

The Publication of a First Homes Interim Guidance Note

Summary

This report outlines:

- An update to the National Planning Practice Guidance which sets out the requirement for 25% of all affordable housing units on development schemes to be delivered as First Homes;
- The proposal to publish a First Homes Interim Guidance Note to make the planning policy requirements for First Homes clear for Surrey Heath, and the inclusion of local connection criteria for determining eligibility of prospective purchasers within the Guidance Note; and
- The key matters surrounding the implementation of First Homes Policy in Surrey Heath including potential resourcing implications.

Portfolio: Planning and People

Wards Affected: All

Recommendation

That the Executive RESOLVE that

- (i) the update to National Planning Practice Guidance and the introduction of First Homes be noted;
- (ii) the publication of the First Homes Guidance Note, as attached at Annex A, including the local connection criteria for determining eligibility of purchasers be agreed; and
- (iii) the potential resource implications of First Homes be noted.

1. Key Issues

- 1.1 On 24th May 2021 the Housing Minister made a Written Ministerial Statement to Parliament which set out changes to the Planning Practice Guidance including the introduction of First Homes, with effect from 28th June 2021. First Homes are a specific form of discounted market sale housing that will be available to first time buyers and are to be sold at a minimum discount of 30% below the market value, with a maximum price of £250,000 at the first sale after the discount is applied. The discount is to be retained in perpetuity through a restriction on the Land Registry title. The policy sets out that for planning applications determined after 28 December 2021, at least 25% of all affordable housing units delivered through developer contributions must be First Homes.

- 1.2 Local Planning Authorities are encouraged to make the development requirements for First Homes clear for their area. The Planning Practice Guidance states that the most appropriate method or tool to do this will depend on individual circumstances for each Local Planning Authority. These might include (but may not be limited to): publication of an interim policy statement or updating relevant local plan policies. Local Planning Authorities should assess their own circumstances when considering the most appropriate way to achieve this in their context.
- 1.3 Policies within the new Local Plan will reflect the requirement for First Homes however as the new Local Plan is not due to be adopted until 2023, it is considered appropriate to publish an Interim Guidance Note. This will make the requirements for First Homes clear to developers and can be in place prior to the requirement for First Homes taking effect for schemes granted permission after 28 December 2021. This guidance note can also be used during pre-application discussions on new housing sites coming forward in the Borough.
- 1.4 The Planning Practice Guidance on First Homes sets out that Local Authorities can set a greater discount and lower price cap for First Homes and a lower income cap for prospective buyers if they can demonstrate a need for this. Additionally, local connection or key worker requirements can also be set for prospective buyers. Any amendments to the national criteria can only be made through the Local Plan process. The exception to this is the setting of local connection criteria which it is proposed to include within the First Homes Guidance Note.
- 1.5 The inclusion of local connection criteria provides the Council with the opportunity to seek to ensure that purchasers of First Homes have a link to the Borough and that First Homes contribute towards meeting local need. The Planning Practice Guidance states that Authorities should consider the application of these discretions carefully and ensure they do not limit the eligible consumer base to the point that homes become difficult to sell. Regard has been had to other examples of local connection criteria used by Surrey Heath, and by the Local Government Association and it is proposed that criteria based on residency, employment and family connection are applied. Local connection criteria only apply for a maximum of 3 months from when a home is first marketed and if a suitable buyer has not reserved a home after 3 months, the eligibility criteria revert to just the national criteria. There is also a statutory exemption to the local connection criteria for members of the armed forces.
- 1.6 The proposed local connection criteria for Surrey Heath set out within the Guidance Note, and agreed with the Housing Services Manager, is that at least one purchaser must be able to demonstrate that they meet one of the following criteria:

- a) Normally a resident in Surrey Heath – they are a current resident of the Borough and have been so continuously for the last 6 months or have lived in the Borough for 3 years during the previous 5 years; or
- b) Their place of employment is in Surrey Heath, and they have a current permanent contract for at least 16 hours a week that they have been in continuously for at least the previous 6 months; or
- c) They have a close family connection to the Borough, defined as a father, mother, brother, sister or adult children who are usually resident in the Borough in line with the criteria in (a); or
- d) There is an exceptional reason for allowing a discretionary local connection to the Borough in order to access the scheme, which will be assessed on individual circumstances.

1.7 In addition to the local connection criteria, the Guidance Note sets out the following information to applicants:

- a) What First Homes are and the national qualifying criteria (30% discount, £250,000 price cap) and eligibility criteria (First time buyers with household income under £80,000 and mortgage for a minimum of 50% of the discounted price).
- b) Confirmation that the Guidance Note will apply until the adoption of the new Local Plan.
- c) How the current Affordable Housing Policy (Policy CP5 of the adopted Core Strategy) is to be implemented in light of the requirement for 25% of all affordable units to be First Homes (summarised in section 1.8 below).
- d) Guidance on how the Council will seek to secure First Homes through developer contributions and the responsibility of developers with regard to valuations and prospective buyers.
- e) Details of transitional arrangements for decision making as First Homes will take effect for schemes granted permission after 28 December 2021, or after 28 March 2022 in cases where there has been significant pre application engagement relating to affordable housing tenures.
- f) Summary of the Council's next steps for implementing First Homes Policy in Surrey Heath.

1.8 The main implication of the introduction of First Homes is that the delivery of other forms of affordable housing (including affordable home ownership products such as shared ownership) will be impacted. In accordance with Government Guidance, once the 25% of First Homes is accounted for, social rent should be delivered in the same percentage as set out in the Local Plan and the remainder of the affordable housing tenures should be delivered in line with the proportions set out in the Local Plan Policy. In line with the Council's adopted affordable housing policy (Policy CP5 of the Core Strategy 2012) the requirement for First Homes will result in the following percentage breakdown of affordable housing tenures:

	Affordable Tenures – Example: 40 affordable units
Without First Homes	20 social rented units (50%) 20 intermediate units (50%)
With First Homes	10 First Homes units (25%) 20 social rented units (50%) 10 intermediate units (25%)

1.9 The Guidance Note including the local connection criteria was presented to the Local Plan Working Group on 18th October 2021. If approved, the Guidance Note will be published on the Council's website. Further work on any local amendments to national criteria will be progressed through the Local Plan. The Guidance Note will apply in the interim.

2. Resource Implications

2.1 The implementation of First Homes is likely to result in resource implications as Local Authorities are required to have a role in the application process for the purchase of First Homes and associated administrative tasks. In addition to ensuring developers are aware of First Homes criteria (proposed to be actioned through the publication of the Interim Guidance Note), in order to deliver First Homes there is an anticipated role for the Council in:

- Defining legal obligation requirements
- Application process for buyers – including providing a contact for notification of valuations, assessment of applications against eligibility criteria and issuing Authority to proceed and Authority to Exchange notices on both initial sales and resales
- Maintaining rental period records (First Homes can be rented out for a maximum of two years providing the Local Authority is notified)
- Monitoring marketing periods (to determine timescales for applying local criteria)

2.2 It is advised that at present there is no additional government funding relating to the delivery and administration of First Homes and there will potentially be financial implications for the Council. This is most likely to be in relation to resources in the Housing team to administer First Homes. This will be kept under review and if additional resource is required, this will come forward either as part of the usual budget process or through a separate report to the Executive.

3. Options

3.1 The options before the Executive in the light of First Homes policy are:

- (i) To agree the publication of the First Homes Guidance Note including local connection criteria.

- (ii) Not to agree the publication of the Interim Guidance Note and set out the First Homes requirements at a later date through the Local Plan process.
- (iii) To agree to omit local connection criteria from the Guidance Note, with the option of setting this at a later date as part of the Local Plan process or not setting any local connection criteria.

3.2 This report recommends approval of Option (i) above as the requirement for First Homes will apply for planning applications determined after 28th December 2021. First Homes will therefore form part of the affordable housing requirements for development schemes going forward and, as such, will also form part of current pre-application discussions on development proposals. The absence of an Interim Guidance Note would mean that the First Homes requirements for Surrey Heath will not be clear to developers until the Local Plan is adopted in 2023. Furthermore, the absence of local connection criteria would mean that only national eligibility criteria for First Homes would apply and the Council would not have the opportunity to seek to provide First Homes specifically for local residents.

4. Proposals

- 4.1 It is recommended that, in light of government guidance that Local Authorities should make the development requirements clear for their area, a First Homes Interim Guidance Note is published. It is also recommended that the Council utilises the opportunity to set local connection criteria within this Guidance Note in order to target local needs.
- 4.2 It is also recommended that potential resource implications resulting from the implementation of First Homes is noted having regard to the areas of work listed in paragraph 2.1 above (to be agreed at a later stage).

5 Supporting Information

- 5.1 Not applicable

6 Corporate Objectives and Key Priorities

- 6.1 The delivery of First Homes supports the objective to build and encourage communities where people can live happily and healthily. In particular, it addresses housing needs within the community
- 6.2 The introduction of First Homes supports the Health and Quality of Life aims within the Five Year Strategy as First Homes, and the addition of local connection criteria for determining eligibility of purchasers, provide a way of delivering more good quality affordable housing in order to better provide for the needs of Surrey Heath residents.

7 Policy Framework

- 7.1 The delivery of First Homes supports the Council's objective to build and encourage communities where people can live happily and healthily and through that to address housing needs within the community. First Homes will support the Health and Quality of Life aims within the Five Year Strategy as they will contribute towards the delivery of new homes that people can afford.
- 7.2 First Homes are to account for 25% of all affordable housing units and will be delivered alongside other affordable housing tenures set out within the Council's Affordable Housing Planning Policy (Policy CP5 of the Adopted Core Strategy 2012) and will support work being undertaken on the New Local Plan to meet the housing needs of all sectors of our local community.

8 Legal Issues

- 8.1 Legal Services will require clear instructions on section 106 agreements for the provision of First Homes. These may include the following.
- Eligibility criteria in relation to income, local connection and employment status.
 - Mortgage exclusion clauses.
 - The circumstances and conditions where a developer may sell a First Home on the open market and any requirements to compensate the Council for the loss of an affordable home.
- 8.2 The scheme is likely to demand additional resources from Legal Services; there appears to be potential for an increase in planning enforcement matters.

9 Governance

9.1 No matters arising at this time

10 Risk Management

10.1 No matters arising at this time

11 Equalities Impact

11.1 No matters arising at this time

12 Human Rights

12.1 No matters arising at this time.

13 Environmental Impact

13.1 No matters arising at this time.

14 Consultation

14.1 No matters arising at this time.

15 PR And Marketing

15.1 No matters arising at this time.

16 Officer Comments

16.1 None.

Annexes	Annex A - First Homes Guidance Note
Background Papers	N/A
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First Homes: Policy Guidance Note

November 2021



1. Purpose of this Guidance Note

The purpose of this Guidance Note is to set out for prospective applicants how First Homes are to be delivered in Surrey Heath prior to the adoption of the new Local Plan 2019-2038 (due to be adopted in 2023) having regard to the National Guidance and Surrey Heath's current Development Plan.

It also sets out local connection criteria to be used in determining First Homes eligibility. This Note was agreed by Executive on xx.

2. Background

On 24th May 2021, the Housing Minister made a **Written Ministerial Statement** to Parliament which set out changes to planning policy including the introduction of First Homes, with effect from 28th June 2021. This sets out that First Homes are the government's preferred discounted market tenure and, for planning applications determined after 28 December 2021, at least 25% of all affordable housing units delivered by developers must be First Homes (Section 5 below sets out the transitional arrangements for the introduction of First Homes).

Details of First Homes are included in an updated **Planning Practice Guidance (PPG)**.

2.1. What are First Homes?

First Homes are a specific form of discounted market sale housing for first time buyers which meet the definition of affordable housing for planning purposes. The PPG sets out the following national criteria for First Homes:

- First Homes must be sold at a minimum discount of 30% below their full market value.
- The discount is to be retained in perpetuity through a restriction registered on the title at HM Land Registry.
- The first sale must be at a price no higher than £250,000 once the discount has been applied.

2.2. Who can purchase a First Home according to the national criteria?

In order to purchase a First Home, at both the initial sale and at any future resale, buyers must meet all of the following eligibility criteria set out in the PPG:

- All purchasers must be first time buyers as defined in paragraph 6 of Schedule 6ZA of the Finance Act 2003 for the purpose of Stamp Duty Relief.

- Purchasers must have a combined annual household income of no more than £80,000.
- Purchasers should have a mortgage or home purchase plan to fund a minimum of 50% of the discounted purchase price.

2.3. First Homes criteria to be applied in Surrey Heath

The PPG advises that Local Authorities can set a greater discount of 40% or 50% and/or a lower price cap if they can demonstrate a need for this. The PPG also advises that Local Authorities can apply their own set of local eligibility criteria based on local needs, which can include a lower income cap for buyers, a local connection test or criteria based on employment.

Until the new Local Plan is adopted, **the Council will be applying the national criteria for First Homes** (30% discount, £80,000 income and £250,000 price cap). However, in order to meet local needs and to allow people to get on the housing ladder in their local area, the Council has set Local Connection criteria for First Homes eligibility as set out below.

Surrey Heath Local Connection Criteria:

In addition to the criteria in Section 2.2, at least one purchaser must be able to demonstrate that they meet one of the following criteria:

- a) Normally a resident in Surrey Heath – they are a current resident of the Borough and have been so continuously for the last 6 months or have lived in the Borough for 3 years during the previous 5 years; or
- b) Their place of employment is in Surrey Heath, and they have a current permanent contract for at least 16 hours a week that they have been in continuously for at least the previous 6 months; or
- c) They have a close family connection to the Borough, defined as a father, mother, brother, sister or adult children who are usually resident in the Borough in line with the criteria in (a); or
- d) There is an exceptional reason for allowing a discretionary local connection to the Borough in order to access the scheme, which will be assessed on individual circumstances.

In recognition of their unique circumstances, there is a statutory exemption from local connection criteria for all members of the Armed Forces.

Local connection criteria apply for a maximum of 3 months from when a home is first marketed. If a suitable buyer has not reserved a home after 3 months, the eligibility criteria revert to just the national criteria set out in Section 2.2.

3. The Surrey Heath Current Local Plan

3.1. What does Surrey Heath's current affordable housing policy say?

The existing Affordable Housing policy is Policy CP5 of the Adopted Core Strategy which seeks a target of 35% of all net additional housing as affordable (varies according to site size), split evenly between social rented and intermediate.

Policy CP5 of the Adopted Core Strategy (2012) - extract:

Over the lifetime of the Core Strategy, the Borough Council will seek a target of 35% of all net additional housing as affordable, split evenly between social rented and intermediate

The Borough Council will negotiate the overall quantity and type of on-site affordable housing on a site by site basis, based on the following thresholds and targets: -

Developments of 5-9 units (net) – 20% on site provision

Developments of 10-14 units (net) – 30% on site provision

Developments of 15 or more units (net) – 40% on site provision

The Borough Council will also negotiate a 20% affordable housing equivalent financial contribution on sites of 3-4 units (net)

3.2. How is Policy CP5 of the Core Strategy affected by First Homes?

The introduction of First Homes means that at least 25% of all affordable housing units should be First Homes. Once a minimum of 25% First Homes has been accounted for, the PPG sets out that social rent should be delivered in the same percentage as set out in the Local Plan and the remainder of the affordable housing tenures (75% of the total affordable units) should be delivered in line with the proportions set out in the Local Plan policy. This will therefore be the Councils starting point in discussions with applicants.

While the overall targets for total affordable housing provision on development schemes in Surrey Heath will remain unaffected by First Homes, First Homes will now account for 25% of the affordable housing provision and the proportions of affordable housing tenures set out within Policy CP5 will make up the remaining 75% with priority given to the delivery of social rent.

After the 25% of First Homes is accounted for, social rent should be delivered in line with Policy CP5 (half of the overall affordable provision), with the remainder to be intermediate housing. This would result in the following percentage breakdown of affordable tenures:

First Homes	25%
Social Rent	50%
Intermediate	25%

3.3. Worked example: 100 unit scheme before and after First Homes takes effect

Policy CP5 requirement for 40% affordable housing = 40 units in total

	Affordable Tenures
Without First Homes (i.e. for developments granted permission before 28 December 2021*)	20 social rented units 20 intermediate units
With First Homes (i.e. for developments granted permission after 28 December 2021*)	10 First Homes units 20 social rented units 10 intermediate units

*Or 28 March 2022 where there has been significant pre-application engagement (Transitional arrangements set out in Section 5).

3.4. How do First Homes interact with the requirement in the NPPF for 10% of homes to be available for affordable ownership on major schemes?

The NPPF sets a requirement that, where major development is proposed, at least 10% of homes should be available for affordable home ownership. The 25% First Homes contribution can make up or contribute to this 10% requirement.

As the Council's Development Plan requires 40% affordable housing for developments of 15 units and above, it is expected that the 25% First Homes contribution will make up the 10% affordable ownership requirement in most instances.

However, if a planning application for a major housing site (10 or more units) in which 25% of the affordable homes are First Homes does not meet the 10% affordable home ownership expectation in the NPPF, additional affordable ownership homes may be provided on top of the First Homes provision in order to meet this expectation.

It is expected that where additional affordable home ownership homes are needed to meet the 10% NPPF requirement, then applicants are encouraged to provide the additional affordable home ownership products such as 'shared ownership' homes to enable access to an alternative affordable home ownership model.

3.5. Exemptions

Where specific developments are exempt from delivering affordable home ownership products (Paragraph 65 of the NPPF) they are also exempt from the requirement to deliver First Homes. This exemption applies to development which:

- a) provides solely for Build to Rent homes;
- b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);
- c) is proposed to be developed by people who wish to build or commission their own homes; or
- d) is exclusively for affordable housing or a rural exception site.

4. Developer Contributions

4.1. Securing First Homes through Planning Obligations

First Homes will be secured through Section 106 planning obligations¹ and will make up a minimum of 25% of all affordable housing units on any development scheme which is required to provide affordable housing. When a First Home is sold by the developer to the first owner, a restriction is to be entered onto the title register identifying the unit as a First Home. This restriction should ensure that the title cannot be transferred to another owner unless the relevant local authority certifies to HM Land Registry that the First Homes criteria and eligibility criteria have been met, including the discounted sale price².

4.2. Can First Homes be delivered through cash contributions?

In accordance with paragraph 63 of the National Planning Policy Framework (NPPF), affordable housing is expected to be delivered on-site unless off-site provision or a financial contribution in lieu can be robustly justified, and the agreed approach contributes to the objective of creating mixed and balanced communities. This expectation is also set out in Policy CP5 of the Core Strategy which states that a financial contribution will only be acceptable where on-site provision is not achievable and where equivalent provision cannot readily be provided by the developer on an alternative site.

Where cash contributions for affordable housing are secured instead of on-site units, a minimum of 25% of these contributions should be used to secure First Homes. This could be achieved, for example, by acquiring additional First Homes from market development, paying the developer a sum to offset the discount from market price, and securing the tenure through section 106 planning obligations.

Where a mixture of cash contributions towards affordable housing and on-site units are secured, 25% of the overall value of affordable housing contributions should be applied to First Homes.

4.3. Are First Homes CIL Liable?

The Community Infrastructure Levy (CIL) Regulations 2010 allow developers of First Homes to obtain an exemption from the requirement to pay CIL.

Mandatory social housing relief can apply in respect of dwellings where the first and subsequent sales are for no more than 70% of their market value. To be eligible, a planning obligation must be entered into prior to the first sale of the dwelling designed to ensure that any subsequent sale of the dwelling is for no more than 70% of its market value. As First Homes will be provided at a minimum discount of 30% of the market value, this relief will therefore be available for First Homes.

¹ The Government is expected to provide template planning obligations which the Council will use as a basis for S106 agreements

² Model title restriction included in Appendix 1

4.4. Valuations and prospective buyers

It is expected that the valuation process and verification are to be managed by the developer and lender. During the initial sale of a First Home, the developer is required to commission a RICS registered surveyor for a valuation which will be approved by the mortgage lender's valuation and shared with the Council under the S.106 agreement.

It is also the responsibility of the developer to ensure that prospective purchasers of First Homes meet the eligibility criteria through:

- Assisting prospective buyers in the completion of an application pack³.
- Submission of the application pack to Surrey Heath Borough Council for review and notice of Authority to Proceed.

5. Decision making

5.1. *Transitional Arrangements*

The new First Homes policy requirement does not take effect for the following:

- Development sites with full or outline planning permissions already in place or determined (or where a right to appeal against non-determination has arisen) before 28 December 2021.
- Applications for full or outline planning permission where there has been **significant pre-application engagement*** which are determined before 28 March 2022.

***significant pre-application engagement** means any substantive discussions between the local planning authority and the applicant relating to the proposed quantity or tenure mix of the affordable housing contribution associated with that application.

5.2. *Section 73 Applications*

The requirement for First Homes does not apply to applications made under Section 73 of the Town and Country Planning Act 1990 to amend or vary an existing planning permission unless the amendment or variation in question relates to the proposed quantity or tenure mix of affordable housing for that development.

6. First Homes Policy in Surrey Heath – Next Steps

The Surrey Heath Local Plan is currently at Draft Regulation 18 stage and is due to go out to consultation in early 2022. The Draft Plan will incorporate the requirement for First Homes within an Affordable Housing policy and a First

³ Application packs are expected to be provided to the Council by the government in due course.

Homes Exception Sites policy. The Plan is due to be adopted in 2023 and this Guidance Note applies in the interim.

6.1. Will further local criteria be set in Surrey Heath?

Any changes to the national criteria such as a greater discount, lower price cap or lower income cap would be set through the Local Plan process. In the interim, the national criteria are to be applied for First Homes in Surrey Heath as set out in Section 2.3.

Should you require any further information please contact
planning.policy@surreyheath.gov.uk

For advice on the suitability of your development proposal it is recommended that you submit a request for pre-application advice (please note this is a fee paid service):

Pre-application Service | SURREY HEATH BOROUGH COUNCIL

Appendix 1: Model Title Restriction

The Council will use the following model title restriction which is a variation on a standard Form L restriction which has been prepared by the Government with HM Land Registry for this purpose. This model title restriction is part of the government's published template planning obligations:

No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition.