organisations with differing objectives and subject to differing pressures.

In general terms landowners want the maximum price, commercial developers want maximum profit, RSLs want maximum numbers of properties, the Housing Corporation wants maximum value, financial institutions want security of lending coupled with maximum return and the Council wants maximum numbers of Affordable Housing with the infrastructure necessary to support the people occupying it.

This mix of organisations provides a heady cocktail of conflicting interests. The Council's Housing Service needs to play a leading and active role in brokering a development package that all parties can commit to achieving.

Where the landowner is the commercial developer or where the Council owns the land this complexity is reduced. Some of the partners have different levels of interest in the development. Financial institutions for example have a level of interest in direct proportion to their assessment of risk. Where they perceive a low level of risk to the security of their lending and returns their interest is low.

The achievement of Affordable Housing requires all of the development partners to accept the deal negotiated. Of particular interest for the Council is the RSL selected to own and manage the Affordable Housing to be provided.

Planning Policy Guidance 3 (PPG3) and Circular 6/98 state that as a Planning Authority the Council should not specify the RSL to be used for the provision of Affordable Housing on sites where it would be appropriate to negotiate such provision. Planning consent could not be refused on the basis of the choice of the RSL. This re-inforces the need for the Council's Housing Service to take the leading role in negotiating the Section 106 Agreement in relation to the provision of Affordable Housing.

Unless the land to be developed is owned by the Council the only way for a Council to secure the RSL they favour for a development is through negotiation. As Council's will appreciate the provision of the Affordable Housing is only part of the equation.

The provision of management and support to the occupiers of the Affordable Housing is of equal importance and Councils will want to ensure that the RSL has the resources, skills and infrastructure in place to provide the post development support and services required.

Increasingly the Housing Corporation is looking for designated RSLs to work in Council areas. Commercial developers specifying the RSL that they are to work with for a specific development should be resisted by Councils if they do not believe that the RSL can provide the post development resources, skills and infrastructure required.

Negotiations with the development partners are generally part of the negotiations for the Section 106 Agreement for the development. It is very important that the Council determines its negotiating position as early as possible and that it has a preferred RSL ready to support its negotiating position.

In the past RSLs have recognised the Council's influence in terms of either providing LASHG and/or agreeing local priorities with the Housing Corporation. The new Housing Capital Finance regime and the creation of a Regional Housing Board have removed the ability to provide LASHG and cast doubt on the influence Councils can exert on local priorities for investment. RSL's commitment to responding to the needs of Councils in a spirit of partnership could well be tested in the future.

Whilst recognising the differing drivers of the organisations involved in the development of sites and the provision of Affordable Housing, Councils should aim to create development partnerships rather than just a transactional relationship. In this way all of the development partners are more likely to achieve their objectives without the problems of delays and complexity that cost time and money.

KEY QUESTION:

Does the Council's Housing Service have access to the skills, resources and corporate capacity necessary to manage development partnerships for the provision of Affordable Housing?

10. RISK MANAGEMENT.

The process for the provision of Affordable Housing, whether the Council is the landowner or solely the Enabler, is a partnership. Partnerships are not relationships based just upon a financial transaction but upon a shared approach to risks and outcomes. Implicit in them is a willingness to be flexible, to innovate, to continuously improve performance and to trust each other.

In considering the formation of a partnership with the providers of Affordable Housing, Councils have to be very clear about the ability of the partnership to produce the outcomes agreed within specified timescales. Roles, responsibilities and the criteria for success have to be clear and agreed.

The removal of the LASHG mechanism means that for a number of Councils in the ACTVaR sub-region the basis of partnership with RSLs has changed. Those Councils are no longer providing funding directly to the RSLs. This does not mean, however, that the spirit of partnership has changed or the need to manage the risks associated with partnerships has been removed.

In many ways the situation has become more complex and Councils must ensure that the involvement (and the power) of third parties, such as the Housing Corporation, does not cause Councils to be distracted from their important Enabling Role and the need to manage risks.

Different levels and types of risk occur at different times in the partnership process for the delivery of Affordable Housing. Indeed, risks start to be developed prior to the creation of the partnership for a specific site. If risks are to be minimised/clearly understood a lot of work is required prior to the formation of the partnership.

Objectives must be clear, partner selection criteria must be developed, the risks to be managed must be identified, research must be undertaken into

potential partners and an effective selection process created. Experience has illustrated that a failure to carry out the above can create serious problems and increase risks for both the Council and the people it is trying to help.

Inappropriate partner selection is the biggest reason for the failure of partnerships in the private sector. Councils must ensure that they understand as much as possible about potential partners.

In the development process for Affordable Housing Councils are often faced with developers proposing RSLs with which they want to work to provide the Affordable Housing element of the proposed development. Councils should, wherever possible, resist the imposition of an RSL in this way.

Councils should have preferred RSL partners which have been selected after a rigorous process of evaluation. This process should have determined the risk profile of the RSL, the track record in delivery and provided evidence that the RSL is able to provide the service levels and support necessary after the development has been completed.

Government is proposing to provide SHG to organisations other than RSLs to develop Affordable Housing. It is vitally important that Councils understand and evaluate the risks associated with working with these organisations.

Analysis of annual reports and accounts is only a small part of this risk assessment of partners. Councils must understand where their Council's area fits strategically into the portfolio of housing, investment and activities of partners. Is the Council's area part of the partner's core business? Is the partner seeking to penetrate the market or extend geographical coverage or to diversify from its core business? What is its track record in delivery? Is the partner currently seeking to create many more partnerships that might undermine its ability to deliver for the Council? Does the partner have a risk management strategy? What is the partner's risk profile?

Answers to these and other questions are vital to understand a partner's approach to the partnership, to its corporate strategy, to its operational capability, to its approach to risk management, to resource investment and consequently to potential risks for the Council. Similarly, the Council needs to understand where the potential partnership with the partner fits within its strategic context as this will affect its approach to the partnership and its willingness to take risks.

Councils and partners can find it difficult to work effectively together because of cultural differences. Indeed, different cultures can exist within the same Council and inhibit partnership working within a Council, never mind with partners!

Like a marriage, how Councils and partners will work together is difficult to predict with certainty. Successful partnership working hinges on mutual trust and understanding which develops only with effort over time. Similarly, the interdependence within a partnership exposes organisations to their partners' problems and cultures. Each organisation has to think more about how its behaviour and decision-making affects the other. Qualitative as well as quantitative issues are important.

The RSL sector is undergoing consolidation as Group structures are formed. These Groups are seeking to achieve economies of scale and to leverage their overheads. They are often also increasingly diversifying into activities such as the provision of care services.

This consolidation brings potential benefits in terms of more efficient RSL partners, access to specialist skills and the opportunity to reduce operating costs. It also brings increased risks as the focus of the RSL's attention is often spread over a very wide geographic area and its focus is distracted by the diversified activities that involve higher financial and operational risks for the RSL. The benefits of Group structures and diversification have not yet been illustrated to deliver significant increases in performance. It is, however, well known that the further an organisation diversifies away from its core business the higher the risk. Councils must seek tangible evidence that RSLs operating a Group structure and diversifying have delivered sustained improved performance and reduced their risk profiles in relation to Affordable Housing provision and management.

Councils must be aware of the corporate/competitive strategy of the partner with whom they are thinking of working. They must also be alive to the fact that changes in strategy often require different leadership skills to deliver improved performance in practice. If these new skills are not introduced risk increases. If they are introduced the Council must be clear that the new leadership has an approach that is acceptable to the Council.

The risks associated with partnership working with RSLs etc. include:

- a) Risks to the Council's reputation/brand in terms of negative perceptions being generated if the partner's performance does not meet expectations within agreed timescales or partner performance elsewhere creates negative perceptions about the partner and consequently the Council.
- b) Council performance/customer relationship being undermined by the performance of the partner.
- c) The creation of expectations/demand that cannot be fulfilled.
- d) Confused accountability.

- e) The creation of a risk momentum over time so that the Council becomes committed to a partner as a major provider of Affordable Housing and it has to continue the partnership even if risks increase due to the actions or omissions of the partner.
- f) The ability to respond effectively to legislative changes and political changes at a local level are constrained by the willingness and ability of partners to change their approach.

The above list is not exhaustive. Risk management in partnership working is about much more than managing financial risks. It must be understood from the partner's perspective as well as the Council's. It is also an on-going process. Risk continues after the delivery of Affordable Housing.

Councils will enter into nomination agreements with RSLs etc. and will continue to monitor both the nominations and the service levels provided to those nominated. It is highly unlikely that a Council will not want to review a partnership where delivery of the original housing is good but post delivery service is poor. Risk is as much associated with post construction partner performance as it is with the performance to deliver the Affordable Housing initially.

Sharing risk encourages the development of shared commitment. The Council should not knowingly enter into a partnership that the partner regards as a short-term financial opportunity, whilst the Council depends on the partnership for its long-term performance.

The success of a partnership depends as much on mutual faith as it does on anything that can put on paper. It is hard to take risks in the absence of trust. The greater the risk, the more important the relationship - and the higher the management levels that must be involved.

Councils must remember that both parties must get something positive out of the partnership, that things change over time and that both parties need to be flexible and to recognise each others problems.

Councils must keep their partnerships in context and:

- a) Protect core Housing competencies/capabilities.
- b) Protect key Housing Service values/culture.
- c) Maintain relationships with key stakeholders.
- d) Prevent the disclosure of confidential information.
- e) Be clear about the total level of risk exposure with each partner that is acceptable and stick to it.
- f) Maintain a strong organisation.
- g) Protect the Council's interests.
- h) Plan for unreliable performance.

Partnership working can deliver huge benefits for the people and communities that Councils serve. Those benefits, however, will only be

delivered in practice if Councils fully understand the RSL's and others perspectives and objectives from partnership; they manage risks proactively and recognise that it is often qualitative issues that cause partnerships to fail.

KEY QUESTION:

Does the Council have a risk management strategy for partnership working with RSLs and others?

11. WHAT HAPPENS DURING AND AFTER PROVISION?

The achievement of Affordable Housing whether through development or acquisition is only part of the process as far as Councils are concerned. The Planning Service will want to assure itself that planning consents have been complied with in terms of the nature, location and numbers of properties provided and any planning issues arising out of a Section 106 Agreement have been met. It will also want to learn from the developer's perspective how the process was perceived and whether or not the service provided could be improved.

An issue for a number of RSLs and developers in relation to the Planning Service is the consistency of the service received from Councils. Whilst recognising that individual Councils have different policies to reflect local interpretations of legislation and needs, RSLs and developers want clarity of the standards to be applied and consistency of application within Council areas.

This Practical Guide provides the opportunity for Councils to achieve greater consistency of policy across the ACTVaR sub-region should they so choose. The consistent application of policies within Councils remains an issue for individual Councils.

Frequently the Planning Service is organised on the basis of geographical areas within Councils. It is vitally important that systems exist to ensure that consistency of approach is achieved between these areas. This could be achieved by nominating client managers for RSLs and developers who operate throughout the Council's area. The client manager would be responsible for ensuring the consistency of approach and act as the liaison point for application related issues.

Feedback from RSLs and developers should be welcomed and case reviews undertaken to ensure that the Planning Service learns from both the client's experience of the process and the practical results of planning consents. Whilst recognising that RSLs and developers will not always get the unfettered planning consents they might seek and that this might consequently affect their perceptions of the Planning Service, the service should nonetheless seek to learn from the client.

The Housing Service's concerns in relation to what happens during provision relate largely to ensuring that the construction process progresses to time and budget and that nominations are made to the dwellings provided.

The provision of dwellings to time and budget is vital and contributes to both Councils and RSLs being able to illustrate the efficiency of the Enabling process. This is of increasing importance given the new regime for the allocation of Government investment. It is also very important in enabling Councils to meet local housing needs.

The Housing Service will want to ensure that the nominations made under Nomination Agreements are accepted. Nomination Agreements should be clear about who the Council can nominate, the percentage of nominations, the period within which the Council can make nominations, the flexibility the RSL has to reject nominees, what happens if the RSL does not comply with the Nomination Agreement and any financial implications associated with nominations.

It will also want to ensure that the support provided by the RSL is as agreed and appropriate to the needs of the individuals nominated. This may be through the RSL operating in partnership with Social Services etc. or through the provision of services itself. The latter may be particularly important because of the Supporting People Initiative and the charges that are sometimes levied by RSLs for other services. The Housing Service has a role to play in monitoring the reasonableness of service charges along with the monitoring of rent levels to ensure that they remain within the definition of Affordable Housing.

RSLs are not just providers of housing but have a role to play in supporting sustainable communities. The Housing Service will want to know (and review) how that role is proposed to be carried out and contribute to supporting the sustainable community in practice.

The Housing Service's concerns after provision can be categorised as housing management, learning and partnership. Housing management relates to the services provided by the RSL to the persons nominated by the Council for the occupation of the dwellings provided.

Repairs and maintenance will be required to both the dwellings provided and the environment in which they are situated. The Housing Service will want to review the RSL's performance in the provision of repairs and maintenance (including more capital intensive programmed maintenance), the operation of its complaints system and its approach to the management of the environment. Similarly, the Housing Service will want to review the level of customer satisfaction the RSL is achieving.

The objectives of all of the above are to ensure that agreements between the Council and the RSL are met, that those nominated by the Council to

RSLs receive the services and support they require at an on-going affordable cost and that both the Council and RSLs learn from the provision of Affordable Housing.

The Housing Service, on behalf of the Council, has a responsibility to ensure that the people in housing need they nominate to RSLs receive appropriate services from RSLs. It also has responsibility to engage with tenants, those in housing need and communities to learn from its activities and to use that learning to improve the performance of itself and its RSL partners. In this way the Housing Service will remain confident that its Enabling Role is achieving its objective of meeting housing needs within the context of the Community Plan. It will also remain confident that the RSLs with which it remains in partnership truly deliver Affordable Housing to meet the needs of people within sustainable communities.

Partnership is the ultimate aim of the Housing Service. This partnership has to be based upon shared learning to ensure that the expectations, requirements and performance of all of the key partners are known and focused on those in housing need. In this way the need for change will be recognised before it becomes a crisis and the most economic, efficient and effective use of resources will be achieved.

The Housing Service, in determining the Panel of RSLs with which it will seek to work, must gather, analyse and evaluate information on the performance of RSLs on an on-going basis and be proactive in seeking to use that information to prompt improvements in RSL performance. This means that Councils should share information about the performance of RSLs on a regular basis.

The ODPM has made it clear that the investment priority will be the growth and other designated areas. The allocation of what is left will be made to schemes giving the best value for money elsewhere within the region (the South East is aggregated with London and the East of England). This means that Councils must play a full and active role in monitoring the delivery of Affordable Housing and ensure that they are working with RSL partners capable of delivering value for money within the region.

Aggregation of the South East with London and the East of England creates problems of comparing value for money and this underpins the need for the collecting and sharing of information. The ACTVaR sub-regional performance needs to be put within the broader aggregated regional delivery information and a case promoted for investment within the ACTVaR sub-region.

RSLs should share this commitment to information provision and should also be encouraged to communicate their perceptions about the performance of the Councils. In this way the performance of the whole Enabling process can be improved.

KEY QUESTION:

How does the Council learn from the Enabling process and ensure that learning leads to continuous improvement?

12. CONCLUSION.

Affordable Housing is fundamental to sustainable communities and requires a partnership approach to enable it to be delivered in practice. Councils and their partners need to have a clear understanding of housing needs, the willingness to recognise the reality of housing markets and the ability to deliver the housing required in practice.

Access to the resources necessary for the delivery of Affordable Housing increasingly requires the recognition of regional priorities and the ability to influence at a regional level. ACTVaR has a key role to play in this process.

This Practical Guide seeks to provide Councils with the ability to achieve consistency of approach through proposing definitions of Affordable Housing and Key Worker. It also addresses issues at both strategic and operational levels to enable Councils to improve its processes and performance.

Whilst recognising that Councils must make choices to reflect their local priorities and requirements, it is hoped that this Practical Guide can contribute to the achievement of a more consistent approach throughout the sub-region. Increased consistency is likely to increase the chances of achieving increased Government resource allocations.

As the future unfolds this Guide will be updated to ensure that it remains relevant. It is hoped that Councils will share information and experience so that all within the ACTVaR sub-region can improve their performance and enable more Affordable Housing to be provided to meet housing needs.

APPENDIX ONE

The Provisions of Section 106 Agreements

General

The Section 106 Agreement will be tailored to the specific details of the site to be bound by the agreement, the parties, the LPA policies and the manner in which the affordable housing is to be provided.

The Affordable Housing may be provided in one of the following ways:

- 1) The developer builds the affordable housing and then transfers it to an RSL.
- 2) The developer transfers serviced land to an RSL and pays a commuted sum to the Council.
- 3) The Developer pays to the Council a sum of money to facilitate the provision of Affordable Housing.
- 4) Affordable Housing provided and managed by developer with no RSL involvement.

Each LPA will determine the most appropriate mechanisms for its own area.

Recommended Standard Affordable Housing Clauses for Section 106 Agreements – issues to be covered:

Whilst it is recognised that all LPAs will have their own style of drafting and form of Section 106 Agreements, the agreement's content will need to cover certain key principles as well as specific local circumstances. Circular 06/98 provides guidance on the issues to be considered when securing Affordable Housing as part of the planning obligations.

In particular the following should be considered when drafting the Section 106:

Definition of Affordable Housing

Whilst Circular 06/98 recommends that the tenure of Affordable Housing ought not to be defined in a Section 106 Agreement LPAs do make provision for the tenure of the units in certain circumstances since this impacts upon the affordability of Affordable Housing.

Long Term Provision

The Affordable Housing to be provided must remain Affordable Housing in the long term, i.e. in perpetuity.

Occupancy Criteria and Nominations

The criteria by which a person may occupy the Affordable Housing must be clearly set out in the agreement. This will reflect each Council's housing policy and will take into account the Housing Needs Register of the council together with any other criteria for example such as residency in the district or borough, strong local connection, living in non self-contained accommodation etc as the Council determines.

Exclusion from Right to Buy

Where appropriate consideration should be given to the exclusion of Affordable Housing from any Right to Buy in favour of the occupiers of the Affordable Housing or from any other mechanism which would result in the Affordable Housing being sold on the open market.

Mortgagee in Possession

Only a mortgagee in possession of the Affordable Housing as a whole should be permitted to take free of the obligation to provide Affordable Housing. The agreement must make such provision to permit RSL to obtain funding in the market place thereby allowing a funder, as a last resort to sell the properties if the RSL has financial problems. However, such a release need not operate in respect of individual units of Affordable Housing

Design Considerations

The Affordable Housing units must be constructed to the requirements of the Housing Corporation and the RSL identified to acquire the units (where units are to be constructed)

Developer Obligations

The developer should always be required to provide a programme and timetable for provision of the Affordable Housing to be approved by the LPA before the commencement of development except when only a financial contribution in lieu of provision is sought.

None of the dwellings to be sold or let on the open market to be occupied until the developer has either:

- a) entered into an unconditional contract with the RSL for the construction and transfer of the constructed Affordable Housing.
- b) entered into an unconditional contract for the transfer of the land to provide the Affordable Housing.

It may be necessary for practical reasons to permit a small percentage of dwellings to be occupied in advance of the provision of the Affordable Housing but it is recommended this be no more than 50%.

In the event of the developer being unable to comply with the requirement to transfer units or land to an RSL there needs to be a mechanism whereby the Council are notified and are required to comply with an alternative method of provision. (This is a provision that requires careful consideration to ensure that the developer and LPA actively work towards securing the Affordable Housing without waiting for what may appear to be an easier course of action to be followed)

Conclusion

Whilst the drafting of Section 106 Agreements is very much a matter of individual style, upon analysis the same issues in respect of the provision of Affordable Housing are required.

The key to negotiating a Section 106 is early preparation, an understanding by officers of what needs to be achieved and how together with close working with the RSLs who will ultimately take over the Affordable Housing.

APPENDIX TWO

FURTHER READING AND WEBSITES:

Affordable Housing and Sustainable Communities

Sustainable communities: building for the future
Office of the Deputy Prime Minister, 2002

<http://www.odpm.gov.uk/communities/plan/main/index.htm>

Rural Housing Signposts: the path to better delivery of Affordable Housing

Local Government Association & The Countryside Agency, February 2003

www.lga.gov.uk

Housing Strategies and Planning

Effective Housing Strategies & Plans:
ODPM & Chartered Institute of Housing

<http://www.housing.odpm.gov.uk/local/stratsandplans/index.htm>

Developing Housing Strategies in Rural Areas: a good practice guide
Chartered Institute of Housing, 2002

www.cih.org

Planning Gain and Affordable Housing: Making it Count by
Crook, Currie, Jackson, Monk, Rowley, Smith and Whitehead, Joseph
Rowntree Foundation 2002

www.jrf.org.uk

Affordable Homes for South Shropshire's People
South Shropshire District Council, December 2002

www.southshropshire.gov.uk

Delivering Affordable Housing Through Planning
DTLR, February 2002

www.odpm.gov.uk

Working Together - A Guide for Planners and Housing Providers
The Royal Town Planning Institute (2001), Thomas Telford Publishing,
London

Delivering Affordable Housing Through the Planning System
RICS Policy Unit in association with the Housing Corporation (2001)

Delivery of Affordable Housing Through Planning Obligations
Orbit Housing Association in association with the Housing Corporation
(2001)

The Rules of the Development Game

Government Office for the South East & The Housing Corporation: South
East Regional Housing Statement, Good Practice Guidance & Maps:

<http://www.go-se.gov.uk/key%20business/housing/housingrhshf.htm>

Regional Housing Forum – Membership & Minutes:

<http://www.go-se.gov.uk/key%20business/housing/housingrhf.htm>

The South East Regional Housing Board:

<http://www.go-se.gov.uk/key%20business/housing/housingrhs.html>

The Housing Corporation

<http://www.housingcorp.gov.uk/>

National Housing Federation:

<http://www.housing.org.uk/>

Regional Planning Guidance for the South East:

<http://www.go-se.gov.uk/key%20business/planning/planningindex.htm>

Definition of Affordable Housing

Planning Policy Guide Note 3: Housing:

<http://www.planning.odpm.gov.uk/ppg3/index.htm>

Circular 6/98 – Planning and Affordable Housing

http://www.planning.odpm.gov.uk/circulars/06_98/01.htm

Key Workers

Housing to Underpin Economic Success
Surrey Local Government Association, September 2001

Development

Developing Affordable Housing: A comprehensive guide to commissioning and building new homes.

National Housing Federation, June 2001

www.housing.org.uk

Partners in Strategy: RSLs, the local authority strategic role and the shape of the sector

Chartered Institute of Housing, June 2001

www.cih.org