



Commuted Sums and Alternative Sites for the Provision of Affordable Housing

Supplementary Planning Document 2022



An Addendum to the Adopted Affordable and
Specialist Housing
(Adopted October 2021)

**Commuted Sums and Alternative Sites for the Provision of Affordable Housing SPD 2022
Addendum – to Harlow Council Affordable and Specialist Housing SPD 2021**

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Section 1: Introduction

Background:

- 1.1. The Council resolved at Cabinet on 24 March 2022 to “actively pursue a policy of seeking to secure further commuted sums via section 106 agreements for private developments.”
- 1.2. These are sums paid by developers in lieu of affordable housing on a development site, where it is not appropriate or feasible to provide on-site affordable housing. This can cover the full cost of a scheme providing it is delivering appropriate tenure housing within the Harlow area.
- 1.3. The Council agreed that “In line with Local Plan policy and the Council’s Affordable Housing Supplementary Planning Document, developers will need to agree with the Council that the right circumstances exist for off-site contributions.”

Legislative and Policy Context:

- 1.4. This SPD is an addendum to the adopted Harlow Council Affordable and Specialist Housing SPD 2021.
- 1.5. This addendum is considered a formal SPD and is a material consideration in the determination of planning applications and will also inform pre-application discussions on relevant developments. The SPD is unable to introduce new policy. This document has been prepared in accordance with Regulations 8 & 11 to 16 of the Town and Country Planning (Local Planning) (England) regulations 2012.
- 1.6. This SPD should be read in conjunction with Affordable Housing and Specialist Housing Supplementary Planning Document that was adopted in 2021.

Section 2: Provision of affordable housing on alternative sites or commuted sums

- 2.1. It is a requirement of the Local Plan Housing Policy H8 that the provision of affordable housing will be made on site. This is supported by the National Planning Policy Framework (NPPF) at paragraph 63 which states:

Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:

a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and

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b) the agreed approach contributes to the objective of creating mixed and balanced communities.

- 2.2. This is reflected in the adopted Affordable and Specialist Housing SPD, which amplifies this requirement, and that only in rare and exceptional circumstances will it be acceptable for a financial contribution be accepted on an alternative site. (Extract at Appendix A)

Provision on alternative site

- 2.3. If a developer has indicated through negotiation with the Council that provision of affordable housing will be through development of an alternative site, the Council will calculate the number of affordable dwellings to be provided based on the assumption that 100% market housing will be provided on the original site.
- 2.4. The Council will therefore be expecting an uplift in affordable dwellings on the alternative affordable housing site.
- 2.5. Policy H8 of the Adopted Harlow Local Development Plan¹ development of more than 10 dwellings will be expected to provide 30% affordable housing. For example, development of a site for 50 dwellings 15(a) would be expected to be affordable the remaining 35(b) would be market.
- 2.6. If an alternative site was identified, then 50(c) market houses would be provided on the original site and 15 on the alternative site, however this increases the total houses being provided to 65, which means the affordable offer is 23% of the total, meaning that an additional 7% should be accommodated.
- 2.7. To ensure that the 30% level of affordable is complied with the affordable housing provision needs to be boosted to compensate for the 7% deficit.
- 2.8. A simple formula can be applied using the fictitious example above:

Number of Affordable Houses = (a)/(b) x number of market houses(c)

$$\frac{15}{35} \times 50$$
$$750 / 35 = 21 \text{ (rounded)}$$

- 2.10. Therefore 65 dwellings in total to be provided of which 21 will be affordable, which equates to 30%.

¹ <https://www.harlow.gov.uk/sites/default/files/documents/Harlow%20Local%20Development%20Plan.pdf>

Commuted Sum

- 2.11. As required by Policy H8 of the Harlow Local Development Plan 2020 the Council will be seeking the provision of 30% affordable housing on developments above 10 dwellings. Although Policy and National Guidance expect affordable housing requirement to be provided on site, there may be occasions where this is not possible for some or all the housing. For example, the Council may consider commuted sums in the following circumstances.
- On site affordable housing may not be the right type or tenure for the location
 - On site affordable housing may not meet the needs of the waiting list in the proposed location
 - Viability of the application site may be in jeopardy, and a commuted sum may allow the site to come forward, A viability appraisal would be required as set out in the Affordable and Specialist Housing SPD and the Council's validation checklist.
 - Registered Providers may not consider the site suitable for their portfolio.
- 2.12. To be compliant with Local Plan policy H8 the commuted sum on existing sites or new sites will be calculated using the formula set out below. Subsequently developers may wish to review that contribution to affordable housing and submit a viability appraisal supporting their departure from policy.
- 2.13. Existing sites are those where an application has been approved and it has become clear through further viability assessment that the affordable element (either as a commuted some or alternative site) would be unviable in its current form, and the developer wishes to renegotiate their contribution.
- 2.14. The Council has set out a formula used by other authorities to calculate the commuted sum. Its basis is average sales price data for the main CM postcodes in the Harlow District, namely CM16, CM17, CM18, CM19, and CM20. (Map showing boundaries of areas is at Appendix B).
- 2.15. The amount of affordable housing that will be provided and the associated commuted sum is calculated depending on the situation. Using the example above in paragraphs 2.6 to 2.10 then a development of 50 market value dwellings with no affordable equates to a commuted sum for 21 affordable dwellings.
- 2.16. The formula to establish the commuted sum based on the number of affordable houses as calculated above is as follows:
- $$\text{Commuted Sum} = (\text{AH required} - \text{AH proposed}) \times \text{Avg. house price in postcode} \times 0.44$$
- 2.17. The adjustment factor of 0.44 represents land purchase and servicing costs to be incurred by the Council or housing provider. Land costs typically represent

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40% of the open value market value of housing. Servicing and professional fees are estimated to be about 10% of the land value (4% of the total cost). Therefore, the financial contribution sought will be 44% of the open market value of the residential units to be delivered. See Appendix D for Excel version.

- 2.18. Commuted sums will be expected to apply in different circumstances, for example, where the affordable housing requirement will wholly be on an alternative site, or when a proportion is on site and off site.
- 2.19. When calculating market dwelling values that form part of the calculation developers should consult the Land Registry house price sales data² for the latest whole year. If the register indicates a relatively small number of sales, it would be prudent to take sales figures for a longer period.
- 2.20. The commuted sum will take account of the dwelling types to be provided based on the 30% for each type. Land Registry tables set out the market values for a variety of types for both new build and older properties.
- 2.21. It may be that a proposed development site straddles two or more postcodes, in which case the commuted payment will be based on the proportion of the residential area in each postcode.
- 2.22. There may be instances where both affordable houses are delivered on an alternative site and a commuted sum, possibly caused by practical difficulties, or where the “claw back” as set out in Harlow Local Development Plan Policy IN6 (see Appendix C) has been implemented through a Viability Review Mechanism.
- 2.23. Through using the calculation should there be a non-integer result, for example 2.4 dwellings, that should be rounded up to 3 dwellings.

² <https://landregistry.data.gov.uk/app/standard-reports/report-design?utf8=%E2%9C%93&report=avgPrice>

Appendix A: Extract from the Adopted Harlow Council Affordable and Specialist Housing SPD 2021

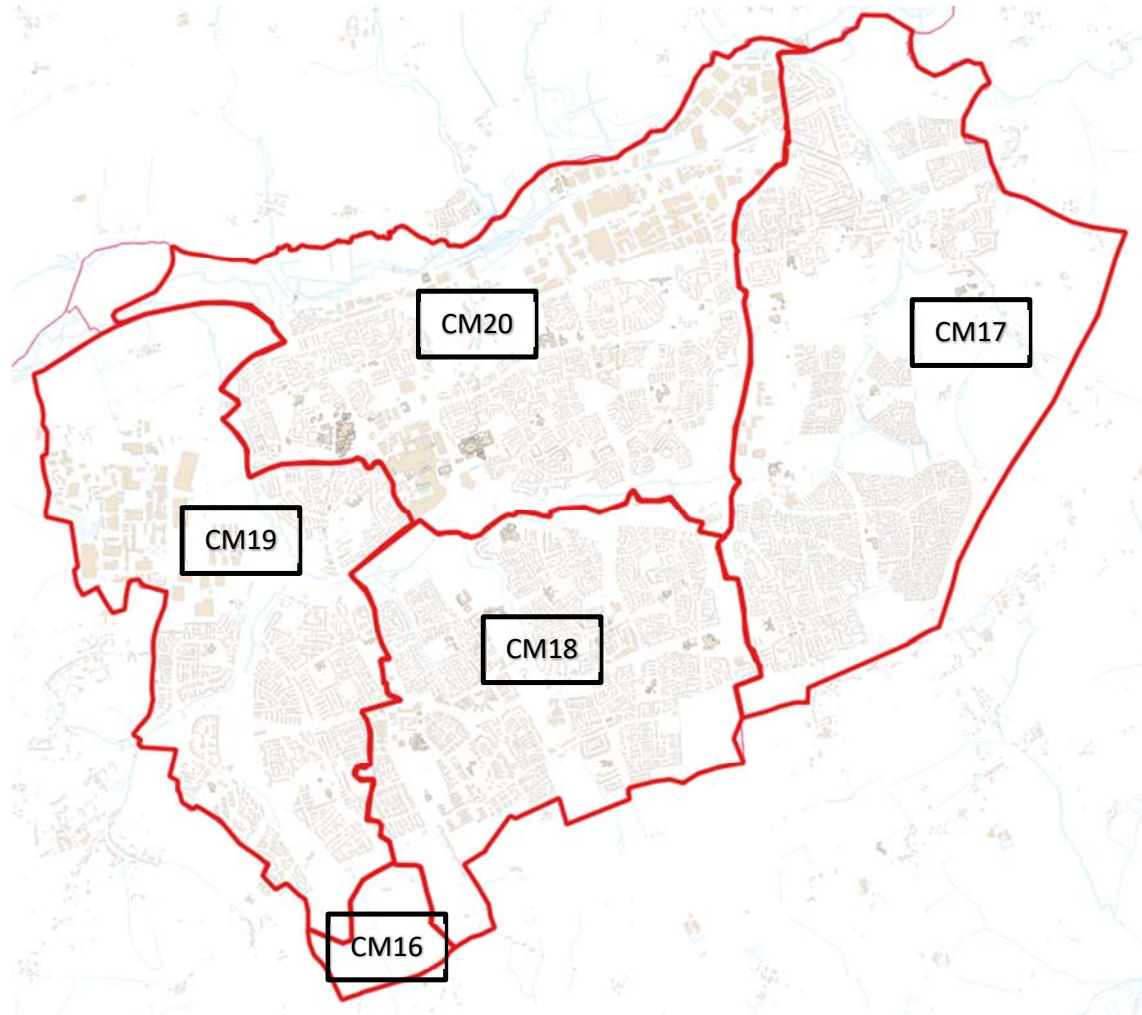
Provision of affordable housing on alternative sites / commuted sums

- 2.70. It is a requirement of the Local Plan Housing Policy H8 that the provision of affordable housing will be made on site.
- 2.71. Only in exceptional circumstances and by mutual agreement between the developer and the Council will a financial or other contribution for affordable housing on another site acceptable to the local planning authority.
- 2.72. It is strongly recommended that pre-application advice is sought if an applicant considers that an off-site contribution is appropriate. Applicants proposing off-site provision should provide written justification, setting out why affordable housing cannot be provided on site and off site provision / a commuted sum is necessary, as part of a planning application.
- 2.73. In rare exceptional circumstances, the Council may permit a proportion or the entire affordable housing to be delivered on an alternative site within the District or seek the provision of land in lieu of part or all of the affordable housing contribution.
- 2.74. If the proposal for alternative land is acceptable by the Council, land should be serviced to its boundaries and be of a size that is of equivalent value to on-site provision and in agreed location close to the original site.
- 2.75. Commuted sums will only be considered where the Council is satisfied that there is robust justification for not providing housing on-site or on an alternative site.
- 2.76. Where a commuted sum or similar contribution is sought as an alternative to on-site provision of affordable housing, the Council may require this contribution to be greater than the cost of providing affordable housing elsewhere. The money will be used to provide affordable housing on an alternative site. It is therefore appropriate that the level of payment in lieu should relate to how much it will cost an affordable housing provider to provide the equivalent housing on the open market.
- 2.77. The calculation of any commuted sums will be based on local market costs (all costs including acquisition of land) of replacing the number and mix (size and type) of affordable units had they been provided on site reflecting the latest housing needs findings.
- 2.78. The Council will seek to secure financial contributions broadly equivalent to the cost of providing the affordable housing off-site via an agreed methodology.
- 2.79. Commuted sums will be subject to indexation for the residential development.

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- 2.80. The applicant should notify the Council when the development commences or the trigger for payment / delivery has been reached. On receipt of the notification the Council will issue an invoice for the amount payable including any indexation. Indexation will be specified in a section 106 agreement based on an appropriate method at the time.
- 2.81. The Council will monitor Building Control and other sources and will issue an invoice if the Applicant fails to advise the Council that the payment has been triggered.
- 2.82. Indexation applies until the date of the invoice, so in these circumstances the amount may be higher than if the applicant had advised the Council when the payment was triggered. Penalty interest is payable to all unpaid contributions and accrues from when the payment is triggered to the date of actual payment.

Appendix B: Post Code Map of Harlow



Appendix C: Extracts from the Adopted Harlow Local Development Plan December 2020

H8 Affordable Housing

In residential developments of more than 10 dwellings, it will be expected that at least 30% affordable housing is provided.

Reduction of this percentage may be permitted for viability reasons. Any reduction or non-agreement between the developer and the Council will require an independent viability assessment.

Affordable housing within a development will normally be provided on-site unless exceptional circumstances should require it to be provided elsewhere with the agreement of the Council. Applicants will be required to submit justification for off-site construction or financial contributions.

Affordable housing provision will be expected to have regard to the recommended tenure mix identified in the latest Evidence Base on housing need and affordable housing products defined in current national planning policies.

Affordable housing will be incorporated into the overall design layout to avoid significant clustering of affordable housing. The design of affordable housing should make it indistinguishable from market housing.

Legal agreements with the Council will ensure that affordable housing benefits, for both affordable rented and intermediate housing, are secured for first and subsequent occupiers and retained as affordable

Justification

- 13.1 The Strategic Housing Market Assessment (SHMA) (2015) indicates there is a need for 13,600 affordable dwellings over the Local Plan period, equating to an average of 618 dwellings per year for the Housing Market Area (HMA). Specifically for Harlow, the affordable

housing need is 154 dwellings per annum (3,400 affordable homes over the Local Plan period).

- 13.2 The SHMA also shows that a significant number (85%) of affordable housing should be provided as affordable rent, normally provided by a Registered Provider or the Council. The remainder of the affordable housing should be provided as Intermediate Affordable housing at 15% of the total affordable.

Implementation

- 13.3 The type, tenure and bed-size of affordable housing will be informed by the current version of the SHMA and Viability Study or successor studies.
- 13.4 Affordable housing development should be provided on the application site, which will help ensure a mix of tenures and sizes. There may be circumstances where this is not possible, and in such circumstances, where both the Council and the developer agree, a commuted sum may be acceptable.
- 13.5 The Housing and Planning Act 2016 introduced the requirement for Councils to promote the supply of starter homes. The Act sets out a definition of starter homes and signals the Government's intention to require a proportion of starter homes to be delivered on qualifying sites, the level of which will be confirmed by secondary legislation. The consultation sets out 20% of dwellings on sites larger than 10 dwellings (0.5ha). It also suggests that where the affordable housing requirement is greater than 20%, the remainder of affordable housing can only be met once the requirement of the Act is met. This policy should have regard to this once the regulations have been enacted.
- 13.6 The new Garden Communities in the Harlow and Gilston Garden Town also have an important role in diversifying the existing housing market and supporting economic aims. These sites could provide a wide range of types and tenures of homes, informed by site-specific evidence and ensuring that there is a balanced mix of sustainable

and high-quality homes across the West Essex and Hertfordshire HMA.

IN6 Planning Obligations

Planning permission will only be granted for development if provision is secured for related infrastructure, affordable housing, services, facilities and environmental protection and any other planning contributions which are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

The provision of such requirements shall be secured either as part of development proposals, through the use of conditions attached to planning permissions, or through planning obligations. Where it can be demonstrated that provision on-site is not feasible then provision elsewhere, or a financial contribution towards this provision, will be required.

Where a planning application extends beyond the district boundary, prior agreement for the provision and location of any necessary obligations will need to be obtained from relevant parties.

Where the submission of a viability assessment has been justified, the Council will require an independent review of the viability of the scheme to be prepared, the costs of which shall be met by the developer. Where it is accepted that planning contributions are reduced below the requirements set out in policies of the Local Plan, a viability review mechanism will be required to enable a fully policy compliant level of contributions to be achieved over the lifetime of the project. Other than in exceptional circumstances, viability assessments will be made publicly available.

Justification

- 13.7 All development has the potential to impact on the environment and place pressure on local infrastructure and services. The planning system can be used to ensure that new development contributes

positively to the local environment and helps to mitigate any adverse impacts on infrastructure.

- 13.8 Section 106 agreements are a very effective means of ensuring that public services keep pace with private sector development and will play an important role in implementing the Local Plan. They can ensure relevant infrastructure and facilities are provided, the quality of a development is enhanced and schemes are enabled to go ahead that would otherwise be refused planning permission.

Implementation

- 13.9 Planning obligations are negotiated on a case-by-case basis. The approach to development viability, including how it should be taken into account in decision making, should be in accordance with national planning guidance. Viability review mechanisms will be considered on an individual basis taking into consideration matters such as the scale and phasing of the development and may be required both early and late in the development process. Further guidance will be available in an Adopted Planning Obligations Supplementary Planning Document (SPD).

- 13.10 Development can create a need for the provision of services, facilities and infrastructure both on-site and off-site. This provision may include, but not be limited to:

- (a) affordable housing;
- (b) open spaces and Green Infrastructure;
- (c) communications infrastructure;
- (d) public art;
- (e) community and social facilities;
- (f) transport improvements;
- (g) culture and recreation facilities;
- (h) utility services;
- (i) education and health facilities;
- (j) emergency service requirements;
- (k) measures to protect and enhance amenity or the environment, including biodiversity and wildlife habitats;
- (l) any other infrastructure items identified in the Local Plan.

- 13.11 Requirements for individual developments will depend on the nature of the proposals, specific site circumstances and on the requirements laid out in any adopted SPDs produced by the Council.
- 13.12 If the necessary requirements generated through a development cannot be achieved through negotiations or condition, they will normally be secured as planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) in association with a grant of planning permission.
- 13.13 In addition to securing necessary infrastructure, services and facilities, planning obligations may involve measures to ensure development takes place in an agreed way, for example, by setting out the appropriate phasing of development, and measures to meet other Local Plan policies and objectives, such as the protection of the environment.
- 13.14 New development can have wider impacts, such as development generating additional traffic movements outside the district or a larger application straddling the administrative boundary. In these cases, agreement may also be required with the adjoining Council and also Essex and/or Hertfordshire County Councils, as the Highway Authorities, as part of a Section 106 agreement.

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Appendix D: Commuted Sum Calculator

	B	C	D	E	F	G
2	COMMUTED SUM CALCULATOR					
3						
4	Calculate the commuted sum by filling in the white cells as appropriate					
5	Policy H10 30% Affordable Housing	=0.3		0.44	Adjustment Factor	
6	Type of dwelling	Detached	Semi detached	Terraced	Flat / Maisonette	Total
7	Total number of units on site					=SUM(C7:F7)
8	Percentage of affordable housing required (decimal value)	=\$C\$5	=\$C\$5	=\$C\$5	=\$C\$5	
9	Number of market value units proposed on site					=SUM(C9:F9)
10	Number of affordable units proposed on site					=SUM(C10:F10)
11	Total number of residential units #	=C9/(1-C8)	=D9/(1-D8)	=E9/(1-E8)	=F9/(1-F8)	=G9/(1-G8)
12	Total number of affordable units required	=C11-C9	=D11-D9	=E11-E9	=F11-F9	=G11-G9
13	Number of affordable units required off site (payable by commuted sum)	=C12-C10	=D12-D10	=E12-E10	=F12-F10	=SUM(C13:F13)
14	Market value of dwelling type					
15	Market value of affordable housing units	=C14*C13	=D14*D13	=E14*E13	=F14*F13	=SUM(C15:F15)
16	Adjustment factor applied (0.44)	=C15*\$E\$5	=D15*\$E\$5	=E15*\$E\$5	=F15*\$E\$5	=G15*\$E\$5
17	Commuted sum required	=C16	=D16	=E16	=F16	=G16

i.e. number of market value units provided + number of affordable units required to comply with policy or agreed otherwise with the Local Planning Authority

For Excel