

Planning and Affordable Housing for Build to Rent Consultation Response

Response from: London First, Middlesex House, 34-42 Cleveland Street, W1T 4JE

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London First

1. London First is a non-profit organisation with the mission to make London the best city in the world to do business. We work with the support of the capital's major businesses in key sectors such as housing, property, retail, finance, transport, infrastructure, professional services, ICT and education.
2. Our response to the consultation is written from a London perspective, but we want build to rent (BTR) to spread across the UK, and many of our members with an interest in BTR operate nationally.
3. We have only responded to the questions that are relevant to our perspective and highlight issues raised in this consultation that require consideration from a London perspective in relation to the Mayor's Draft Affordable Housing and Viability Supplementary Planning Guidance 2016¹. Accordingly, we will also share this consultation response with the Mayor.

Summary of key issues

- We welcome the publication of this consultation and the Government's continued support for the BTR sector.
- It is a positive step to introduce the Affordable Private Rent (APR) product and to make it clear it is the affordable product that should be used on BTR schemes. However, the parameters of the product should be changed from the current proposal.
- More broadly, it is important there is alignment between the Government and the Mayor of London's BTR policies. This does not mean that respective policies must be identical, but they must not contradict each other on fundamental issues. We think that changes should be made – discussed in further detail in the body of this consultation response – to both the Government's proposed policy and the Mayor's draft SPG in the following areas:
 - the definition of BTR (in the Mayor's draft SPG)
 - the parameters of affordable private rent (in this consultation)
 - eligibility and nomination criteria for APR (in the Mayor's draft SPG)
 - claw-back and covenant (potentially in the London Plan).

Consultation response

Q 5: Do you consider there are market and regulatory failures impeding the rapid development of the Build to Rent market that merit national policy intervention? Please add comments.

4. The BTR market is currently operating in a policy and legislative framework that has been designed with for sale housing and affordable housing in mind. This limits the ability to deliver BTR development and places planning applications for such development at a disadvantage. For example, BTR currently generates lower capital values than for sale housing which makes it hard for BTR developers to compete on an equal footing for land.

¹ Herein referred to as draft SPG

This is compounded by the absence of clear and comprehensive national BTR policy particularly in relation to affordable housing and unit sizes and mix.

5. In recent years both central and London Government have sought to alter this dynamic with a series of welcome policy changes and practical financial interventions, but more is required to realise the full potential of BTR development.

Q 6: Do you agree with the proposal to refer explicitly to Build to Rent in the National Planning Policy Framework?

6. Yes, we agree with this proposal. It would send a clear signal to local authorities that BTR is a mainstream part of the housing market that must be catered for in local plans and policy.

Q 7: Do you think that Government should set a policy expectation on Affordable Private Rent in the National Planning Policy Framework, or not? (Please state your reasons.)

7. Yes, we support a policy expectation in the National Planning Policy Framework (NPPF) that APR is the affordable housing type which should primarily be used on BTR schemes. The wording of the policy should be unambiguous to provide developers and local planning authorities with a clear route to follow.
8. We propose a different approach to determining what the quantum of APR should be and its level of discount from market rent (see our response to Q 18) and therefore do not support the consultation's proposals that these issues should be set out in the NPPF as currently drafted.

Q 8: Will a policy expectation in the National Planning Policy Framework send a sufficiently strong signal to support Affordable Private Rent as the main vehicle for affordable housing in Build to Rent? (Please state your reasons)

9. At this stage, the proposed policy seems sufficient. However, this should be monitored to ensure that applicants aren't being forced to deliver other types of affordable housing where they are seeking to deliver APR. If an amended NPPF proves insufficient then, as the consultation states, the Government should consider further measures such as legislation to implement this change.

Q 9: Do you consider that Affordable Private Rent could play a useful role in the delivery of affordable housing in the area(s) where you live or operate?

10. Yes. There is a strong benefit to introducing APR in London as it will provide well-designed and professionally managed homes to a broad range of Londoners who are not eligible for social housing but who need some support with meeting the cost of living in London. It will also help support social mobility, allowing renters greater access to a wider range of high-quality homes.

Q 10: Do you consider that the efficiencies arising through on-site provision of Affordable Private Rent can materially improve the viability of Build to Rent, compared to other affordable housing tenures?

11. Yes. Creating a system that allows one operator to manage all the homes on a BTR scheme – both market rent and APR homes – will provide a boost to the viability of schemes as well as the general attractiveness of BTR to invest in. Most investors want the

ability to own and manage (or contract out the single management of) all the homes in a BTR scheme. In more mature markets, where there is single ownership of schemes, there are well established secondary markets where schemes in their entirety are traded (a practice which further supports the financial viability of schemes). Other types of affordable housing require a registered provider to manage the properties and would therefore mean single ownership and control is not possible.

Q 11: Do you consider that there could be unintended consequences of Affordable Private Rent if it is accepted as a form of affordable housing?

12. It should be made clear that APR is a form of affordable housing but is not, for example, social housing and must therefore have a different price point in the market. This is not to say that BTR developers and local authorities can't agree a blend of rents in a scheme, but the starting point in policy must be clear that APR does not fall into the traditional definition of social housing.
13. Likewise, is it important to establish a clear eligibility criteria for APR - i.e. it is akin to or is an intermediate housing product rather than a general needs housing product. Although again, this should not prevent BTR developers and local planning authorities agreeing their own arrangements (see our response to Q 20).

Q 12: If your answer to Q11 is yes, would these consequences be mitigated by limiting Affordable Private Rent only to Build to Rent schemes?

14. We do not consider that limiting APR to only BTR schemes would help address the issues we have highlighted in response to question 11 – they can be addressed by producing clear policy and guidance.
15. One of the key reasons for introducing APR to BTR schemes is to support the viability of this type of development and help kick-start the delivery of significant numbers of BTR schemes. A general and wide use of APR in residential developments of any tenure runs the risk of diluting this. However, it would be sensible, in specified circumstances, for a slightly wider use of APR as the affordable housing contribution. For example, where a scheme includes a range of tenures including BTR or where there is a clear public policy benefit to supporting a range of affordable products being delivered.
16. Where APR homes are built, they must be accompanied by a clear and professional management plan. This will already be inherent as part of BTR planning application, but would also need to be provided in other schemes that fit into the specified circumstances mentioned above.

Q 13: Do you think it is reasonable for Planning Authorities to specify minimum tenancy lengths in Build to Rent schemes? Please add your reasons, and give examples of such agreements where appropriate.

Q 14: Do you agree that Build to Rent tenancies should be for at least three years (with a one month break option for the tenant after the first six months) , for all customers in the development who want one?

17. In answer to questions 13 and 14 together, it is appropriate for BTR operators to be required to offer longer tenancies to all customers who want them. Three years is generally regarded as a suitable timeframe for such tenancies. We do not, however, consider it appropriate that planning authorities should specify minimum tenancy lengths *per se* - i.e. a length they have determined themselves which could vary across the country.

Q 15: Does the definition of Build to Rent set out on page 20 capture all of the appropriate elements? (If not, please state why, and what criteria should apply).

18. We welcome the consultation's definition and agree it should be broad to enable the sector to innovate. BTR is starting to gain significant traction with thousands of BTR homes set to be built over the coming years. An overly perspective definition might constrain new entrants into the market.

19. The Government's BTR definition differs from the Mayor of London's definition in the draft SPG. The three areas of significant difference are:

- the Mayor setting a minimum size of development to constitute BTR development - at least 50 homes;
- requiring the homes to be held under a covenant for at least 15 years; and
- referencing the need for on-site management.

20. The differences in definition are not fundamentally at odds with each another. The GLA's definition is providing a further level of detail. However, to ensure there is as much alignment as possible between the national and London approach, and to ensure the London definition is not overly restrictive, the following amendments should be made to the GLA's definition:

- the 50 homes reference should be softened to provide for flexibility to go under the number where it is clear the development is BTR, but for whatever reason – and there could be a variety of legitimate reasons – it can't deliver 50 homes. For example, the physical constraints of the site prevent 50 homes being built or several smaller schemes in an area are delivered and managed (see bullet below) as a portfolio which aggregate to over 50 homes; and
- the reference to on-site management should be removed. The emphasis should be on high-quality professional management, but this does not always need to be on-site. In many existing high-quality affordable and private rental schemes, particularly those that are small-scale, on-site management is not universal and a requirement for such could impact heavily on viability, resulting in unwanted cost increases to residents, and not delivering a higher standard of service. On-site management is not a blanket regulatory requirement for affordable rented housing.

21. The Mayor's BTR definition mentions a covenant as this is in existing London Plan BTR policy, which the draft SPG must be based on. We have no objection to its inclusion (see our response to Q 21 for further detail on the covenant versus claw-back approach).

Q 16: Do you agree that the National Planning Policy Framework should put beyond doubt that Affordable Private Rent qualifies as affordable housing in Build to Rent schemes? (If not, please state why.)

22. Yes, we agree. This is essential to the future growth of BTR in the UK as, amongst other things, it allows for the single ownership of BTR schemes.

Q 17: Do you agree with the proposed definition of Affordable Private Rent set out on page 21? (If not, please state why, and what criteria should apply).

23. Yes, we agree with the proposed definition but suggest the reference to at least 20 per cent below market rent is removed and replaced with a reference to 'at a level that is below market rent but above social rent'. This reflects our response to question 18 below.
24. Regarding the existing definition of affordable housing, specifically the fourth bullet point on page 21 of the consultation, it should be noted that due to the mechanism for calculating social rent, scenarios can be created where local market rent is lower than social rent. As such, it might not always be possible in low value areas to provide APR homes which will be above social rent.

Q 18: The Government intends to set the parameters of Affordable Private Rent as:

- **a minimum of 20 per cent of the homes to be discounted;**
- **the discount to be set at minimum of 20 per cent relative to the local market;**
- **an offer of longer tenancy of three years or more;**
- **the discount to apply indefinitely (subject to a "claw-back" arrangement if Affordable Private Rent homes are withdrawn).**

Taken as a whole, are these parameters: (i) reasonable; (ii) too onerous; (iii) insufficient? Which, if any of them, would you change and why?

25. These parameters are too onerous or more accurately premature. We support the 3rd and 4th bullet points but disagree with the approach in the 1st and 2nd bullet points.
26. As the consultation acknowledges, the BTR market is still evolving with new entrants entering the market with different business models. The Government is right to support the evolution of this market, but key to this support is the creation of broad framework that encourages growth and innovation. An overly prescriptive approach such as specifying the quantum of homes that should be APR and their level of discount to market rent runs the risk of limiting flexibility, which in turn stifles innovation and investment. This could ultimately reduce rather than boost the delivery of new homes.
27. We acknowledge, as the consultation sets out, the potential benefit that fixing these parameters might provide in terms of being able to factor them into land value. However, at the current stage of the market's evolution this potential benefit is outweighed by the lack of data to suggest such an approach is viable. As the market matures and comprehensive data about BTR schemes become available there may be merit in retuning to this proposal.
28. In the context of London (and an approach that could be adopted nationally), we support the Mayor's approach to this issue as outlined in the draft SPG. This requires a viability appraisal to be undertaken to assess what the quantum of APR (referred to as discounted market rent in the SPG) should be and a negotiation about the level of discount to market rent (although the Mayor favours use of the London Living Rent). The Mayor's justification for this approach is one that we agree with:

A specified threshold approach [i.e. setting a percentage] for Build to Rent has not therefore been proposed...as there is currently insufficient Build to Rent schemes completed for any such threshold to be set with the certainty that it is not either too high and will reduce development, nor too low and will fail to maximise affordable housing delivery².

² Paragraph 4.31, page 44 Homes for Londoners, Draft Affordable Housing and Viability Supplementary Planning Guidance, Greater London Authority: November 2016.

Q 19: Should the parameters for Affordable Private Rent appear on the face of the National Planning Policy Framework or within Planning Practice Guidance?

29. We would support including the parameters for APR in the NPPF rather than NPPG but only if the 1st and 2nd bullet points are removed and replaced with the approach to viability as outlined above in paragraph 28 in response to question 18.

Q 20: The Government is minded to leave determination of eligibility and nomination criteria for Affordable Private Rent to negotiation between the developer and the local authority. Do you support this position? Will it affect take-up of the policy? Please give your reasons.

30. We agree the determination of eligibility and nomination criteria for APR should be set through negotiation between the developer and the local authority. As per our response to Q 11, the nomination process should not be used to alter the APR product by, for example, a local authority insisting a developer take people from their general needs housing waiting list, where such people are in fact seeking and are eligible for social housing.

31. This is no to say that a developer should be prevented from agreeing a range of discounts and housing a variety of people in APR (and indeed the market rent components of a scheme) but policy should clearly state this is at the discretion of the developer rather than a requirement. Likewise, policy should make clear that housing people in APR is meeting a distinct housing need compared to other types of affordable housing.

32. Regarding the Mayor's SPG, eligibility and nomination criteria for the affordable element of BTR schemes is not covered. This should be changed to provide clarity on this issue. The Mayor should adopt the Government's approach (with our amendments) as set out above.

Q 21: The Government considers there is no need for a fixed minimum covenant period, so long as appropriate claw-back arrangements are provided for. Do you agree?

33. Yes, we agree with this approach. The claw-back arrangements are essential to have in place to give reassurance to both local authorities, that they will not unfairly lose out on affordable housing if the scheme is converted into another tenure, and investors that, if necessary, there is a transparent process in place to convert to other tenures. It is important to stress that most BTR investors are long-term investors and will not be seeking early exits.

34. In the short-term, the existence of just a claw-back in national policy and a covenant and claw-back in London policy does not cause a problem as they are essentially performing the same role, but in slightly different ways. The forthcoming review of the London Plan offers the opportunity for national and London policy to be harmonised.

35. If London policy was to adopt just the claw-back approach (i.e. drop the current reference to a covenant) it will be important not to lose the wider meaning that has started to be attributed to the use of a covenant. For example, applying a bespoke approach to the design of and the mix of dwelling sizes in BTR schemes has become interwoven with the use of the covenant. If the covenant was to be dropped this bespoke approach should not be lost and new policy and guidance should be introduced to address these crucial issues.

Q 22: Do you think Government should (a) prescribe the basis for calculating the amount of claw-back, (b) set a possible basis for calculating the amount of claw-back

in guidance, or (c) leave the amount of claw-back to be agreed between the local authority and the applicant?

36. The Government should adopt (c) leave the amount of claw-back to be agreed between the local authority and the applicant subject to a safeguarding mechanism to ensure that Section 106 negotiations do not continue for an unreasonable period. For the same reasons stated above in relation to fixing the quantum of APR and its discount to market rent, the market is still maturing and there is a lack of data about BTR schemes to make wider extrapolations. Therefore, the viability of BTR schemes is best dealt with via individual negotiations, and the suggested approaches of (a) and (b) are too prescriptive for national policy at this stage.

37. Approach (c) has already in effect started to take shape in London with the Mayor proposing two approaches as to how claw-back might be calculated in the draft SPG.

Q 23: Should the Government's Build to Rent and Affordable Private Rent policy be identical across the whole of England or does it need to be set differently between London and the rest of England? If it should be set differently, please use the comments box to tell us how and why the policy should vary in London from the rest of England.

38. The Mayor of London already has significant control over housing and planning policy in London through several stages of devolution. It is therefore appropriate for London to have the choice to adopt a different approach to BTR from central government. However, to provide as much certainty as possible to BTR developers and investors, which is central to helping the expansion of the BTR market, both national and London BTR policy should be broadly aligned. This does not mean that respective policies must be identical, but they must not contradict each other on fundamental issues.

39. In our response to this consultation we have set out areas where national and London policy differ and have proposed changes. A summary of these suggested changes is set out below:

- **BTR definition** (see the response to Q 15 for further detail): The Mayor's definition in the draft SPG should be amended to:
 - provide flexibility for schemes that are below the 50 home metric, but are clearly BTR schemes, to be considered as such; and
 - remove the reference to the need for on-site management.
- **The parameters of affordable private rent** (see the response to Q 18 for further detail): This should be amended so that:
 - the proposal to include a minimum of 20 per cent of the homes to be discounted, with these homes discounted at a minimum of 20 per cent relative to the local market, is removed; and
 - replaced with a transparent viability appraisal to be undertaken to assess what the quantum of and level of discount of the APR should be.
- **Eligibility and nomination criteria for APR** (see the response to Q 20 for further detail). The Mayor's draft SPG should be amended to:
 - include guidance which states that eligibility and nomination criteria for APR (referred to as discount market rent in the draft SPG) is to be set through negotiation between the developer and the local authority.

- **Claw-back and covenant** (see the response to Q 21 for further detail). The forthcoming review of the London Plan offers the opportunity for national and London policy on this issue to be harmonised. If the London Plan was to be amended to remove the reference to the covenant it is important not to lose the wider meaning that has started to be attributed to the use of a covenant such as applying a bespoke approach to the design of and the mix of dwelling sizes in BTR schemes.

Q 24: Would it be helpful for Government to produce model clauses (which would not be mandatory) that could be used in Section 106 agreements to give effect to Affordable Private Rent?

40. If Government was to support the changes recommended in our consultation response to APR and model clauses can be developed, it may be helpful to produce them.

Q 25: Is a transitional period of six months appropriate for the introduction of the policies proposed in this consultation? (If not, why not?)

41. In general, it makes sense to use a transitional period when moving from existing policy to new policy, but if such an approach is used it must take into consideration the adoption of the Mayor's draft SPG (which is likely to happen during the summer) and any differences between national policy and London policy.