Supplementary Planning Guidance

AFFORDABLE HOUSING

ORIGINALLY ISSUED 2004
UPDATED JULY 2007

Executive Manager Planning/Development Services
Preface

This document provides Supplementary Planning Guidance for Policy DE3 of the West Lancashire Replacement Local Plan which was adopted in July 2006. This document also explains how the Council will treat PPS3, the Regional Spatial Strategy, and the adopted Joint Lancashire Structure Plan, as material considerations when planning applications for affordable housing developments are determined.

Guidance has now been produced in relation to managing the housing land supply and a future supplementary planning document will be produced on the design of development.

As a draft, this SPG was placed on deposit with the Deposit Draft Replacement Local Plan 2001-2016 for a six week period between 1st April 2004 and 13th May 2004. All the comments were considered, and the SPG adopted on 10th November 2004. A summary of the comments, and the Council’s response, is attached as Appendix 2 to this SPG.

Following a Public Inquiry into objections to the Replacement Local Plan, a minor amendment was made to the affordable housing policy. This document simply updates the SPG adopted in November 2004 to take into account this minor change as well as changes in the status of the Replacement Local Plan and the Joint Structure Plan, plus the results of the 2005 Housing Needs Study.

If you would like to discuss any aspect of this guidance, please ring 01695 577 177 and ask for:

- Planning Policy Section (Ian Gill or Peter Bradford)
- Development Control Section (John Harrison)
- Housing Needs and Strategy Section (Jonathan Mitchell)
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1.0 Introduction

1.1 This Supplementary Planning Guidance is a statement of how the Council will interpret Policy DE3 of the West Lancashire Replacement Local Plan 2001 – 2016; Policy 5 of the Joint Lancashire Structure Plan 2001-2016; Policy UR.9 of the adopted Regional Spatial Strategy; and national guidance contained within Planning Policy Statement (PPS3).

2.0 National Planning Guidance

2.1 The Government has set out a revised national planning policy framework for delivering housing objectives through PPS3 (Housing), published in November 2006. This document supports local planning authorities and other key players in the delivery of more high quality affordable housing, by providing a framework for the preparation of plan policies and other practical advice. This is in order to improve the affordability and supply of housing in all communities, including rural areas, for people who are unable to access or afford market housing, in addition to assisting people in making the step from social-rented housing, to home ownership.

2.2 The advice contained within PPS3 states that local planning authorities should specify the size and type of affordable housing, which is needed in particular locations. The range of circumstances in which affordable housing will be required should be set out, with a national indicative minimum threshold of 15 dwellings, however this can be set to a lower levels, where viable and practicable. The authority should set out the approach towards seeking developer contributions to facilitate the provision of affordable housing, with a presumption towards providing this on-site, contributing towards a mix of housing. It is also advised that in providing for affordable housing in rural communities, where opportunities for delivering affordable housing tend to be more limited, the aim should be the creation and maintenance of sustainable rural communities in market towns and villages.

2.3 In determining planning applications, PPS3 makes it clear that local planning authorities should have regard to:

- Achieving high quality housing.
- Ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular, families and older people.
- The suitability of a site for housing, including its environmental sustainability.
- Using land effectively and efficiently.
- Ensuring the proposed development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives.
3.0 **Strategic Planning Context**

**Regional Spatial Strategy for the North West (RSS)**

3.1 Regional Planning Guidance for the North West (RPG) was adopted in March 2003, and officially became part of the Development Plan, and was renamed the Regional Spatial Strategy (RSS), in October 2004. It seeks to promote an urban renaissance within the main urban areas of the region (Policy UR.1).

3.2 Policy UR9 deals specifically with affordable housing and states that development plans should address the need for affordable housing. One of the areas of greatest need identified in the policy are those affluent areas within commuting distance of the regional poles, including South Lancashire. The policy states that development plans should make provision for a range of dwelling types and sizes to meet the assessed housing needs of all sectors of the community including the elderly, those with special requirements, ethnic minorities, single households and larger families in both rural and urban areas based on up-to-date local housing needs studies. The full policy is reproduced as Appendix 1.

**Replacement Lancashire Structure Plan 2001 –2016**

3.3 The Joint Lancashire Structure Plan 2001-2016 was adopted in March 2005. This Plan does not contain a specific policy on affordable housing, although Policy 5 (Development in Rural Areas) does refer to development outside of the identified market towns being limited to that which meets an identified local need.

4. **Housing Needs Study**

4.1 The District Council commissioned a district-wide Housing Needs Survey (HNS) which was published in 2005. This survey shows that there is a significant affordability problem in West Lancashire, especially in the rural areas. The survey recommends that the overall District target for affordable housing should be 40% of the total of all new units negotiated on all suitable sites. In Ormskirk and the rural areas, because of lack of existing supply and higher house prices, it states that targets could be higher, whereas in Skelmersdale a lower percentage would be required because of the lower house prices, the existing supply and units arising from regeneration.

5.0 **West Lancashire Replacement Local Plan 2001 - 2016**

5.1 The West Lancashire Replacement Local Plan 2001-2016 was adopted in July 2006. The policies within this document are compatible with the RSS and the policies contained within the Joint Lancashire Structure Plan as well as guidance contained within PPG3. They have been tested through a Public Local Inquiry and, therefore, any planning application will be determined in accordance with them unless there are any other material planning considerations.
5.2 Policy DE3 of the Deposit Draft Replacement West Lancashire Local Plan is reproduced below:
Affordable housing development to meet the needs of local people will be permitted within the settlement areas shown on the Proposals Map provided that:

(i) a need has been identified in the local area and the proposed development would meet that need;

(ii) the affordable housing is made available for local residents in proven housing need, who cannot afford to rent or buy houses through the open housing market. The tenure of affordable units should be determined by need in the local area, and should meet local needs in perpetuity; and

(iii) the site should be in reasonable proximity to local services such as schools, shops, medical facilities and public transport, and its development should not prejudice the realisation of other key planning objectives for the development of the site or local area.

The number of affordable housing units to be provided within approved housing developments outside of Skelmersdale will be between 30% and 50% on sites of 10 or more dwellings. The tenure of these affordable units should be determined by need in the local area, and should meet local needs in perpetuity.

Within Skelmersdale the number of affordable housing units to be provided on each site will be up to 25% on sites of 10 or more dwellings. These affordable units should include a mixture of types required to meet the overall regeneration and Housing Strategy objectives for Skelmersdale.

In determining the precise level of affordable housing provision to be made on any site, regard will be had to the following criteria: (a) site size suitability and the economics of provision; and (b) the need to achieve a successful housing development.

All affordable housing proposed under this policy must be demonstrated to be genuinely affordable to those on lower incomes in the local area.

5.3 Policy DE1 of the Plan places very tight restrictions on new housing development over the Plan period, due to an identified housing oversupply. Affordable housing is, however, listed as an exception to the policy, where
schemes consist of 100% affordable housing and the affordable housing need is clearly identified.

5.4 The policy, therefore, allows affordable housing schemes in any of the District’s settlements provided they meet the criteria in the policy and all the other policies in the Plan, in terms of design etc. Policy DE3 reinforces this policy and sets out the main policy criteria that will be considered by the Council when considering affordable housing proposals.

5.5 Where market housing schemes of 10 or more dwellings are permitted within Ormskirk/Aughton and Burscough, then the Council will require 30%-50% of the units to be affordable. This will also apply in the rural areas, although given the Council’s housing policy it is extremely unlikely that such schemes will arise. In Skelmersdale the policy requires that up to 25% of the units are affordable. All affordable housing should be demonstrated to be genuinely affordable to those on lower incomes in the local area.

5.6 Set out below is how the District Council will interpret the policy in the West Lancashire Replacement Local Plan.

6 Considerations to be applied to applications involving Affordable Housing

6.1 Potential affordable housing projects need to reflect this Council’s policy and therefore applicants are strongly urged to contact the council to seek advice on the appropriate criteria for any such scheme. For general planning policy advice on affordable housing schemes and on the suitability of particular sites, interested parties should contact the Planning Policy Section.

6.2 Any queries in relation to whether there is a housing need in a particular part of the District should be directed to the Council’s Housing Needs and Strategy Section.

6.3 Any queries in relation to affordable housing required as part of a particular market-housing scheme, through a Section 106 Agreement, should be made to the District Council’s Development Control Section. They will then make appropriate enquiries with the Housing Needs and Strategy Section as required.

6.4 All appropriate contact numbers are contained at the start of this guidance.

6.5 When determining planning applications for affordable housing development the District Council will interpret the policies contained within the West Lancashire Replacement Local Plan in the following way:

**Definition of Affordable Housing**

6.6 Affordable housing in West Lancashire is defined as follows:
'Affordable housing' is defined as housing for social rent, shared-ownership or low-cost ownership, for people

- eligible to join the Council Housing Register or an RSL Housing Register, or

- for people unable to access housing for purchase or market rent through the open housing market due to the differential between local housing costs and income levels.'

Types of Affordable Housing required in West Lancashire

6.7 The District Council consider the following types of housing, depending on the circumstances, to be affordable in the local context:

Units for Rent

6.8 The West Lancashire HNS Update (2003) identifies that this tenure of housing is the major requirement to meet the needs of those on the lowest incomes in the district. These units will be normally managed by a Registered Social Landlord (RSL) and will provide 100% nomination rights to the Council on the first letting and an agreed percentage on any subsequent letting.

Shared Ownership Units

6.9 A shared ownership property is where an RSL owns a percentage of the property’s equity (with rent being paid to the RSL for this share) and the remaining equity proportion may be purchased through private finance eg a mortgage arranged with a bank or building society,

Low-cost subsidised units

6.10 This is where housing is offered for sale at a discount from full market value to local residents. This is normally expressed as a percentage of the full market value eg 30% - 50% off the full market value. Through a Section 106 agreement, the market sale price is kept low on subsequent re-sales. This maintains the availability of low-cost properties for sale in perpetuity.

6.11 Any such units provided should be affordable in the context of house prices in the local area and not just in the context of the particular site – ie should be available to those who cannot afford property in the locality. Due to high house prices in West Lancashire, it is unlikely that this option would provide genuinely affordable housing to those on lower incomes in most areas of the District without a very large discount on the market price.
In Perpetuity

6.12 The Council’s policy requires that all affordable housing provided should remain so in perpetuity. This is to ensure that an adequate stock is available to meet future local needs. The principle of affordability will be protected through a Section 106 agreement. The Council will use its best endeavours to ensure that new build RSL accommodation is available in perpetuity, which may include an exemption from ‘Right to Buy’ and ‘Right to Acquire’ regulations to maintain sustainable mixed communities, and to accord with the Council’s Local Plan policy.

Housing Need

6.13 The Local Plan policy requires that affordable housing should only be provided to meet a proven housing need. Housing need can be defined in the following ways;


- Households in housing need as defined by the Council’s Housing Allocation Scheme.

- Households in housing need as defined by an RSLs Housing Allocation Scheme, where this does not conflict with the Council’s own Housing Allocation Scheme.

- Households who would normally be unable to access the private rented or owner-occupied housing market due to the differential between local housing costs and income levels.

6.14 In all cases it must be demonstrated that there is a local need for the affordable housing. The District-wide Housing Needs Survey undertaken in 2005 clearly demonstrated that there is a need to provide affordable housing throughout West Lancashire, especially in the rural areas and in Ormskirk and Burscough.

6.15 The amount of housing need in West Lancashire will be defined through regular updates of the District-wide HNS and through more localised surveys where necessary. The Council’s Housing Needs and Strategy Section will advise on whether there is an identified housing need in any particular area of the District.

Locations for Affordable Housing

6.16 Schemes consisting of 100% affordable housing will be acceptable, in principle, in any settlements within West Lancashire that are not within the Green Belt, subject to a proven need being established.
6.17 In terms of areas of open land on the urban fringe covered by Policy DS4, affordable housing will be considered acceptable provided there are no other acceptable sites within the settlement area, or that local needs could not be met in a nearby settlement. If this is the case then an assessment should be made of all the open land areas within the settlement with priority being first given to sites close to the village centre and secondly sites which may contain problems of dereliction due to former glasshouses. A separate guidance note covering this sequential approach is set out in Appendix 4.

6.18 The conversion of rural buildings in the Green Belt for affordable housing will be acceptable [Policy DE1(f)] provided the building is in a less remote location – ie on a bus route and relatively accessible to retail, school and other service facilities. In other circumstances in the Green Belt, Policy DS2 of the Replacement Local Plan states that only very limited affordable housing for local needs will be permitted if there are no sites available within areas excluded from the Green Belt. This would need to include an assessment by the applicant of nearby settlements and any areas of open land on the urban fringe, designated by Policy DS4.

**Affordable Housing as part of a Market Housing Scheme**

6.19 Policy DE3 of the West Lancashire Replacement Local Plan requires that, for sites of 10 or more dwellings, then the number of affordable housing units should be between 30% and 50% on sites in Ormskirk/Aughton, Burscough and other rural settlements and up to 25% in Skelmersdale. In Skelmersdale these units should include a mixture of types required to meet the overall regeneration and housing strategy objectives for the town. Elsewhere the affordable units should be either for rent, be low-cost subsidised units or shared ownership units, or a mixture of these tenure types. The Council will require the affordable housing to be provided on the site in question, and only in exceptional circumstances would the Council consider a commuted sum, for the affordable housing to be provided off-site, to be appropriate.

6.20 The Council will need to enter into a Section 106 agreement with developers to ensure the affordable housing is provided on site. Developers are advised to seek advice at an early stage on the affordable housing aspects of a development proposal. The Council would strongly advise applicants to provide a unilateral Section 106 agreement with any planning application to ensure that their application can be dealt with as speedily as possible, and a model agreement is attached as Appendix 2 to this SPG. Negotiations on affordable housing should be conducted through the Development Control Section, who will take advice from the Council’s Housing Needs and Strategy Section and Planning Policy Section as appropriate.

**Determining the Precise Level of Affordable Housing**

6.21 As explained above the Council require up to 25% of dwellings in Skelmersdale and between 30 and 50% in all other settlements to be affordable on sites of over 10 dwellings. The penultimate paragraph of the
policy explains that the exact percentage will take into account the size of the site, the suitability of the site, the economics of provision and the need to achieve a successful housing development. Therefore on sites that are large (ie 20 or more dwellings) and well located in terms of local services, and where there are no significant additional costs involved in developing the site, the Council will expect the developer to provide the maximum 25% in Skelmersdale and 50% elsewhere. However if there are known problems of contamination or poor ground conditions that require abnormally expensive treatment then the Council may be willing to accept a lower percentage down to a minimum of 10% in Skelmersdale and 30% elsewhere.

6.22 The Council may be willing to accept a lower percentage on smaller sites (ie 10 to 19 dwellings) where the provision of affordable housing would affect the viability of a scheme. In Skelmersdale there may be occasions when the Council will only require a very small percentage (eg 10%) if it is in the interests of promoting a balanced mixed tenure within a particular area, for example within an area where there is already a good supply of low-cost and social housing. In other parts of the District a lower percentage (eg 30%) will only be acceptable if there are severe constraints due to the size of the site or if there are any abnormal costs involved in developing the site.

6.23 In determining the exact level the Council will always ask for the maximum amount unless the developer provides convincing evidence that this would make the scheme unviable or would reduce the quality of development to an unacceptable level. The Council will, therefore require a detailed financial appraisal that they will audit before agreeing to any reductions in provision of affordable housing below the maximum stated in the adopted policy.

Section 106 Agreements

6.24 A Section 106 agreement is a legal agreement between the developer/landowner and the Council, and is the means by which the Council controls the affordability of the dwellings provided either on a site of 100% affordable housing or where the affordable housing is provided within a market housing scheme. The Section 106 agreement will normally cover the following points:

- A description of the affordable units and the mix if appropriate

- A price fixing mechanism and monitoring mechanism for resale units to ensure the provision of affordable housing in perpetuity

- A property marketing mechanism for low-cost market units for sale

- A description of who is eligible to purchase units (if appropriate)

- A right for the Council to nominate either property purchasers or potential tenants (as appropriate)
Provision of a variation mechanism to assess or change the agreement scope.

6.25 In all cases, applicants are advised to provide a unilateral Section 106 agreement with their applications, to ensure that their application can be dealt with as speedily as possible. A model agreement is attached as Appendix 2.
APPENDIX 1

Regional Spatial Strategy – Policy UR.9
• ensure that land allocated is brought forward so that the re-use of previously-developed urban land and buildings is promoted as a priority while ensuring the provision of sufficient land for housing in the wider sub-region; and

• an awareness of the potential housing land provision and policy framework in place in adjoining local authority areas is essential to ensure that a sub-regionally consistent approach is adopted that does not allow urban renaissance in other districts to be undermined by the early release of land.

The sub-regions referred to above are: the Merseyside area (including Halton); the Greater Manchester area (including Warrington); Cheshire; Cumbria; and Lancashire.

5.37 With this in mind, the local planning authorities will have to commit to ensuring that none of them will pursue development plan allocations or grant planning permissions which result in the over provision and early release of open land in one district to the detriment of urban renaissance in other local authority areas.

5.38 Regular housing provision studies, undertaken jointly by groups of local authorities together with the house building industry and other parties to take account of sub-regional circumstances, should replace existing housing land availability studies. This would allow for monitoring of the development of brownfield and greenfield sites, enable urban potential study assessments to be rolled forward and the provision of housing land supply to be assessed, and also monitoring density of development and the contribution from windfall sites.

Policy UR9 Affordable Housing

Development plans across the North West should address the need for affordable housing. It is anticipated that the greatest need will be in:

• market towns and the more accessible and scenic rural areas of Cumbria, particularly the Lake District National Park and adjoining areas to the South and East;

• villages in remoter rural areas; and

• particularly affluent areas within commuting distance of the Regional Poles including Stockport, Trafford and parts of North Cheshire and South Lancashire.

Development plans should make provision for a range of dwelling types and sizes to meet the assessed need of all sectors of the community, including the elderly, those with special requirements, ethnic minorities, single households and larger families in both rural and urban areas, based on up-to-date local housing needs studies. They should do this in accordance with national planning policy, as currently expressed particularly in PPG3 (Housing) and Circular 6/98 (Planning and Affordable Housing), and:

• indicate how many affordable homes need to be provided and make proposals for their provision on particular sites;
• indicate the type of affordable housing necessary in the context of their own area, provided this does not exclude any particular type of affordable housing taken into account in local studies;

• indicate how an element of affordable housing would be sought in all substantial housing schemes;

• consider the use of local connections criteria, where appropriate, and conditions on planning permissions and planning obligations to support the provision of housing to meet local needs;

• address the development of affordable housing to meet identified local needs as an exception to normal planning policies in rural areas where there is a demonstrable shortage of such housing which cannot otherwise be met;

• address the need for affordable housing in rural settlements with populations under 3,000 by seeking contributions even on the smallest sites;

• permit the sympathetic conversion of other buildings to residential use, particularly traditional farm buildings and under-used commercial premises not required for employment purposes; and

• seek to ensure that affordable housing provided can be secured and will be available in the long term.

5.39 An adequate supply of good quality affordable housing is essential to the quality of life and economic well being of the Region's residents. The North West Regional Housing Need and Demand Research suggests that the predominance of low house prices in the North West belies the need for affordable new housing in many parts of the Region, although market pressure caused by demand for holiday, retirement and commuter homes renders some areas prohibitive to those on modest or low income. Many people raised in the locality are likely to find it more difficult to live or remain in the countryside or to enter the housing market. This can create a serious imbalance in the population of certain communities and reduce the workforce available to rural businesses.

5.40 By creating a greater choice of housing types the land-use planning system can help to increase the supply of both social and low-cost market housing, aid social inclusion and create more balanced communities. The aim is to redress the imbalance in affordable housing provision and ensure that where need cannot be met, for example due to a lack of resources available to social housing providers, the shortfall will not be made up by additional market housing provision. This approach also reflects the principles of 'Plan, Monitor and Manage'.

5.41 The North West Regional Housing Need and Demand Research indicated an approximate 30% growth in households in the rented sector, based on continuation of current patterns of tenure. It is possible that this may translate into a considerable demand for affordable housing, unless the economic situation of householders improves, thus placing a considerable
demand upon the private, local authority or Registered Social Landlord sectors with the remainder made up of low cost, owner occupied, market housing.

5.42 Circular 6/98\(^{21}\) requires that development plans define the type of affordable housing appropriate to their own area, provided this does not exclude any particular type of affordable housing taken into account in local studies. Where up-to-date local housing needs studies point to a shortage of affordable housing, development plans should reflect local circumstances. The provision and management of affordable housing will need to be backed by considerable resources from both the private and public sectors.

5.43 Isolated countryside residential development for farm or forestry workers may be justified in certain circumstances, in line with PPG\(^{22}\).

**Policy UR10 Greenery, Urban Greenspace and the Public Realm**

Local authorities and other agencies should identify the urban areas in need of more greenspace, and in response develop appropriate strategies for the design, management, maintenance and enhancement of the public realm and urban greenspace with an emphasis on:

- driving up significantly the overall quality of the public realm, especially in city and town centres;
- enhancing the setting of local residential neighbourhoods in built-up areas;
- increasing the overall stock of urban trees; and
- improved accessibility and community safety.

Development plan policies should create and enhance urban greenspace networks by:

- ensuring adequate protection is given to key features such as parks, linear walkways, river valleys, canals and public open spaces, and
- identifying the areas where new physical linkages between these areas need to be forged.

Local authorities and others should also encourage patterns of development which maintain and improve air quality and minimise the impact of light and noise pollution upon the public realm. Good lighting of the public realm and urban greenspace should be secured in order to ensure safety. Tranquil zones should be identified, sustained and extended as part of the plans to enhance urban greenspace networks.

5.44 The creation of attractive, safe, well planned and maintained public spaces and the promotion of patterns of growth and types of development that aim to improve tranquillity in urban areas can make towns and cities more attractive places to live and work, in line with the broader aim of achieving an urban renaissance in the North West. Networks of urban

\(^{21}\) Circular 6/98 Planning & Affordable Housing, DoE, 1998

\(^{22}\) PPG7: The Countryside: Environmental Quality and Economic and Social Development, DoE, February 1997
APPENDIX 2

Model Section 106 Agreement

The attached document can be downloaded from the Council’s website (www.westlancsdc.gov.uk)
WEST LANCASHIRE DISTRICT COUNCIL

- and -

[Your name/company]

PLANNING AGREEMENT

for the provision of public open space and children's play facilities and affordable housing under the Town and Country Planning Act 1990

Section 106

at land (insert Site name & Location)

G L Rowe
Council Secretary
and Solicitor
West Lancashire District Council
52 Derby Street
ORMSKIRK
Lancashire L39 2DF

Planning Ref. [WLDC to insert]
THIS AGREEMENT is made the day of 2004

BETWEEN WEST LANCASHIRE DISTRICT COUNCIL of 52 Derby Street, Ormskirk, West Lancashire L39 2DF ("the Council") of the first part and [Your name/company], as set out in Appendix A (attached hereto) ("the Owner")

WHEREAS:

(1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 ("the Act") for the area within which the land edged red on the plan annexed hereto ("the Red Land") is situate and is the Local Planning Authority by whom the obligations herein contained are enforceable.

(2) The Owner is the registered proprietor of the Red Land being areas of land [insert site location/address] which land is registered with Title Absolute at HM Land Registry Lytham under Title Numbers [insert] and

(3) An outline planning application reference [insert by planning dept] dated [insert date] (edged and hatched green on the plan annexed hereto) and a full planning application reference [insert by planning dept] dated [insert date] (edged and hatched purple on the plan annexed hereto) were made for the erection of residential development on the Red Land ("the Development")

(4) By the applications the Owner has applied to the Council for approval of the Development

(5) The Council is desirous of granting both planning permissions for the Development outlined in recital (3) above subject to the proper restriction and regulation of the Development as is intended to be secured by the covenants hereinafter appearing.

Definitions

In this Agreement unless the context requires otherwise the following words and expressions shall have the respective meanings as set out opposite them:-

"Net site density" includes only those parts of the Red Land which will be developed for housing and directly associated uses.
This includes access roads within the site; private garden space; car parking areas; incidental open space and landscaping; and children’s play areas. It includes open spaces serving a wider area and significant landscape buffer strips.

"Affordable Housing Units" such dwellings provided by way of either low cost for sale (ie. A minimum of 30% to 50% below market value unless agreed otherwise), shared ownership or affordable rental or any combination thereof as shall be made available to a Local Resident in proven housing need who cannot gain access to housing through the open market.

"Local Resident" a person satisfying one or more of the qualifying criteria (a) ordinarily resident in the West Lancashire District Council Wards of [insert local wards]; or (b) having strong local connections with the West Lancashire District Council Wards of [insert local wards] by virtue of either close family association, employment or past period of residence and is the subject of a Nomination Agreement referred to hereafter.
"Registered Social Landlord" such organisation as is registered under
Section 1 of the Housing Associations
Act 1985 and has been identified to and
approved by the Council’s Executive
Manager of Housing Services or his
nominee

NOW THIS DEED WITNESSETH as follows:-

1. THIS AGREEMENT is made pursuant to and is a planning
obligation for the purposes of Section 106 of the Town and Country
Planning Act 1990.

2. THE Council hereby grants outline planning permission in respect of Application No
[insert number] and full planning permission in respect of Application No. and formal
notices to that effect are annexed hereto.

3. THE Owner hereby covenants with the Council so as to bind the Red Land into whosoever
hands the same may come but not so that the Owner shall be liable for any breach of any
of the covenants after it shall have parted with its interest in the Red Land or any part
thereof to which such breach relates (except for any antecedent liability) as follows:-
(i) to provide within the Red land, areas of land which shall be used
for the purpose of Public Open Space and for no other purpose
(hereinafter referred to as the “Public Open Space”) at a standard of
0.1 hectare for every [xNo – insert according to Council’s latest standard] housing
units erected on any part of the Red
Land
(ii) to implement a landscaping scheme on each area of Public Open
Space in accordance with a detailed specification and timetable (which
shall be determined in accordance with the proposed phasing of the
Development) that shall be agreed with the Council prior to
the commencement of any building operations on the Red Land
(iii) to erect children’s play equipment in the proposed Development within the agreed
areas of Public Open Space in accordance with a specification and timetable of
implementation (which shall be determined in accordance with the proposed phasing of the Development) that shall be agreed with the Council prior to the commencement of any building operations on the Red Land

(iv) to provide or procure a Bond equivalent to the sum of laying out and landscaping the Public Open Space and providing play equipment thereon, such Bond to be provided to the Council prior to the commencement of any building operations on either part of the Red Land

(v) within 28 days of the completion of each area of Public Open Space, including the implementation of the agreed landscaping scheme and the provision of children’s play equipment all to the reasonable satisfaction of the Council, each area jointly or separately shall be transferred (with full title guarantee, free of incumbrances) to the Council

(vi) within 28 days of the approval of each area of Public Open Space as confirmed in writing by the Council, pay to the Council, within 7 days of such written confirmation, a commuted sum being the cost to the Council of maintaining that area of Public Open space for a period of 7 years from the date of such written confirmation. In default of such payment the sum shall increase at the rate of 4% per annum above the base lending rate from time to time of Lloyds Bank Plc from the seventh day following written confirmation until the payment is made to the Council.

(vii) to ensure that the overall net density of the Development on the Red Land is not less than 40 housing units per hectare

(viii) to erect or cause to be erected no later than the completion of the construction of 25% of the total number of housing units comprising the Development (or such extension as the Council may grant upon the request in its absolute discretion) a specified number of Affordable Housing Units the total number of which shall constitute not less than [insert agreed % figure]% of the total number of housing units constructed on the Red Land

(ix) the occupation of all of the Affordable Housing Units shall be limited to applicants in assessed local housing need Residents, in accordance with a detailed scheme of sale or
tenure that shall previously have been approved by the Council prior to the commencement of any building operations on the Red Land

(x) the developer shall include a Registered Social Landlord for the provision of the Affordable Housing units in the case of Affordable Housing Units which are provided by way of rental or shared ownership, or any combination thereof.

4. THE Owner hereby further covenants with the Council to give two calendar month's prior notice in writing of any proposed change in ownership or occupation of the whole or any remaining part of the Site and to provide the Council with such reasonable information as may be required to ascertain whether there has been a breach or breaches of the hereinbefore recited covenants.

5. THE expressions “the Council”, “the Owner”, and “Registered Social Landlord” shall include their respective successors in title and assigns.

6. THIS Agreement is made further pursuant to the Local Government (Miscellaneous Provisions) Act 1983 Section 33 and the parties hereto hereby agree that the covenants on the part of the Owner and the Registered Social Landlord shall be enforceable without any limit of time against any person deriving title from the original covenant or in respect of their interest in the land and any person deriving title under it in respect of any lesser interest in the Site as if that party had also been an original covenanting party in respect of the interest for the time being held by him.

7. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties Act 1999 (“the Act”) to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.
FIRST SCHEDULE

(a) If the Owner at any time fails to perform or observe any of the conditions stipulations or obligations on their part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Owner’s estate or if the Owner is being wound up or if the Owner enters into a composition or scheme of arrangements (otherwise than for the purpose of reconstruction or amalgamation) the Council may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Surety notice in writing (the “default notice”)

(i) specifying the work (the “default work”) to be carried out in order that the Open Space Scheme may be executed or completed as the case may be in accordance with the approved details under this Agreement; and

(ii) containing an estimate by the Council of the cost of carrying out the default work (hereinafter referred to as the “default cost”)

(b) Within twenty-eight days after the Surety has received the default notice the Surety shall:

(i) pay the default cost to the Council, or

(ii) send to the Council notice in writing (hereinafter referred to as the “Surety’s counter notice”) of the intention of the Surety to carry out the default work

(c) If the Surety having sent the Surety’s counter notice to the Council fails to start the default work within fifty-six days after the Surety received the default notice the Surety shall forthwith pay the default cost to the Council with simple interest thereon at the rate of 4% per annum above the base lending rate from time to time of Lloyds Bank Plc calculated from the date on which the Surety received the default notice.

(d) If the Surety having sent the Surety’s counter notice to the Council starts the default work and the said work is not completed within four months after the Surety’s counter notice was received by the Council or within such further period as may be agreed by the Council the Surety shall subject to sub-clause such sum as the Council may determine as being the cost of
carrying out any default work not carried out by the Surety and or the 
commuted sum and also pay to the Council the amount determined by the 
Council as being the amount of the appropriate usual 
establishment charges of the Council together with simple interest thereon 
at the rate of 4% per annum above the base lending rate from time to time 
of Lloyds Bank Plc calculated from the date on which the Surety received 
the default notice 

(e) The sum payable under sub-clause (d) above (before the addition of interest) 
shall not exceed the default cost and the covenant in clause 6 above shall 
apply with respect to such sum 

(f) The Surety shall be released from all liability under this Agreement on the 
transfer to the Council of the freehold title of the area of public open space and 
the payment of the commuted sum or the completion of the default work or the 
payment of the default cost or after a period of 6 years whichever first occurs 

(g) For the purposes of this Agreement a demand stated to be made hereunder 
and signed or purported to be signed on behalf of the Council shall be 
conclusive as to the Surety's obligation to pay the amount demanded and there 
shall be no obligation or duty whatsoever on the Surety to consider the 
alternative set out in (b)(ii) above.
APPENDIX

List of names of [the Trustees]
As to part: [Official Custodian for Charities]
As to remainder: [other parties]
IN WITNESS whereof the Council and the Owner have executed this a Deed on the day and year first before written.

THE COMMON SEAL of WEST
LANCASHIRE DISTRICT COUNCIL was hereunto affixed in the presence of:-

Authorised Officer

SIGNED AS A DEED by the said [name] in the presence of:

Authorised Officer

Chairman of the Council
APPENDIX 3

The Council’s Response to comments made on the Draft SPG – Affordable Housing
### The Council’s Response to the comments made on the Draft SPG – Affordable Housing
(Approved at Cabinet on 2\textsuperscript{nd} November 2004)

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Paragraph</th>
<th>Comment</th>
<th>WLDC Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tarleton Parish Council (Agent J. Hodson)</td>
<td>General</td>
<td>Draft SPG lays emphasis on arrangements with RSL’s. This does not address shortage of affordable housing in the Northern Parishes. No sites of sufficient size to attract RSL interest. Need to allow small scale developments in open land areas with Section 106 agreements to keep houses affordable and for rent. Need to consider results of housing need surveys.</td>
<td>Policy DE3 of the Draft Local Plan is to be amended to allow affordable houses within the Open Land areas, provided certain criteria are met. SPG does not state that affordable housing has to be owned by an RSL, but this is preferred. Results of housing needs surveys will be taken account of. AMEND TO MAKE REFERENCE TO CHANGES TO POLICY DE3</td>
</tr>
<tr>
<td>John Hodson</td>
<td>General</td>
<td>Comments as per Tarleton Parish Council above</td>
<td>See above response</td>
</tr>
<tr>
<td>Nadine Ashcroft</td>
<td>General</td>
<td>Comments as per Tarleton Parish Council above</td>
<td>See above response</td>
</tr>
</tbody>
</table>
APPENDIX 4

Guidance on the Sequential Approach to Providing Affordable Housing in Rural Areas of West Lancashire
Guidance on the Sequential Approach to Providing Affordable Housing in Rural Areas of West Lancashire

Introduction

Providing affordable homes to support sustainable communities in West Lancashire is one of the key priorities for this District Council and the West Lancashire Local Strategic Partnership. Protecting the environment of the District is also a priority and so the Council has introduced policies that seek to balance both of these, sometimes conflicting, priorities. This outline note explains the Council’s approach in our rural areas only.

Planning Policies

The Council must determine all planning applications in accordance with development plan policies unless there are any other material considerations. Therefore anyone considering the delivery of affordable housing should, as a first step, consult the West Lancashire Replacement Local Plan adopted in July 2006 and the Supplementary Planning Guidance for Affordable Housing published in November 2004. Both of these documents are available on the Council’s website (www.westlancsdc.gov.uk/planningpolicy).

Current Council planning policy allows only a limited number of private houses but schemes that provide 100% affordable housing are acceptable within certain parts of the District. These areas are coloured pink or beige on the Proposals Map and are within the built-up areas of the main villages of West Lancashire. These are the initial and preferred locations for affordable housing as they relate well to other buildings and local services and their development would not extend the village boundaries. If there are no suitable sites within the built-up area then Policy DS4 allows affordable housing in “open land on the urban fringe”, i.e. areas shown by green and white vertical stripes on the Proposals Map. However the policy does state that affordable housing will be allowed on such sites only if:

(i) It can be demonstrated that there are no suitable sites available within the built-up area, and
(ii) If there are no such sites, that sites closest to the village centre are considered first, followed by sites which are further from the village centre where a problem of dereliction would be removed.

The village centres are taken to be the local shopping centres as defined in Policy DE10 of the Replacement Local Plan and coloured blue on the proposals maps. However some of the smaller villages do not have such a centre and in such cases the location of the village centre should be agreed in writing by the Council’s Planning Policy Manager. In measuring the distance from the village centre to compare sites the shortest route on foot from the site to the centre should be used.
In exceptional cases where there is no available site within the above areas the Council may consider granting permission in the Green Belt for very limited developments of affordable housing (normally under 5 units).

The Council expects prospective developers of affordable housing to undertake a sequential search for appropriate sites and this must be evidenced by appropriate documentation that show an audit of action.

Sequential Search

An acceptable sequential search would need, at the least, to demonstrate the following:

In the case of statements about alternative sites being unavailable for development (e.g. landowners unwilling to sell /land in multiple ownership), evidence should be produced to demonstrate that landowners /businesses or their agents had been contacted to discuss the possibility of selling or developing their land within the project timeframe. In the case of perceived difficulties with access to or across land, there should be evidence that consultation had taken place with landowners.

If highways issues were cited as reasons why particular sites may not be developable, the Council would expect the relevant highways authority (i.e. Lancashire County Council) to have been contacted for their views on access to the sites and for this to be documented.

In some rural areas, the Council may accept that there are only limited opportunities for affordable housing development within the built up area. Where specific sites have been rejected as being unviable for affordable housing, robust evidence would be required to demonstrate that land /business owners had been contacted regarding the disposal of the sites and sufficient detailed financial information submitted to show on what basis that it is unviable to proceed with the scheme.

Policy DS4 gives preference to sites where a problem with dereliction would be removed even if they are further from the village centre than a non-derelict site.. This means that a satisfactory sequential search needs to examine not just sites within the built-up area and other DS4 land closer to the village centre, but also other DS4 land further from the village centre suffering from problems with dereliction. Conversely, if the site under consideration also has problems with dereliction all that would need to be demonstrated is that there are no sites within the built-up area and no other derelict site closer to the village centre.

A further issue that may need to be taken into account with respect to any planning application is the “efficient” use of land covered by Policy DS4. It would be necessary to ensure that any development proposals would not preclude the development of larger areas of DS4 land or render parts of it unusable, for example by restricting access.
Developers must ensure that the sequential test is valid during the lifetime of the project and the Council’s Executive Manager (Planning & Development) will confirm, in writing, at what stage the sequential test is satisfied to enable any grant funding bids to be submitted to relevant agencies such as the Housing Corporation.

NB. This note only covers the sequential approach. Early discussion with the Council’s Planning and Housing Divisions is essential to ensure that the type and scale of affordable housing proposed relates well to the built form of the locality and the housing needs of the local area.