

**Independent Review of Proposed
Affordable Housing Policy
for the
Guernsey Island Development Plan

and associated
Supplementary Planning Guidance**



February 2015

(incorporating interim reports submitted in October 2014 and January 2015)

CONTENTS

SUMMARY	2
1. INTRODUCTION	5
2. THE PROPOSED APPROACH	7
3. THE EVIDENCE BASE	9
4. THE POLICY AND SPG	11
5. REVIEW OF RECOMMENDATIONS FROM THE REPORT “THE USE OF PLANNING COVENANTS IN THE DELIVERY OF AFFORDABLE HOUSING IN GUERNSEY”	14
6. RESPONSE TO QUESTIONS	16
7. RECOMMENDED POLICY WORDING	17
APPENDIX 1: AFFORDABLE HOUSING POLICY IN THE UK	18
APPENDIX 2: AFFORDABLE HOUSING POLICY IN JERSEY	23
APPENDIX 3: COMMENTS ON AMENDED DRAFT AFFORDABLE HOUSING SPG AND DRAFT IDP POLICIES GP10 AND GP11	27

Independent Review of Proposed Affordable Housing Policy for the Guernsey Island Development Plan

Summary

A draft Affordable Housing policy for Guernsey has been produced for inclusion in the Island Development Plan. This report, commissioned by the Planning and Building Control Section of the States of Guernsey's Environment Department, provides an independent review of the proposed policy and the associated draft Supplementary Planning Guidance (SPG), advising on:

- the robustness of the evidence base and its ability to support the policy both through the Plan consultation, examination and adoption processes and in its implementation;
- any significant omissions, deficiencies or discrepancies in the preliminary draft policy and SPG;
- its likely effectiveness in helping to deliver affordable housing to meet identified needs;
- any technical, legal or practical issues that may hinder effective implementation of the policy.

The independent review has been undertaken by Steve Kemp BA, DipTP, MRTPI, Executive Director of OpenPlan (Open Plan Consultants Ltd).

The review initially considered:

- **The Proposed Approach** – a review of the proposed approach to contributing to the provision of affordable housing through the planning system in the light of current issues and “best practice” relating to affordable housing policy in UK, and the Jersey experience;
- **The Evidence Base** – a review of the evidence base relating to affordable housing issues in Guernsey to assess its ability to support an effective policy;
- **The Policy and SPG** – an assessment of the likely effectiveness of the proposed policy, and the related Supplementary Planning Guidance, with recommendations regarding any significant omissions, deficiencies or discrepancies.

Detailed comments and recommendations on each of those items are set out in the main body of the report.

In a second stage, revised drafts of the relevant policies and SPG were reviewed. Further comments and recommendation relating to that second stage review are detailed in Appendix 3.

For convenience, the main findings and recommendations have been summarised below, drawn from both the main body of the initial report (October 2014) and Appendix 3 (January 2015).

1. The evidence base to underpin the introduction of an affordable housing policy for Guernsey appears to be sound and robust [see Paragraphs 3.1 – 3.10].

2. Setting the threshold development scale to trigger an affordable housing contribution at 5 dwellings appears to be reasonable (well-grounded in evidence relating to the actual scale of developments in Guernsey and the viability of developments of differing scales) and practicable (it should produce a reasonable yield of affordable homes without incurring costly administrative burdens) [see Paragraphs 4.6 and 4.7].
3. Stepping up required provision as the scale of proposed development increases is a well-reasoned approach. It is based on an informed assessment of the relative costs involved in smaller and larger developments and viability issues associated with these, and it represents a reasonable response to the considerations that those involved in the development of housing must take in to account when deciding whether to invest and build.
4. Setting contributions at between 20% and 30% seems reasonable in the light of the evidence gathered on development costs, required profit margins and land-owner expectations and, at this stage in the economic cycle, expectations of this scale seem unlikely to raise major viability concerns overall. The proposed “steps” are gradual and take account of the relative costs involved in larger and smaller developments whilst minimising incentives for developers to seek to “underdevelop” sites by staying just below a threshold so as to reduce the required level of contribution.
5. The proposed threshold at which the higher rate contribution (30%) is triggered is considered to be reasonable at this stage, taking account of viability considerations and the fact that this is the first time that a requirement of this type will have been made of developers in Guernsey. The evidence base appears to be sound. The effectiveness of the policy and any need for adjustment of thresholds and requirements can – and should – be considered as part of the plan review process, based on evidence then available [see Paragraphs 4.9 and 4.10].
6. The proposed approach to considering viability issues in cases where this may be questionable is reasonable and provides for objective and transparent decision-making. *Policy GP11: Affordable Housing* makes clear reference to the issue of viability and how this will be taken in to account. Recommendations that the wording of the original draft should be strengthened and clarified have been given effect in the revised policy.
7. As Guernsey currently has no legislative provision for commuted sum payments, it is advisable to include within the policy caveats to minimise opportunities for:
 - a) under-developing sites; and,
 - b) seeking incremental permissions for the development of larger sites in phases that fall below the threshold,
 so as to safeguard against prospective developers seeking to circumvent requirements by those means.
8. In that context, the requirement for consistency with all other policies, particularly those relating to density and mix, is appropriate and quite clear (although it has been suggested in Appendix 3 that alternative wording of *Policy GP10: Comprehensive Development* might be considered). Correctly, the requirement is stated in the policy and then expanded upon in the SPG.

9. Looking further ahead, it is considered that the strongest safeguard may be a requirement for commuted sums to be paid towards off-site provision of affordable housing in relation to all residential developments of four houses or fewer. This would appear to require legislative change. It is recommended, therefore, that the effectiveness of the policy should be closely monitored so as to inform decisions regarding possible legislative changes in future, in the event of a significant problem being identified once the policy has been in operation for an appropriate period of time.
10. It is considered that, overall, the proposed IDP Policies and the proposed SPG documents work together and cover the relevant information well. A few minor amendments have been suggested for consideration in Appendix 3. Of these, the most significant relate to the way Policy GP11 is summarised in paragraph 6.2 of the SPG, which appears inadvertently to reverse the policy preference for land rather than buildings, and then uses examples that may lead to some uncertainty.
11. Finally, we were asked to comment on problems experienced when an affordable housing policy was introduced in Jersey. These appear to have stemmed from a combination of factors, including:
 - a consultation process that left some stakeholders unsatisfied that their concerns were addressed adequately in the policy;
 - bringing the policy forward before the detailed SPG relating to it;
 - uncertainty regarding the evidence base;
 - concerns about the objectivity and transparency of the proposed review and amendment process;
 - lack of confidence amongst land owners and the development sector;
 - concerns regarding viability in the context of market conditions at the time.

An outline of the Jersey experience is set out in Appendix 2. Judging by the responses received to consultation so far, it is considered that the approach being taken for Guernsey is much more likely to gain and retain broadly based support.

Steve Kemp BA, DipTP, MRTPI, OpenPlan, February 2015

1. Introduction

1.1 A draft Affordable Housing policy for Guernsey has been produced for inclusion in the Island Development Plan. The purpose of this report is to provide an independent review of the proposed policy and the associated draft Supplementary Planning Guidance (SPG), advising on:

- the robustness of the evidence base and its ability to support the policy both through the Plan consultation, examination and adoption processes and in its implementation;
- any significant omissions, deficiencies or discrepancies in the preliminary draft policy and SPG;
- its likely effectiveness in helping to deliver affordable housing to meet identified needs;
- any technical, legal or practical issues that may hinder effective implementation of the policy.

1.2 Preparation of the draft policy has been informed by (amongst others) a report prepared for the Environment Department in November 2012 by Geoff Harrison BA (Hons), MRTPI, entitled “The Use of Planning Covenants in the Delivery of Affordable Housing in Guernsey”. That report (to be referred to as “the 2012 Report”) has been scrutinised as part of this review and it is considered to provide sound foundations on which to build an effective policy. It is recommended that this review should be read in conjunction with the 2012 Report, to which references will be made, as appropriate, so as to avoid simply repeating matters that have already been well covered and considered.

The draft policy and SPG have been compared against the recommendations set out in the 2012 Report to assess the extent to which those recommendations have been accepted and reflected in the current draft documents and to enable any apparent rejections to be identified and questioned.

1.3 Other documents that have been reviewed and considered include:

- States Strategic Plan 2013-2017
- The Strategic Land Use Plan 2011
- Development Plan Review, Key Messages, Issues and Options Consultation 2013
- Topic Paper Consultation Report for Development Plan Review 2012
- 2nd Stage Consultation for Island Development Plan Summary of Public Responses 2013
- Housing Needs Study 2011
- Strategic Housing Land Availability Assessment Methodology 2013
- Housing Monitoring Reports 2011 to date
- Analysis of Potential Local Centres 2013
- Guernsey Urban Area Plan (Review No. 1, 2002)
- Guernsey Rural Area Plan (Review No.2, 2005)
- Review of the Island Development Plans: Guidance Note on the ‘Call for Sites’
- Community Guide to the Plan Review

1.4 As this will be the first time that a planning policy intended to deliver affordable housing will have been adopted and implemented in Guernsey, the review process has also included comparative consideration of:

- current and recent issues relating to the delivery of affordable housing through planning policy in the UK and in Jersey.
- relevant best practice in the UK;

1.5 The remainder of this report is structured as follows:

- **The Proposed Approach** – a review of the proposed approach to contributing to the provision of affordable housing through the planning system in the light of current issues and “best practice” relating to affordable housing policy in UK, and the Jersey experience;
- **The Evidence Base** – a review of the evidence base relating to affordable housing issues in Guernsey to assess its ability to support an effective policy;
- **The Policy and SPG** – an assessment of the likely effectiveness of the proposed policy, and the related Supplementary Planning Guidance, with recommendations regarding any significant omissions, deficiencies or discrepancies.

1.6 The proposed policy reads as follows:

Policy CP8

The Environment Department will require proposals for the development of 5 or more dwellings to provide a proportion of the developable area of the site for affordable housing (or an equivalent number of units) in line with the following:

- 5 or more dwellings but fewer than 10 - 20%
- 10 or more dwellings but fewer than 15 - 22%
- 15 or more dwellings but fewer than 20 - 24%
- 20 or more dwellings but fewer than 25 - 26%
- 25 or more dwellings but fewer than 30 - 28%
- 30 or more dwellings - 30%

Proposals must be consistent with all other policies of the Island Development Plan, noting in particular the requirements in relation to density and mix of units.

The application of this policy will have regard to the economic viability of the scheme and the Department will use Planning Covenants to deliver the appropriate level of affordable housing. In assessing the proposals the Department will have regard to and be consistent with the provisions of the ‘Supplementary Planning Guidance: Affordable Housing’.

2. The Proposed Approach

A review of the proposed approach to contributing to the provision of affordable housing through the planning system in the light of current issues and “best practice” relating to affordable housing policy in UK, and the Jersey experience.

2.1 In the UK, it has for many years been standard practice for developers of private sector housing to be required to provide an element of affordable housing within, or in association with, housing developments. The requirement is effected through a combination of national policy guidance - currently, the National Planning Policy Framework - policies in statutory development plans, the determination of planning applications and the use of legal obligations or ‘agreements’ (“Section 106 Agreements”). There are, at present, no equivalent requirements in Guernsey’s planning system so this will be the first time that a planning policy intended to deliver affordable housing will have been adopted and implemented.

2.2 A brief summary of UK policy is provided in Appendix 1.

2.3 The proposed approach mirrors, in some respects, that taken in the UK, in that:

- it is anchored by an overarching strategic policy – in the States Strategic Plan 2013-2017 and the Strategic Land Use Plan 2011¹;
- it will be expressed in policy form in the statutory Island Development Plan;
- it will be given effect in the consideration and determination of planning applications;
- requirements will be secured legally by the use of Planning Covenants made under Section 23(1) of the Land Planning and Development (Guernsey) Law, 2005.

2.4 There are, however, some significant differences in the details of the approach proposed. In particular:

- a) there is no provision for payments of “commuted sums” in lieu of the provision of land or dwellings (provision for payment of commuted sums in certain circumstances – eg, for development falling below the prescribed threshold size - is normal in UK policies);
- b) there is an emphasis on contributions being in the form of providing land, although dwelling “units” are acceptable in some circumstances (in the UK the provision of built dwelling units is the norm);
- c) there is no requirement for affordable housing contributions from developments below the proposed threshold size of 5 dwellings (mainly because current legislation relating to Planning Covenants - The Land Planning and Development (Planning Covenants) Ordinance, 2011 – does not provide for commuted sum payments to fund affordable housing provision).

¹ *‘The Development Plans will make provision for a range of social and specialised housing as part of the annual requirement for new homes as set out within Policy SLP13. Appropriate levels of provision of social and/or specialised housing on larger general market sites may be required through the use of planning condition or covenant and established through a specified mechanism.’*

2.5 These and other matters were addressed in the 2012 Report and the relationship between the proposed policy and the recommendations of that report is considered in Section 4 of this report.

2.6 The approach being proposed for seeking the provision of affordable housing needs to be considered in the context of broader housing policy as summarised below:

“Under the existing approach to housing land supply, the Island relies solely on windfall sites for housing supply coming forward through enabling policies (unless a strategic need is identified that warrants the release of greenfield land reserved for housing known as Housing Target Areas). Windfall sites are those that have not been identified specifically for housing in a Development Plan, but that come forward for development and receive planning permission by being otherwise consistent with planning policy and other material considerations identified in the Planning Law.

To meet the aims of the SLUP, the proposed new approach to housing land supply is to identify a five year land supply primarily through the ‘allocation’ of housing sites within and around Main Centres. ‘Allocating’ a site means identifying it in the Development Plan with policies which secure and promote the site for housing. Whilst the majority of the five year supply will be met by allocations, the Department will still allow for windfall provision to come forward and contribute to the housing supply. For the remainder of the Plan, beyond the first five years, ‘Broad Areas of Search’ will be identified within and around Main Centres, as strategic reserves of housing land to be brought forward for development if required. Overall the approach of a combination of ‘Allocations, Windfalls and Broad Areas of Search’ will give flexibility to match the growth or decline in housing supply requirements in the future. It is more proactive and provides greater surety to the public and the market as to where the majority of housing is likely to be located by engaging earlier with landowners who have demonstrated an interest in building housing”.

3. The Evidence Base

A review of the evidence base relating to affordable housing issues in Guernsey to assess its ability to support an effective policy.

Housing needs

3.1 The Key Messages, Issues & Options August 2013 paper outlines the evidence for housing needs (451 households per year) and relates this to current supply targets and build-out levels. It is clearly demonstrated that the Island's housing needs for both affordable and market housing are not being met by supply.

Affordable Housing²

3.2 The Strategic Land Use Plan (2011) established the principal for contributions to affordable housing to be delivered through general market housing.

'The Development Plans will make provision for a range of social and specialised housing as part of the annual requirement for new homes as set out within Policy SLP13. Appropriate levels of provision of social and/or specialised housing on larger general market sites may be required through the use of planning condition or covenant and established through a specified mechanism.' (Policy SLP17).

3.3 The legal basis to secure affordable housing through planning covenants is established through Section 23 of the 'Land Planning & Development (Guernsey) Law 2005', and the 'Land Planning and Development (Planning Covenants) Ordinance, 2011'.

3.4 'The Use of Planning Covenants in the Delivery of Affordable Housing in Guernsey, (2012)', commissioned by the Department, demonstrates the feasibility of affordable housing provision on larger general market housing developments. The report appears to be thorough and considered.

3.5 According to the Key Messages, Issues & Options August 2013 paper, key findings and recommendations include:

- 'There is a robust planning and legislative framework in place to deliver affordable housing using planning covenants.'
- 'Landowners' expectations of residual land values at around £3 million per hectare should be tempered if the affordable housing needs of the Island's community are to be satisfactorily addressed.'
- 'Changes in average earnings ... during the last 5 years (i.e. 8%) have been outstripped by increases in average house prices during the same period (i.e. 28.5%)'
- 'If residential site allocations are utilised in the emerging Development Plan Review, they could sustain levels of affordable housing at 20%-30% through on-site provision.'

Consultation

3.6 Through the first stage public consultation for the Review of the Development there was

² The full definition of affordable housing in this context is set by *The Land Planning and Development (Planning Covenants) Ordinance, 2011*. Broadly speaking it includes **social housing** and also **intermediate housing**. Both types are for persons whose housing needs are not met by the private sale or rental market. **Social housing** is offered to persons on low incomes or with other needs as identified by the Housing Department. **Intermediate housing** includes part ownership, part share of equity or low cost ownership or similar schemes mainly for those who cannot meet the full cost of renting or buying on the private market. (*Key Messages, Issues & Options August 2013*)

general support for a contribution based system (i.e. the direct provision of houses and land), as opposed to a tariff-based system (i.e. monies in lieu which may require a change to the Planning Law).

3.7 The second stage consultation (Key Messages, Issues & Options August 2013) presented five potential policy options for securing affordable housing contributions:

- Option 1: The same requirement for all housing development schemes
- Option 2: Vary the requirement between different areas
- Option 3: Site-by-site approach
- Option 4: Staircase approach
- Option 5: Allocating sites for general market housing and affordable housing separately

3.8 The Summary of Public Responses report explains that of the potential options put forward in the consultation, Option 2 was the most supported and Option 4 was least favoured. It is, however, noted that the overall number of responses specific to the policy options posed was very small.

3.9 The use of planning covenants is also shown to be supported in bringing forward affordable housing. Tenure blindness (i.e. not differentiating between different tenures by their design or location) received strong support.

3.10 In conclusion, we consider that there is a sound and robust evidence base to underpin the introduction of an affordable housing policy for Guernsey.

4. The Policy and SPG

An assessment of the likely effectiveness of the proposed policy, and the related Supplementary Planning Guidance, with recommendations regarding any significant omissions, deficiencies or discrepancies.

4.1 Proposed Policy currently reads as follows:

The Environment Department will require proposals for the development of 5 or more dwellings to provide a proportion of the developable area of the site for affordable housing (or an equivalent number of units) in line with the following:

- 5 or more dwellings but fewer than 10 - 20%
- 10 or more dwellings but fewer than 15 - 22%
- 15 or more dwellings but fewer than 20 - 24%
- 20 or more dwellings but fewer than 25 - 26%
- 25 or more dwellings but fewer than 30 - 28%
- 30 or more dwellings - 30%

Proposals must be consistent with all other policies of the Island Development Plan, noting in particular the requirements in relation to density and mix of units.

The application of this policy will have regard to the economic viability of the scheme and the Department will use Planning Covenants to deliver the appropriate level of affordable housing. In assessing the proposals the Department will have regard to and be consistent with the provisions of the 'Supplementary Planning Guidance: Affordable Housing'.

4.2 Recommendations concerning matters that warrant close consideration are summarised below:

- a) the threshold development scale that triggers an affordable housing contribution:
 - i. is 5 dwellings justifiable and appropriate?
 - ii. can it be expected to achieve the desired contribution to overall provision of affordable housing to meet Guernsey's needs?
- b) the stepping up of required provision as the scale of proposed development increases:
 - i. is this justifiable and workable?
 - ii. are the proposed percentage requirements and steps appropriate?
- c) the requirement for consistency with all other policies, particularly those relating to density and mix:
 - i. is this appropriate and clear?
- d) consideration of economic viability:
 - i. is this clearly expressed and justified?

4.3 Additionally, it is necessary to consider the level of support the policy is likely to gain – particularly in light of the Jersey experience – as this will have a fundamental impact on its implementability.

4.4 Findings and recommendations relating to each of those issues are set out below.

**The threshold development scale that triggers an affordable housing contribution:
*Is 5 dwellings justifiable and appropriate?***

4.5 On the evidence presented and considered in the 2012 Report, setting the threshold at 5 dwellings appears to be reasonable (well-grounded in evidence relating to the actual scale of developments in Guernsey and the viability of developments of differing scales) and practicable (it should produce a reasonable yield of affordable homes without incurring costly administrative burdens).

Can it be expected to achieve the desired contribution to overall provision of affordable housing to meet Guernsey's needs?

4.6 From responses to the consultation, there seems little reason to expect that setting this threshold will generate significant opposition to the policy, so repetition of the problems experienced in Jersey seems unlikely.

4.7 Data relating to the scale of residential developments suggest that there will be enough developments above the threshold to generate a reasonable contribution towards the island's affordable housing needs. The draft policy's requirements relating to density and mix of units are important in this respect as, provided they are applied consistently, they should safeguard against developers trying to "play the system" by proposing unreasonably low densities of development. There will remain, however, a possibility that developers may seek to apply for permission to develop large sites in small increments. It is recommended that consideration should be given to ways in which opportunities for this may be minimized, but this may need to be considered subsequent to the Island Development Plan being approved and in the light of actual experience of implementing its affordable housing policy. The approach taken by many UK local authorities is to require commuted sum payments (in lieu of the provision of land or units) relating to residential developments below the threshold size, but current legislation does not appear to permit this in Guernsey. In the longer term, and if considered necessary, a legislative change could be made so as to allow a similar approach. This may be more controversial than the current proposals – and promotion of such a legislative change at this stage would undoubtedly delay the whole Island Development Plan process – so it is recommended that the situation should be kept under review – with consideration being given to an appropriate legislative change in the event that a significant number of developers are found to be exploiting the threshold limitation in practice.

**The stepping up of required provision as the scale of proposed development increases:
*Is this justifiable and workable?***

4.8 The justification for this approach is well reasoned. It is based on an informed assessment of the relative costs involved in smaller and larger developments and viability issues associated with these and it represents a reasonable response to the considerations that those involved in the development of housing must take in to account when deciding whether to invest and build.

Are the proposed percentage requirements and steps appropriate?

4.9 Setting contributions at between 20% and 30% seems to be reasonable in the light of the evidence that has been gathered on development costs, required profit margins and land-owner expectations and, at this stage in the economic cycle, expectations of this scale seem unlikely to raise major viability concerns. The proposed "steps" are gradual, with the full 30% requirement applying only to developments of 30 dwellings or more. This stepped approach takes account of the relative costs involved in larger and smaller developments

whilst still ensuring that all developments of 5 or more dwellings make a reasonable contribution towards affordable housing provision. At the same time the steps are sufficiently gradual to minimise incentives for developers to seek to “underdevelop” sites by staying just below a threshold so as to reduce the required level of contribution.

4.10 The proposed approach to considering viability issues in cases where this may be questionable should allay any remaining concerns.

The requirement for consistency with all other policies, particularly those relating to density and mix:

Is this appropriate and clear?

4.11 It is crucial that this requirement is stated clearly in the policy and then expanded upon in the SPG. In the absence of legislative provision for commuted sum payments, it is advisable to include within the policy caveats to minimise opportunities for:

- a) under-developing sites; and,
- b) seeking incremental permissions for the development of larger sites in phases that fall below the threshold,

so as to safeguard against prospective developers seeking to circumvent requirements by those means.

4.12 It is considered that the strongest safeguard may be a requirement for commuted sums to be paid towards off-site provision of affordable housing in relation to all residential developments of four houses or fewer. However, current law does not appear to allow for this. It is recommended, therefore, that the policy should be worded so as to minimise opportunities for circumvention and the effectiveness of this should then be closely monitored so as to inform decisions regarding possible legislative changes in the event of a significant problem being identified once the policy has been in operation for an appropriate period of time.

Consideration of economic viability:

Is this clearly expressed and justified?

4.13 Although the draft policy, as currently worded, makes reference to the consideration of viability, this reads more as an explanatory note than as an integral part of the policy itself. It is recommended that this should be strengthened and clarified by substituting the current wording with a phrase such as:

“Exemption from the full requirements detailed above will only be allowed if clear evidence that such requirements would render development economically unviable is provided and independently verified. In such cases the Environment Department will negotiate with the developer / applicant to establish an affordable housing contribution that can be secured without the compromising the viability of the development”.

5. Review of recommendations from the report “The Use of Planning Covenants in the Delivery of Affordable Housing in Guernsey”

Prepared by: Geoff Harrison BA (Hons) MRTPI on behalf of: The Environment Department, States of Guernsey, November, 2012

5.1 The 2012 report has been reviewed and is considered to provide a sound contribution to the evidence base. Its key recommendations have been identified and the ways in which they have been addressed are summarised – with comments as appropriate – in the table that follows.

Recommendation	Accepted?	Comment
That the findings of the study be subjected to full public consultation as part of the ‘Key Issues and Options’ stage of the Development Plan Review;	YES	This has been carried through and the responses have been taken in to account.
That consideration be given to introducing a two tier policy which sets out differing target requirements for local and main centres;	NO	This was considered but it was decided not to pursue such an approach, which would appear to be over-complicated and unnecessary at this stage.
That consideration be given to a ‘stair case’ approach to affordable housing requirements during the life of the plan;	NO	This was considered and rejected. It would be likely to lead to a rush to obtain permissions before requirements step up, probably leaving many permissions unimplemented for long periods.
That a minimum target requirement of 20%-30% affordable housing provision be established for all housing site allocations in the Development Plan Review;	YES	This is supported by sound evidence and has been accepted.
That, in any event, agreed target requirements be reviewed on an annual basis in accordance with social, economic and demographic data;	YES?	The principle of regular monitoring and review is sound – and is in accordance with accepted best practice. It is important that this is carried out objectively, transparently and consultatively, so as to retain the confidence and support of the development and land-owning sectors – and the wider community. It is also important that the review cycle is not so frequent that it results in a lack of certainty and confidence.
That, within any agreed target provision, an appropriate mix of	YES?	This has been included in the proposed SPG, but not as a specific

intermediate and social rented housing be determined in conjunction with States objectives and the Housing Department;		element of the policy itself. It is assumed that this is because the emphasis is on providing land rather than units, but it may be prudent to give this further consideration.
That a schedule of commuted sums in lieu of on-site provision is determined for all 'windfall' sites yielding 5 private sector housing units or less;	NO	Including such a provision could be seen as a more equitable approach, and would reduce opportunities for developers to avoid contributing by splitting large sites, but current legislation does not allow for such a requirement. It is recommended that this should be reviewed in the light of actual experience of implementing the affordable housing policy.
That any commuted receipts be ring-fenced as part of the Corporate Housing Programme Fund and administered by the Housing Department;	NO	This should, again, be considered as part of a review of the effectiveness of the affordable housing policy once it has been introduced and there is actual experience of implementing it.
That the research be updated following the publication of the next Housing Needs Survey in 2016 or as part of the Development Plan Review, whichever occurs first;	?	It is understood that in addition to the reference in in Section 12.1 of the SPG this will also be included in the monitoring section of the draft IDP. It is recommended that the SPG text should be amended to make this more explicit.
That, if and when a new policy is adopted, a Planning Advice Note is prepared to advise applicants and agents as to the circumstances in which affordable housing will be required together with the legislative framework afforded by planning covenants;	YES	The proposed SPG does this. Some minor amendments are recommended (to follow)
That robust monitoring arrangements are put in place to test the effectiveness of any revised policy framework; and	?	It is understood that this is covered in the Island Development Plan monitoring section.
That full consideration is given to the resource implications of introducing a new policy regime in respect of delivering affordable housing through the planning process.	?	It is understood that this matter is being considered and detailed arrangements are to be finalised.

6. Response to Questions

In response to the preliminary draft of this report, we were asked to clarify our findings and recommendations relating to two specific matters dealt with below.

The higher rate (the 30%) - What is your view of where this kicks in (30 units or more)?

6.1 Our views on this are set out in paragraphs 4.9 and 4.10. In summary, we consider the proposed threshold to be reasonable at this stage, taking account of viability considerations and the fact that this is the first time that a requirement of this type will have been made of developers in Guernsey. The evidence base appears to be sound. The effectiveness of the policy and any need for adjustment of thresholds and requirements can – and should – be considered as part of the plan review process, based on evidence then available.

Jersey's experience - What is your appraisal of why Jersey's approach was not successful, and what Guernsey can learn?

6.2 Our understanding of the Jersey experience is set out in Appendix 2.

6.3 In brief, it seems that the problem stemmed from a combination of factors, including:

- a consultation process that left some stakeholders unsatisfied that their concerns were addressed adequately in the policy;
- bringing the policy forward before the detailed SPG relating to it;
- uncertainty regarding the evidence base;
- concerns about the objectivity and transparency of the proposed review and amendment process;
- lack of confidence amongst land owners and the development sector;
- concerns regarding viability in the context of market conditions at the time.

From the review we have undertaken and judging by the responses received to consultation so far, we consider that the approach being taken for Guernsey is much more likely to gain and retain broadly based support.

7. Recommended Policy Wording

7.1 In the light of the matters considered in this review, it is recommended that the draft Affordable Housing policy should be amended to read as follows:

The Environment Department will require proposals for the development of 5 or more dwellings to provide a proportion of the developable area of the site for affordable housing (or an equivalent number of units) in line with the following:

- 5 or more dwellings but fewer than 10 - 20%
- 10 or more dwellings but fewer than 15 - 22%
- 15 or more dwellings but fewer than 20 - 24%
- 20 or more dwellings but fewer than 25 - 26%
- 25 or more dwellings but fewer than 30 - 28%
- 30 or more dwellings - 30%.

Exemption from the requirements detailed above will only be made if clear evidence that such requirements would render development economically unviable is provided and independently verified, and in such cases the Environment Department will negotiate with the developer / applicant to establish an affordable housing contribution that can be secured without compromising the viability of the development.

Planning permission for developments to which requirements to provide a proportion of affordable housing apply will only be granted when delivery of the required provision has been secured by a legally enforceable commitment.

Affordable housing provision requirements relating to the development of any part of a site allocated for housing development (or mixed-use development including housing) will be set at the level applicable to the number of dwellings expected to be developed on the whole site.

For all sites – including sites not specifically allocated for development, but on which development is considered acceptable (“windfall sites”), proposals must be consistent with:

- all other policies of the Island Development Plan, including, in particular, requirements relating to density and mix of units; and,
- the provisions of the ‘Supplementary Planning Guidance: Affordable Housing’.

NOTE: The Environment Department will normally expect delivery of the appropriate level of affordable housing to be secure through Planning Covenants...

APPENDIX 1: Affordable Housing Policy in The UK

The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is now the only source of national policy on how the English planning system should deal with housing, including affordable housing.

The NPPF requires local planning authorities to identify housing need for both market, affordable and other accommodation, and these needs are to be planned for. As a result, there has been far closer scrutiny of local plans and the housing assessments that support them.

Rightly, the NPPF insists that plans should be deliverable. There has, however, been a general feeling that there is a risk that viability arguments will be used to justify lower levels of affordable housing provision. A robust evidence base coupled with close partnership working with housing associations has proven to help alleviate these risks.

Generally authorities in England set a universal affordable housing target, based on their housing needs assessment. This figure is then translated into locally appropriate percentage targets for sites falling above the policy threshold for affordable housing. Some authorities, like Tynedale, have established a series of needs-based affordable housing targets for different settlement areas. This approach works well for authorities covering a large geographical area, with a range of different housing markets. For councils covering more compact geographical areas, with less diverse housing markets, a single universal percentage target is often more appropriate.

Whatever the approach, best practice promotes regular review of the percentages of affordable homes that are proposed in local plan policies and in proposed schemes.

General affordable housing issues and considerations

Pepper-potting of Affordable Housing

The NPPF emphasises the presumption in favour of sustainable development. An important component of sustainable development is that assessed needs should be met unless that would harm environmental or social interests. The NPPF continues to promote mixed and balanced communities, and assumes that affordable housing needs will normally be met on site.

Many councils seek to have affordable homes pepper-potted across a site although, traditionally, house-builders have been reluctant to support a high level of pepper-potting, which has resulted in affordable housing being concentrated in specific areas of a site – often hidden away or in its less desirable parts.

Local authorities have since adopted a stronger position with regards to negotiations, and protocols that require general site layout principles for affordable housing to be addressed and agreed at the planning application stage.

Notwithstanding the above, it is also recognized that there are times when there are benefits to permitting the location of affordable homes in a single block, provided that this allows the housing association to acquire the freehold, thereby controlling service and

management charges to future tenants.

A balanced assessment must therefore be made between the management practicalities and the overall level of pepper potting and the objective of social inclusion.

Phasing of Affordable Housing

There is often a concern that unless affordable housing is required in the early stages of a development there is an increased chance that it will not be provided in its entirety. However, this is unlikely to pose a real risk in a buoyant housing market where appropriate conditions are imposed that prevent the occupation of the private dwellings on a site before the affordable housing commitments have been satisfied.

The key is to ensure that appropriate triggers take account of the location of the homes within the development. In schemes where there is a high level of pepper-potting it would be unreasonable to expect a very high proportion of the affordable homes to be made available in the early stages of development. Policy responses by some Local Authorities have included a requirement that all the affordable housing should be in place prior to the first occupation of no more than 40% of the market units within any phase of development.

Monitoring affordable housing

The NPPF requires the monitoring of emerging plans to ensure that they set out clear and robust policies for delivering affordable housing, both as part of market led developments and on other sites.

Strategic monitoring is important in terms of reviewing broader council priorities and ensuring that housing needs are being met. The most effective monitoring procedures are considered those that are jointly undertaken by both Housing and Planning colleagues.

It is also considered that monitoring the progress of affordable homes once development has commenced on site is important because it helps to:

- ensure that the affordable homes are provided in accordance with the requirements of the Section 106 agreement
- ensure that the standards of the affordable homes is acceptable.
- generate up-to-date information about anticipated completions and homes handed over to Registered Social Landlords. (This is important both in terms of allocating rented homes and ensuring customers are found for homes for sale).
- ensure that the homes are being satisfactorily managed.

Effective monitoring systems include:

- Regular site visits by housing and enforcement officers.
- Regular contact with RSL partners.
- Regular contacts with the Housing Needs Team (i.e. those who allocate the homes).

Examples of Affordable Housing Policies in UK Local Plans

Chiltern District

Policy CS8: AFFORDABLE HOUSING POLICY

The Council will aim to achieve the following targets for the provision of affordable housing. In new developments which contain 15 dwellings or more, at least 40% of dwellings within the development shall be affordable. In developments with less than 15 dwellings, there should be:

- *at least four affordable housing units on sites which have 12 to 14 dwellings*
- *at least three affordable housing units on sites of 10 or 11 dwellings*
- *at least two affordable housing units on sites of 8 or 9 dwellings*
- *at least one affordable housing unit on sites of 5 to 7 dwellings*
- *on sites of 1 to 4 dwellings, a financial contribution for each new dwelling towards the provision of affordable housing elsewhere in the District.*

The Council recognises that there will be occasions where it is not financially viable for developers to meet the targets in this policy. Where these targets cannot be met the Council will require clear evidence to demonstrate why it is not viable to do so. The Council will review this evidence and where appropriate will negotiate with the developer to establish the affordable housing content or contribution that can be secured without the scheme viability being compromised.

On rural exception sites as described in Policy CS9, all the dwellings must be affordable.

Notes:

i. The Council will make its own assessment of a site's capacity having regard to the adopted planning policies and other material considerations. This will apply in cases where an application site is part of an identifiable larger area capable of more comprehensive development, regardless of ownership.

Elmbridge LBC Core Strategy

CS21 - Affordable housing

The Council will aim to deliver at least 1150 affordable homes between 2011-2026.

In the event that overall housing targets are exceeded, the target for affordable housing delivery will rise proportionately.

The Council will require provision of affordable housing in accordance with the following, where viable:

*40% of the gross number of dwellings on sites of 15 dwellings or more
30% of the gross number of dwellings on sites of 6 – 14 dwellings
20% of the gross number of dwellings on sites of 5 dwellings
A financial contribution equivalent to the cost of 20% of the gross number of dwellings on sites of 1 – 4 dwellings.*

Where exceptionally development is proposed on a greenfield site(44), at least 50% of the gross number of dwellings should be affordable on any site of 15 dwellings or more.

A target of at least 50% will apply to public land, regardless of the number of dwellings proposed. (45)

On-site provision will be expected for sites of 5 or more dwellings. Only in exceptional circumstances will an alternative to on-site provision be appropriate.

The target tenure mix of affordable housing and housing types and sizes shall be in accordance with those identified in the most up to date SHMA or SPD.(46)

Chichester

Policy 34 Affordable Housing

On all residential development sites 30% affordable housing contribution will to be sought where there is a net increase of dwellings. This can be delivered through the following approaches:

- The affordable homes should be provided on site. Commuted sums will only be accepted on sites where there is a net increase of 5 dwellings or less, or in exceptional circumstances. If it can be demonstrated that affordable housing may not be appropriate, development of affordable dwellings on another site may be considered. If this is not achievable, as a last resort and in exceptional circumstances only, the Council will seek a financial contribution to enable provision of affordable homes elsewhere within the district;*
- Where the affordable housing calculation results in fractions of homes, the fraction will be sought as a commuted sum;*
- Where developers are unable to meet the requirements for the delivery of affordable housing set out in the policy, the Council will expect this to be demonstrated through an 'open book' process. An independent valuer appointed by the Council, at the developer's cost, will provide an independent viability assessment. In the first instance an alternative approach will be developed through negotiation. This is likely to involve amending the tenure mix. If this is still demonstrated to be unviable, the affordable housing requirement may be reduced; and*
- In exceptional cases, where a commuted sum is accepted, the payment should reflect the cost of providing the number, type and size of affordable dwellings which would have been provided on-site.*

The affordable housing to be provided on site will be required to be affordable tenures, as defined in the National Planning Policy Framework.

The policy will be monitored and updated to reflect up-to-date viability studies, the Coastal West Sussex Strategic Housing Market Assessment, and other relevant evidence.

APPENDIX 2: Affordable Housing Policy in Jersey

Affordable housing policy in Jersey has been the subject of much debate over recent years. A policy mechanism requiring affordable housing to be provided as a proportion of private housing development was approved by the States in the 2011 Island Plan: Policy H3 (Affordable Housing).

The policy effectively followed the principle established and applied in the UK, which sought to capture land value to deliver affordable housing. Under Policy H3, developments of 2 houses or more units will be required to include 20% of affordable housing on site or, pay the contribution as a commuted payment.

In addition, the Policy enabled the States to increase the thresholds without further need to consult and for housing tenure to be determined on a scheme-by-scheme basis.

Policy H 3

Affordable housing

Permission will not be granted for any residential development to which this policy applies, whether or not this forms part of a mixed-use scheme, unless and until the Minister for Planning and Environment is satisfied that the development has maximised the opportunity for the provision of affordable housing, in accord with the parameters of this policy.

The Minister will require a proportion of affordable housing to be provided on those sites to which this policy applies in accordance with the proportions and thresholds set out in supplementary planning guidance issued by the Minister.

To ensure the timely development and provision of affordable homes, the Minister will limit the validity of planning permission for sites to which this policy applies by condition, the extent of which will be set in supplementary planning guidance, which, amongst other matters, will provide that the validity of such permissions will normally be limited to 3 years, with any extension being conditional upon the full ground works being completed during the 3 year period.

On sites with a limited capacity, the Minister may require a proportion of affordable housing to be provided through a commuted payment, to support the delivery and/or procurement of affordable housing elsewhere. Alternatively, the affordable housing provision may be made on the site for which permission is sought.

The application of this policy, which will commence on 01 January 2012, will be phased incrementally, subject to monitoring and review, such that:

1. the threshold levels for the scale of the development to which it applies will be incrementally reduced over time. It shall initially apply to schemes with a capacity of six or more homes and is intended to apply to schemes with a capacity of two or more homes after five years;
2. the proportion of affordable housing to be provided will be increased over time. It shall initially be at a rate of 12.5%, rising incrementally to 20% after five years. The percentage of affordable housing shall be rounded up if the figures arrived at contain a proportion of one unit.

In order to meet the Island's housing needs, the tenure of that proportion of development yield that is to be provided as affordable housing i.e. whether it is to be social-rent, a form of intermediate housing, be that "Jersey Homebuy" or another/alternative form of shared equity housing, first-time buyer or lifelong homes (for people over 55), shall be determined by the Minister, based on current housing need. The Minister for Planning and Environment will review these parameters on an annual basis and, where there is the need for change, will issue supplementary planning guidance to revise the threshold size of developments to which the policy will apply; the proportion of affordability to be derived from those developments to which the policy applies, including the level of commuted sum tariff; and the tenure of the affordable housing development yield.

Schemes that are just below the threshold levels, will have to satisfy the Minister that the proposals do not represent an under-occupation of the site, nor that a large site is being brought forward in phases in order to avoid the threshold at each stage.

Affordable housing shall be provided on the site for which permission is sought unless one or more of the following circumstances apply:

1. that the provision of affordable housing on the site would make that development unviable;
2. that the site is of such a size or nature that the contribution to affordable housing would be maximised by allowing high-quality market housing to occupy that site and for the contribution to affordable housing to be in the form of a commuted payment, to support the delivery and/or procurement of affordable housing elsewhere;
3. affordable housing is best provided through the mechanism of a site-swap using sites within the ownership and control of the applicant;
4. the housing units provided in a mixed-use scheme are directly related to and necessary for the operation of that development.

All development to which this policy applies will need to be the subject of a standard economic viability assessment, to be provided and funded by the developer, as an integral element of a planning application, in accordance with supplementary planning guidance to be issued by the Minister.

It is intended that this policy mechanism for the delivery of affordable homes will be permanent and will be extended beyond the Plan period.

The application of this policy, which will commence on 01 January 2012, will be phased incrementally, subject to monitoring and review, such that:

1. the threshold levels for the scale of the development to which it applies will be incrementally reduced over time. It shall initially apply to schemes with a capacity of six or more homes and is intended to apply to schemes with a capacity of two or more homes after five years;
2. the proportion of affordable housing to be provided will be increased over time. It shall initially be at a rate of 12.5%, rising incrementally to 20% after five years. The percentage of affordable housing shall be rounded up if the figures arrived at contain a proportion of one unit.

In order to meet the Island's housing needs, the tenure of that proportion of development yield that is to be provided as affordable housing i.e. whether it is to be social-rent, a form of intermediate housing, be that "Jersey Homebuy" or another/alternative form of shared equity housing, first-time buyer or lifelong homes (for people over 55), shall be determined by the Minister, based on current housing need. The Minister for Planning and Environment will review these parameters on an annual basis and, where there is the need for change, will issue supplementary planning guidance to revise the threshold size of developments to which the policy will apply; the proportion of affordability to be derived from those developments to which the policy applies, including the level of commuted sum tariff; and the tenure of the affordable housing development yield.

Schemes that are just below the threshold levels, will have to satisfy the Minister that the proposals do not represent an under-occupation of the site, nor that a large site is being brought forward in phases in order to avoid the threshold at each stage.

Affordable housing shall be provided on the site for which permission is sought unless one or more of the following circumstances apply:

1. that the provision of affordable housing on the site would make that development unviable;
2. that the site is of such a size or nature that the contribution to affordable housing would be maximised by allowing high-quality market housing to occupy that site and for the contribution to affordable housing to be in the form of a commuted payment, to support the delivery and/or procurement of affordable housing elsewhere;
3. affordable housing is best provided through the mechanism of a site-swap using sites within the ownership and control of the applicant;
4. the housing units provided in a mixed-use scheme are directly related to and necessary for the operation of that development.

The implementation of the policy was subject to further consultation and the development of supplementary planning guidance (SPG). Through the SPG consultation process and, through later engagement undertaken during the Island Plan Review, it became clear that the development industry and landowners remained fundamentally opposed to the principle of Policy H3. Concerns centred particularly on viability and land being prevented from being brought forward for residential development as a result – especially given the economic circumstances at the time.

The Council of Ministers accepted these concerns and, consequently, Policy H3 was set aside. It is understood that work is underway to research and develop an alternative policy mechanism to capture value from the development of land to support the provision of affordable homes, which does not have the same associated risks.

APPENDIX 3: Comments on amended Draft Affordable Housing SPG and Draft IDP Policies GP10 and GP11

1. In January 2015 we were asked to review further drafts of the Affordable Housing SPG and IDP Policies GP10 and GP11. Our comments follow.
2. It is considered that, overall, the two documents work together and cover the relevant information well. However, it is considered that the documents would be improved by a few minor amendments, as outlined below.
3. It is recommended revising draft *Policy GP10: Comprehensive Development*, so as to make it (even) more clear that:
 - a) development will be required to achieve efficiency in the use of available land, whilst also meeting other amenity and functional requirements; and,
 - b) in some circumstances a comprehensive scheme will need to be prepared, to which an individual development proposal will need to conform.

It is considered, that the policy and its requirements would be more clear if the wording were to be changed from:

“In considering proposals for development the Environment Department will take into account the need for individual proposals to conform to a comprehensive scheme for the whole site or area in order to make the most effective and efficient use of the land.

Proposals will not be supported where their implementation in isolation would not result in the most effective and efficient use of land”;

to

In considering proposals for development of any site that forms part of a larger parcel or allocation, or another area of land suitable for further development, the Environment Department will take into account the need to make the most effective and efficient use of the land as a whole, whilst also meeting the requirements of other IDP policies. Proposals will not be supported where their implementation in isolation would not result in the most effective and efficient use of land or would prejudice the efficient and well-planned development of remaining land. Where necessary to ensure efficient development, individual proposals will be required to conform to a comprehensive scheme for the whole site or area.

4. There are problems with the way Policy GP11 is summarised in paragraph 6.2 of the SPG. First, the example appears to reverse the policy preference for land rather than buildings, as it refers first to requirements to provide particular numbers of affordable dwellings and then (as what seems like a second preference) to a “land equivalent”. To be consistent with the wording of the policy itself, this would be better phrased the other way round.

Second, the actual numbers quoted in the examples may be misleading, as the area of the proportion of a site provided for affordable housing may not equate that precisely with the number of affordable dwellings it could yield. For example, it is quite likely that 20% of the land area for a development of 9 dwellings would actually yield sufficient land for more than 1 affordable dwelling. The examples would benefit from reconsideration.

5. In Paragraph 7.2b of the Draft SPG, we consider that it would be helpful to clarify the circumstances to which the phrase *"the provision of land is not feasible"* may be expected to apply. It is assumed that this refers mainly to development involving the conversion of existing buildings and / or the development of blocks of apartments. If that is the case, it would be helpful to explain this by using this as an example. If there are other circumstances that may commonly trigger this exception, it would be useful to refer to these as examples too.

6. In Paragraph 7.2c, two minor amendments are recommended:

- In the second line, change the phrase *"the Environment Department will consider"* to *"the Environment Department may consider"*, so as to maintain more discretion over this matter;
- in the eighth and ninth lines, it is assumed that the phrase *"must be capable for development"* should read *"must be capable of development"*.

This independent review was undertaken by

Steve Kemp, BA, DipTP, MRTPI, FRSA, AoU,
Executive Director,
OpenPlan³,
Sparkhouse Studios,
Ropewalk,
Lincoln,
England
LN6 7DQ

website: www.thinkopenplan.com

email: steve@thinkopenplan.com

Tel: +44(0)1522 837 213



³ **OpenPlan** is a trading name of Open Plan Consultants Limited
(Registered Company No. 5591097)