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12<sup>th</sup> September 2013

If you have difficulty reading this document please contact Elaine Reid on 01467 628486

Dear Mr Harrington

### **Consultation on Commuted Payments in Lieu of Affordable Housing**

Thank you for your letter regarding the above.

We welcome the further opportunity to provide feedback in terms of your proposals relating to revised methodology for calculating commuted payments in lieu of affordable housing.

As previously advised since Aberdeen City Council and Aberdeenshire Council share the Aberdeen Housing Market Area (AHMA), we would be happy to participate in future discussions to consider a joint approach to reviewing, assessing and potentially adopting a similar methodology for calculating commuted payments in lieu of affordable housing provision on site for the AHMA. We recognise that a different approach may well be required for the remaining part of Aberdeenshire Council area which is classed as the Rural Housing Market Area, as it is very different in terms of its character and activity.

At our Affordable Housing Forum meeting 11<sup>th</sup> September 2013 Aberdeen City's proposal was discussed. The Forum agreed that a review to the methodology was appropriate. However the general consensus was that the proposal appears to be quite complex and would likely require additional resources to facilitate such a proposal. The Forum felt that a more flexible and pragmatic approach would be required. This builds on our earlier response

### **Housing and Social Work**

#### *Housing*

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where we have suggested that any approach will require to be transparent, provide a degree of certainty to the development industry, as well as being efficient to manage and implement.


In terms of the proposal to allow for a mix of on-site delivery and commuted payments the Forum felt that this was an appropriate option to assist in the delivery of affordable housing.

I trust these comments are helpful but please feel free to contact me should you wish to discuss this further.

Yours sincerely

A handwritten signature in black ink that reads "Elaine Reid". The signature is written in a cursive, slightly slanted style.

Elaine Reid – Team Leader Affordable Housing  
Strategic Planning & Delivery Team  
Aberdeenshire Council



13 September 2013

Mr Daniel Harrington  
Senior Planner  
Aberdeen City Council  
Marischal College  
Broad Street  
Aberdeen  
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**CALA**  
HOMES

### **Commuted Payments in Lieu of Affordable Housing Consultation**

Dear Mr Harrington,

Thank you for the opportunity to comment on the recent 'Commuted Payments in Lieu of Affordable Housing' consultation. Please find enclosed the representation on behalf of CALA Homes (East) Ltd.

We should be grateful if you would acknowledge safe receipt of this letter and the enclosed consultation response and confirm that the content of both will be taken into account by the Council when it takes its decision on whether or not to adopt the proposed alterations.

Yours sincerely,



**Ross MacLennan**  
*Land Buyer*

## **CALA Homes (East) Ltd (CALA Homes)**

### **Consultation Response to Aberdeen City Council's proposed variation to SG 5.1 Affordable Housing (March 2102)**

In summary, CALA Homes oppose the proposed alteration to the current approach to the valuation of commuted sums for affordable housing on the grounds that:

- (i) as a matter of law, in the absence of any relevant supervening change in law, policy or economic circumstance, the development industry is entitled to expect that the current approach will remain in place during the life of the Aberdeen Local Development Plan (February 2012), and
- (ii) the proposed "site by site" formula is unworkable and to the extent that it has the potential to set the value of the commuted sum at a level that is greater than the difference between the open market and affordable housing residual land values that it purports to capture, it would constitute an unlawful "tax" on housing development within the Aberdeen housing market area.

For those reasons CALA Homes would ask the Council to reject the proposed alterations to the current approach to the valuation of commuted sums pending the next review of the local development plan.

As per the representation from Homes for Scotland, to assist the Council in reaching a decision to reject the subject proposals CALA Homes can confirm that they would be prepared to endorse an amendment to the adopted statutory guidance which directed that the annual review of the standard sum should be carried out on an upward only basis. This would provide the key stakeholders with the certainty over the life of the Aberdeen Local Development Plan (February 2012) that the commuted sum would not fall below its current level of £25,000 per unit. As anecdotal evidence suggests that the average price paid for land for affordable housing in the Aberdeen HMA has fallen since 2010 when the standard sum was last reviewed, CALA are of the view that this represents a significant concession.

So far as the proposed increased use of commuted sums payments in developments of 20 or more units is concerned, whilst CALA Homes are supportive of the increased flexibility that an amendment of that nature would provide, we are conscious too of the fact that the introduction of an amendment of that nature would also run contrary to the adopted statutory guidance. In the interests of consistency, therefore, CALA Homes, are of the view that unless valid reasons can be put forward by the Council to justify the introduction of this proposed change at this point in the life of the development plan, the guidance should remain in its current form until the Aberdeen Local Development Plan (February 2012) is itself reviewed.

The issue which CALA Homes has with the introduction of this otherwise worthwhile alteration is that no valid reasons have been put forward by the



Council to justify it. CALA Homes would, alongside Homes for Scotland, welcome the opportunity to assist the Council in setting out reasoned justification for the introduction of a policy change at this point in time. As we see it, this would require to be done as part of a further but limited standalone consultation exercise.

CALA Homes, as a member of Homes for Scotland, would wish to make it clear, however, that alongside the other members, the support for this "mixed use" of on-site and commuted sum provision is predicated on the assumption that the method of valuation would continue to be based on the current approach whereby the value of the standard sum is calculated by reference to the average price that an affordable housing provider would pay for land for affordable housing within the Aberdeen HMA.

In terms of the further detail of the consultation, Aberdeen City Council proposed several variations to the current position. They are:

**Proposed Alteration 1** - the value of the commuted sum payment established by reference to a value that is equal to the amount that an affordable housing provider would need in order to purchase an equivalent site identified for affordable housing, as is the current policy position, its value should be established by reference to a value that is equal to the difference between that affordable housing value (which is to be assumed to be nil unless contractual evidence to the contrary is exhibited) and the value of an equivalent site identified for open market housing (which is to be assumed to be 33% of the mean estimated open market selling price for the mix of housing units that would be delivered on-site in lieu of the affordable housing units)

**Proposed Alteration 2** - a standard sum for the Grampian housing market area that is reviewed annually, as is the current policy position, the value of the commuted sum payment should be agreed or, as the case may be, determined, on a site by site basis at the point when an application for planning permission is submitted, and

**Proposed Alteration 3** - a requirement to provide 25% affordable housing units on-site in circumstances where the number of units authorised to be constructed is greater than 20, as is the current policy position, consideration should be given in pre-application discussions to the policy requirement being provided in the form of a mix of on-site affordable housing units and commuted sum payments.

In putting forward these proposed alterations for consultation, the Council has asked respondents to address the following questions, namely:

1. Is it appropriate to link the value of the commuted sum payment to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement?

2. If the answer to the first question is that it would be inappropriate to make that link, how might the method of valuing the commuted sum be otherwise amended to ensure that it "operates more fairly"?

3. Would the proposal to allow a mix of on-site delivery and commuted sum payments help improve the overall delivery of affordable housing?

The Council has confirmed that if these proposed alterations are approved (in whatever finalised form they may take) then ahead of formal adoption they will be notified to the Scottish Ministers in terms of Section 22 (6) of the Town and Country Planning (Scotland) Act 1997.

### **Response to the Questions**

1. *Is it appropriate to link the value of the commuted sum payment to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement?*

No, it would not only be inappropriate but also unlawful for the Council to change the Statutory Guidance so that the value of the commuted sum payment was linked to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement. CALA Homes believe that this would be contrary to the doctrine of legitimate expectation, contrary to national and local planning policy and the advice set out in the Chief Planners letter of 15th March 2010, and illogical and to that extent unreasonable. Furthermore it is thought that the proposed formula is unworkable and if adopted would stifle the delivery of housing development across the Aberdeen HMA leading to house price inflation.

2. *If the answer to the first question is that it would be inappropriate make that link, how might the method of valuing the commuted sum be otherwise amended to ensure that it "operates more fairly"?*

To protect the value of the commuted sum after it had been first calculated or reviewed after a first calculation, it would be appropriate for the Approved Guidance to be amended so that it was made clear that if the figure were to be reviewed on an annual basis, it would be on an "upward only" basis. Indeed there might be some merit in simply adjusting the Approved Guidance so that it provides that the figure of £25,000 would be indexed over the life of the plan period by reference to increases in construction costs. In either case this would provide both the development industry, the Council and affordable housing providers with the certainty that is needed to underpin investment decisions.

Given that the evidence suggests that the value of land for affordable housing has actually fallen since the date of the last review in 2010, it follows that this proposal represents a significant concession on the part of the Grampian house building industry.

3. *Would the proposal to allow a mix of on-site delivery and commuted sum payments help improve the overall delivery of affordable housing?*

CALA Homes, as member of Homes for Scotland, see a great deal of merit in this proposal we believe it would improve the delivery of both mainstream and affordable housing.

Indeed CALA Homes would suggest that there would be a great deal of merit in the current housing market if complete flexibility were to be introduced into the Existing Guidance whereby a developer was permitted to deliver the headline 25% policy requirement entirely in the form of a commuted sum in circumstances where it was known at the point in time when an application was submitted that no HAG funding would be available.

However, CALA Homes, as a member of Homes for Scotland, is of the view that the Council would have to provide valid reasons for seeking to introduce the proposed "mixed delivery" option.

### **Proposed Changes to the Existing Guidance**

Taking these points together and in order to address the queries in the consultation letter as regards (a) how the methodology might be amended to operate more fairly and (b) whether increased flexibility in the use of commuted sum payments might improve the overall deliverability of both mainstream and affordable housing, CALA Homes, as a member of Homes for Scotland, would recommend that whilst the existing approach to the valuation of commuted sum payments as set out in SG 5.1 should (and indeed must) remain, the remainder of the policy guidance would benefit from the following changes to its wording.

These proposed changes are set out as follows:

Paragraph 2.1 should be amended so that the following sentences are removed:

"Commuted sums will be negotiated between the developer and the Council. The figure for commuted sums is set by the Council, and the figure per plot is currently £25,000 (as of August 2010). This figure is subject to change and the figure is reviewed annually. Any changes will be consulted on and published in advance of implementation on the Council's website."

and replaced with the following:

"Commuted sums will be initially calculated on a fixed contribution per unit basis (currently £25,000) and thereafter reviewed by the Council annually on an upward only basis following consultation with the house building industry by reference to appropriate comparison evidence of sale prices of development land for the average price for affordable housing within the Aberdeen Housing Market Area or, in the absence of such evidence, the residual land value method set out in the relevant edition of the RICS Guidance Note, Scotland on the "Valuation of land for affordable housing". In

the absence of agreement as regards the appropriateness or availability of the available comparison evidence or, as the case may be, the assessment of the average residual land value, the Council will refer the matter to an independent expert for final and binding determination.

The date of the annual review shall be fixed by reference to the month (currently August) on which the commuted sum for the preceding year was agreed or, as the case may be, determined. The figure fixed for the preceding year shall continue to be the relevant figure for the purposes of the application of Policy H5 until such time as the reviewed figure has been agreed or, as the case may be, determined.

The reviewed figure will be published on the Council's website."

The remaining paragraphs in SG 5.1 should be re-numbered accordingly.

### **Rejection of the Proposed Alterations**

CALA Homes respectfully request that the Council rejects the Proposed Alterations and approves the modification to the wording of the Approved Guidance proposed in this response.

## Daniel Harrington

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**From:** William Burr <WBurr@chap.co.uk>  
**Sent:** 13 September 2013 14:22  
**To:** Daniel Harrington  
**Subject:** Commuted payments

Daniel  
Response to the consultation on commuted payments.

Question 1  
No- It should be linked to the provision of affordable housing.

Question 2  
The existing system has been very successful for many years. We believe an annual review of that sum is more appropriate and practical. This would allow flexibility to adjust to changing situations.

Question 3  
Yes – this allows cross subsidy to deliver probably less than 25% but with reduced public contribution.

We wish to object to the proposal as put forward and would urge the Council to acknowledge comment from the industry as put forward by Homes for Scotland.

**Bill Burr**  
**Director**



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## **Consultation on Commuted Payments in Lieu of Affordable Housing**

### **Q1. Proposed Amendment to Methodology.**

**“Do you think this approach, linking the payment to the increase in land value, is appropriate or is there an alternative that you think is more appropriate?”**

I do not think that this proposed change is appropriate; this will make the already very difficult process of delivering housing impossible. It is very difficult to imagine how S75's could be agreed. It is very likely that agreement between the parties will not be achievable and if it were and happens then it may be the case that the viability of such developments would be very questionable and not fundable. This proposal removes a corner stone to progress which is, “the certainty, consistency and speed” of the current process contained in Supplementary Guidance to the Aberdeen Local Development Plan. Fundamental to my understanding of the existing processes concerning affordable housing and commuted sums, I have maintained the reasonable expectation that apart from an annual review of the standard sum (£25,000 within Aberdeen) which subject to analysis, justification and agreement of the stakeholders would be amended to accord with current market conditions, the process would remain unaltered throughout the existence of the present adopted Aberdeen Local Plan.

### **Proposed Methodology**

“In calculating commuted payments the payment will be equivalent to the increase in the residual land value gained by substituting private housing for sale at the open market value of the affordable housing proposed. The use of commuted payments should be limited, but in the case that a commuted payment is acceptable it will be negotiated between the developer/land owner and the Council using this principal. The preferred method for agreeing payments will be to share the concluded missives in confidence to determine the gain in land value. Where concluded missives can not be shared the assumption will be that the area of land required for affordable housing will have nil value”.

This proposed methodology appears to have been written with larger sites in the mind of the author. Where smaller sites are considered in the context of these proposals the problems become clearer especially in regard to their practical operation and apply to all sites. For example if a site for 6 houses were to be considered each with a plot area of say 1800 square meters. For 6 houses this requires  $6 \times 0.25 = 1.5$  affordable homes. The industry has ample comparative evidence to show that it has been accepted by ACC planning, that an appropriate land take for an affordable house is circa 100sqm. Therefore it is straight away obvious that it would be inappropriate to locate affordable housing within this development. It is also worth noting that on the basis that the standard sum of £25,000 per affordable housing site at 100sqm is equivalent to £1,011,572.5/serviced acre which is

presently above the market value (remembering that the 100sqm site for an affordable house and could be established by the Council from their own records of the extent of land take for affordable housing). If under any circumstance the value of an affordable site would be nil then I would subscribe to the view that the house building industry in Scotland should go ahead and create its own RSL into which developers could pass their affordable sites into at nil value. As this organisation would be national then the Government would find it easier to deal with a single entity and said organisation would be likely to collect the majority of grant funding as it is likely that it would hold the greatest share of affordable housing land. The end result would be that the industry would own and control the provision of affordable housing. An added benefit would be that there would be a consistent specification to all AH throughout the country. The participants would receive a return on the basis of the extent of their input.

The idea of establishing residual land values may be fine as an idea but a very different prospect in reality. With all possible respect to the property valuer's fraternity this is not a science and is very open to and driven by opinion, objective and comparison. In the most recent years it has been clearly seen by the development industry that property values have been very driven by comparative values and the availability of funding and still is today. RLV's are dependent upon the anticipated selling prices of the properties being developed. It therefore follows that any scheme will require that it is designed for the requisite affordable provision and also designed on the basis of all private homes all adding another layer of uncertainty and guess work. It is also very inappropriate that developers are asked to open their business to scrutiny. The proposal that missives between developers and land owners, are to be scrutinised by the Council will be unacceptable to most developers and certainly most land owners. This will run the risk of seriously curtailing the availability of land for development.

"In calculating the commuted payment, and the starting point for negotiation, the following formula will be used".

$$(a \times b) \times 0.33 = \text{Commuted Payment}$$

Where

a = the number of private houses gained in lieu of the affordable houses on site

b = the average selling price of the private housing on site

0.33 = an estimated RLV

This is unworkable and at least requires major change. The 0.33 proportion is unjustified and may be a figure that prior to the banking crisis some developers may have been prepared to pay, which is at the extreme upper end of any range that may exist, this is a

symptom of the process that got the industry into the position that exists throughout the country today. Although in the most recent past as there was a lack of sufficient supply of housing land this brought about such extremes.

The following is an example of the unacceptability of this proposal in action.

If we assume a site has 4 houses then there is no Affordable house obligation. If we then assume that said site numbers are increased up to 6. This then implies that there is now an Affordable house obligation which is,  $6 \times 25\% = 1.5$  AH's.

Now let's assume that these houses are to be sold at £1,200,000 each. This implies that;

$$a = 1.5$$

$$b = £1,200,000$$

$$\text{Therefore, Commuted payment} = 1.5 \times 1,200,000 \times 0.33 = £594,000$$

Therefore in this situation the commuted sum will go from £25,000  $\times$  1.5 = £37,500 up to £594,000. If for example the present requirement of the lending institutions is that any development must return a minimum 20% GROSS MARGIN. This implies that the GROSS MARGIN from 2.5 private houses would be required to meet the commuted payment. In accordance with PAM 2/2010 this means that the sum provided to purchase a serviced site suitable to build 1.5 affordable houses is £594,000 this example highlights the problems with this proposal? THE GROSS MARGIN DOES NOT ALLOW FOR THE OPERATING COSTS NOR THE FINANCING COSTS FOR THESE PROJECTS WHICH THE 20% GROSS MARGIN MUST ALSO MEET. Therefore when these costs are also taken into account the number of private houses required to meet the costs of the commuted payment for the affordable housing for such a site would make any such a site unviable. In this situation it would be better to build 4 homes, alternatively the present system for the calculation of commuted sums **WORKS**. Importantly it provides certainty, consistency and speed in the delivery of both private and affordable housing.

This proposed change to the methodology focuses on the selling price of the properties in a development. This is difficult to interpret in any other way other than to see this as means of increasing the revenue to the Council to supplement the reduction of grant funding received from the Government. This does not accord with the Local Development Plan, the Supplementary Guidance or PAN 2/2010.

**Q2. "Do you think the calculation methodology fairly calculates the increase in land value between private housing and affordable housing? If not how should the methodology be amended?"**

To be absolutely clear I am of the opinion that the existing methodology in regard to the standard sum of £25,000 per affordable unit, properly and correctly reflects the value of a



commuted sum and therefore should not be amended. The existing methodology was arrived at with the agreement of all parties particularly ACC after very considerable considerations and therefore now accords with the Aberdeen Local Development Plan, Supplementary Guidance and PAN 2/2010. I cannot see how these present proposals show any respect to this statutory guidance and unfortunately consider said proposal to be ill considered, unlawful and most importantly unworkable.

### **Mix of ON-site and Commuted payment.**

Although I am of the opinion that this idea of a mix of on-site delivery of affordable housing (on sites of 20 or more) and commuted payments has merit. This degree of flexibility as I understand the matter is not provided for in PAN 2/2010 or the Supplementary Guidance. If it were possible to allow this amendment without opening up the methodology to wholesale change, that the present proposals would require then this proposed mix of provision should be conditional. The main one being that the overall cost to the developer should not change. If for example 50 affordables were required and were to be delivered as a mix of on site and commuted sums. The mix could be 25 affordable home serviced plots plus  $25 \times £25,000 = £625,000$  in those proportions or any variation thereof. This commuted sum would have to be spent on the site that generated the payment. If the Council wanted completed homes then agreement between the Council and the developer as to the cost of provision of houses and therefore the number of completed homes always on the condition that the total cost to the developer did not increase from the cost of meeting the initial obligation.

Another example;

At the moment the commuted sum is £25,000. Let's assume that it costs £100,000 to produce an affordable unit "all in". Let's assume that a site has an allocation of 160 units. This would generate an affordable housing obligation of:  $160 \times 25\% = 40$  units. Therefore the developer could build  $£100,000 / £25,000 \times 40 = 10$  completed affordable houses.

### **Q3. "Do you think that allowing a mix of on-site delivery and commuted payments will improve the delivery of affordable housing on-site?"**

If a proper, acceptable and workable solution can be agreed, then on the basis that neither the RSL's nor the LA's have any budgets to build AH's then the answer is obvious.

Gordon Pirie

Churchill Homes.





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**Your reference:** D. Harrington

**Our reference:** Sandy Telfer  
SRT/SRT/311031/120005  
UKM/52833004.1

13 September 2013

Dear Mr Harrington

**HOMES FOR SCOTLAND  
ABERDEEN CITY COUNCIL  
ABERDEEN LOCAL DEVELOPMENT PLAN  
REPORT NUMBER: EPI/13/093: POLICY ON AFFORDABLE HOUSING  
REQUIREMENTS FOR NEW DEVELOPMENT  
CONSULTATION RESPONSE**

We refer to the above matter.

Please find enclosed our response on behalf of Homes for Scotland regarding the proposed alterations to the Council's adopted statutory guidance on the valuation and use of commuted sums for affordable housing.

In summary, its members oppose the proposed alteration to the current approach to the valuation of commute sums for affordable housing on the grounds that:

- (i) as a matter of law, in the absence of any relevant supervening change in law, policy or economic circumstance, the development industry is entitled to expect that the current approach will remain in place during the life of the Aberdeen Local Development Plan (February 2012), and
- ) the proposed "site by site" formula is unworkable and to the extent that it has the potential to set the value of the commuted sum at a level that is greater than the difference between the open market and affordable housing residual land values that it purports to capture, it would constitute an unlawful "tax" on housing development within the Aberdeen housing market area.

For those reasons Homes for Scotland would ask the Council to reject the proposed alterations to the current approach to the valuation of commuted sums pending the next review of the local development plan.

So far as the proposed increased use of commuted sums payments in developments of 20 or more units is concerned, whilst Homes for Scotland's members are very supportive of the increased flexibility that an amendment of that nature would provide, it is conscious too of the fact that the introduction of an amendment of that nature

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A list of members is open for inspection at its registered office and principal place of business, Collins House, Rutland Square, Edinburgh EH1 2AA and at the address at the top of this letter. Partner denotes member of a limited liability partnership.

A list of offices and regulatory information can be found at [www.dlapiper.com](http://www.dlapiper.com).

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would also run contrary to the adopted statutory guidance. In the interests of consistency, therefore, Homes for Scotland, are of the view that unless valid reasons can be put forward by the Council to justify the introduction of this proposed change at this point in the life of the development plan, the guidance should remain in its current form until the Aberdeen Local Development Plan (February 2012) is itself reviewed.

As our consultation response makes clear, the issue which Homes for Scotland has with the introduction of this otherwise worthwhile alteration is that no valid reasons have been put forward by the Council to justify it. Homes for Scotland would welcome the opportunity to assist the Council in setting out reasoned justification for the introduction of a policy change in relation to an increase in the use of commuted sum payments at this point time. As we see it, this would require to be done as part of a further but limited standalone consultation exercise.

Homes for Scotland would wish to make it clear, however, that their members' support for this "mixed use" of on-site and commuted sum provision is predicated on the assumption that the method of valuation would continue to be based on the current approach whereby the value of the standard sum is calculated by reference to the average price that an affordable housing provider would pay for land for affordable housing within the Aberdeen HMA.

We should be grateful if you would acknowledge safe receipt of this letter and the enclosed consultation response and confirm that the content of both will be taken into account by the Council when it takes its decision on whether or not to adopt the proposed alterations.

Finally we are also instructed to advise the Council that Homes for Scotland will reserve its position meantime regarding the instigation of judicial review proceedings in the event that the Council decides to reject its members' views and press ahead with the proposed changes.

We look forward to hearing from you.

Yours faithfully



**DLA PIPER SCOTLAND LLP**



## Homes for Scotland

### Consultation Response to Aberdeen City Council's ("the Council") proposed variation to SG 5.1 Affordable Housing (March 2102)

#### 1. Introduction

- 1.1 Homes for Scotland have now had the opportunity to consult with its members regarding the alterations which the Council proposes to make to the subject statutory supplementary guidance.
- 1.2 In summary the proposed variations are that instead of having;
  - 1.2.1 the value of the commuted sum payment established by reference to a value that is equal to the amount that an affordable housing provider would need in order to purchase an equivalent site identified for affordable housing, as is the current policy position, its value should be established by reference to a value that is equal to the difference between that affordable housing value (which is to be assumed to be nil unless contractual evidence to the contrary is exhibited) and the value of an equivalent site identified for open market housing (which is to be assumed to be 33% of the mean estimated open market selling price for the mix of housing units that would be delivered on-site in lieu of the affordable housing units) ("Proposed Alteration 1")
  - 1.2.2 a standard sum for the Grampian housing market area that is reviewed annually, as is the current policy position, the value of the commuted sum payment should be agreed or, as the case may be, determined, on a site by site basis at the point when an application for planning permission is submitted ("Proposed Alteration 2"), and
  - 1.2.3 a requirement to provide 25% affordable housing units on-site in circumstances where the number of units authorised to be constructed is greater than 20, as is the current policy position, consideration should be given in pre-application discussions to the policy requirement being provided in the form of a mix of on-site affordable housing units and commuted sum payments (Proposed Alteration 3").
- 1.3 In putting forward these proposed alterations for consultation, the Council has asked respondents to address the following questions, namely:
  - 1.3.1 Is it appropriate to link the value of the commuted sum payment to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement?
  - 1.3.2 If the answer to the first question is that it would be inappropriate to make that link, how might the method of valuing the commuted sum be

otherwise amended to ensure that it "operates more fairly"?

1.3.3 Would the proposal to allow a mix of on-site delivery and commuted sum payments help improve the overall delivery of affordable housing?

1.4 The Council has confirmed that if these proposed alterations are approved (in whatever finalised form they may take) then ahead of formal adoption they will be notified to the Scottish Ministers in terms of Section 22 (6) of the Town and Country Planning (Scotland) Act 1997 .

## **2. Documents**

2.1 In preparing this consultation response, Homes for Scotland has taken account of the planning policy and other advice contained in the following documents:

2.2 In chronological order in terms of publication these are:

- \* Circular 1/2009: Development Planning (February 2009);
- \* Chief Planner's Letter dated 28th October 2009;
- \* Consultation on Calculating Commuted Sums for Affordable Housing;
- \* Chief Planner's Summary of Comments regarding the said Consultation;
- \* PAN 2/2010: Affordable Housing and Housing Land Audits (August 2010);
- \* Chief Planner's Letter dated 15th March 2011;
- \* Aberdeen City Council letter dated 1 November 2011 to the Scottish Government;
- \* Policy H5 on Affordable Housing - Aberdeen Local Development Plan (February 2012)
- \* Supplementary Guidance 5.1: Affordable Housing (March 2012)
- \* Report to Enterprise Planning & Infrastructure Committee dated 22nd January 2013, and
- \* Report to Enterprise Planning & Infrastructure Committee dated 21st May 2013

2.3 Before we address the issues raised by the questions which the Council has asked respondents to consider, Homes for Scotland would wish to remind the Council of the level of consultation which both it and the Scottish Government carried out on the issue of commuted sum valuation ahead of the Scottish Government's publication of PAN 2/2010: Affordable Housing and Housing Land Audits in August 2010 and the Council's subsequent adoption of its current supplementary guidance on affordable housing in March 2012.

## **3. Chief Planner's Letter dated 28th October 2009**

2.1 Ahead of the publication of PAN 2/2010 in 2010 (and as part of the review of PAN 74) the Chief Planner wrote to Homes for Scotland, the Scottish Federation of Housing Associations, District Valuer Services and the Heads of Planning in October 2009 to seek their comments on "four options for the



appropriate basis on which to calculate commuted sums" (see PAN 2/2010 Consultation on Calculating Commuted Sums for Affordable Housing: Summary of Contents report published by the Scottish Government.)

2.2 These options were:

Option 1

"For the commuted sum to be equal to the *value of the land for affordable housing* of that part of the original site that would otherwise have been used for affordable housing if the planning authority had not determined that a commuted sum was acceptable (ie the amount required to allow an affordable housing provider to purchase an equivalent site identified for affordable housing elsewhere.)"

Option 2

"For the commuted sum to be equal to the *difference* between the value identified at Option 1 and the value of this land for market housing (ie the amount required to allow an affordable housing provider to purchase an equivalent site for housing on the open market.)"

Option 3

"For the commuted sum to be a standard sum set annually by the planning authority, being a typical or average sum calculated for the authority or housing market area as a whole, using one of the approaches [ ie Option 1 or Option 2] set out above."

Option 4

"For the PAN to focus on planning advice and not to provide advice to planning authorities on land valuation or suitable approaches to commuted sums, referring to instead the forthcoming Royal Institution of Chartered Surveyors guidance."

2.4 In his Summary of Comments concerning the outcome of the consultation exercise, the Chief Planner confirmed that "the majority of respondents supported Option 3 as the most appropriate basis on which to calculate commuted sums because it provided certainty, consistency and speed." (our emphasis).

2.5 The Chief Planner also advised that the respondents who had selected Option 3 had also taken the view that clear details of a standardised method would be needed in order to create certainty, confidence and consistency between Councils and to avoid challenges to the Councils preferred approach.

2.6 Respondents also suggested that the "standard sum" approach proposed in terms of Option 3 should be:

- \* set annually;
- \* standardised/based on average values (the DV or an independent valuer can provide such values);
- \* relate to the housing market area or local authority boundaries, different sums can be used in different areas, and
- \* based on regularly reviewed, published data (to aid transparency)."

2.7 The advice set out in the Summary of Comments would have been an important relevant material consideration which the Scottish government would have taken into account when drafting PAN 2/2010. Given the subject matter of the consultation exercise, the advice set out in the Summary of Comments document would also have been an important relevant material consideration which the Council would have taken into account when it drew up its existing supplementary guidance on affordable housing. It remains relevant and important advice in terms of the Council's current consultation exercise.

### 3. PAN 2/2010

3.1 Having taken cognisance of the consultation responses on commuted sum valuation when drafting PAN 2/2010, the Scottish Government's guidance on the use of commuted sums in lieu of on-site affordable housing provides:

at paragraph 19 that:

*"the contribution from the developer of a market housing site will normally be the provision of serviced land eg a proportion of the site which can be developed by or for a RSL or local authority. Such land can be transferred either at a value relating to its end use for affordable housing or by agreement between the developer and the RSL or local authority, at a lower value."*

at paragraph 21 that:

*"[e]xceptionally a site may be unsuitable for affordable housing for a variety of reasons, including the size of the site, location, topography, conversion of buildings where relevant standards cannot be met and other local circumstances such as whether an appropriate tenure mix can be delivered. In such circumstances the developer may offer to provide the contribution on another viable site within their ownership or in some cases provide a commuted sum as long as the proposed alternative will help to meet an affordable need in the same housing market area. Commuted sums should only be used sparingly. The decision to accept a commuted sum is one for the planning authority and the rationale for accepting a commuted sum should be set out clearly in local policy."* (our emphasis)

and at paragraph 22 that:



*"[w]here it is agreed that as an alternative to a contribution of land within the proposed development site is acceptable the developer will provide either land or homes or a commuted sum of a value equivalent to the cost of providing the percentage of serviced land required by the policy."*

*"Planning authorities may wish to consider a policy for calculating a commuted sum, but this should be the subject of consultation with stakeholders before being applied."*

- 3.2 It was this national guidance which informed the Council's local development plan policy on the use of commuted sums in lieu of on-site affordable housing provision.

#### **4. Chief Planner's Letter dated 15th March 2011**

- 4.1 On 15th March 2011 the Chief Planner wrote again to the Heads of Planning in Scotland to remind them of the importance which the Scottish Government placed on "removing constraints to the development of housing land in the current economic climate."

- 4.2 The latest constraint which the Scottish Government had identified was the impact of cuts in public spending on affordable housing on the delivery of mainstream housing development in those parts of the country where local planning authorities already had or were proposing to put planning policies in place to deliver more affordable housing as part of private sector open market housing development. The Chief Planner highlighted the need for "realism and flexibility" in the drawing up and implementation of such policies.

- 4.3 Specifically he advised the Heads of Planning that:

*"authorities will also be aware of the significantly lower levels of public funding that are likely to be available to support the development of affordable housing in the coming years. In these circumstances [the Chief Planner] suggest[s] that authorities in drawing up and implementing planning policies on affordable housing should consider whether contributions of 25% or more are likely to be deliverable in the current economic climate. Levels of affordable housing that act to stifle overall levels of housing development are likely to be counter-productive. In certain cases the effect could be that development would not proceed at all."* (our emphasis)

- 4.4 The advice contained in the Chief Planner's letter would have been an important consideration which the Council took into account when it drafted its local development plan policy on the use of commuted sums in lieu of on-site affordable housing. It is also a relevant material consideration for the Council to take into account in the context of its current consultation.

#### **5. Aberdeen City Council letter to the Scottish government dated 1st November 2011**

- 5.1 The content of this letter is also relevant for the purposes of the current



consultation exercise. In this letter officers set out the Council's response to the Reporters carrying out the Section 19 examination into the proposed Aberdeen Local Development Plan regarding certain representations which it had received regarding the calculation of commuted sums.

- 5.2 The advice which the Council gave at that time, having considered the terms of the Chief Planner's letters, the Summary of Comments and the guidance set out in PAN 2/2010, was that:

*"The current commuted sum was set on 1st January 2008, and is £25,000. Prior to implementation of this sum notification was sent to developers, and from 1st January this fee (sic) has been used for all commuted sum payments in the Aberdeen Housing Market Area. An assessment was made into what the average cost to a developer was to provide an affordable house or serviced land. This fee has the benefit of providing clarity to the development industry on the likely costs of providing affordable housing."*

*Supplementary Guidance 5.1 allows for the commuted sum payment to be altered, but that this is to be the subject of consultation with the development industry and notice of any change in fee will be given."*

- 5.3 For the purposes of the current consultation exercise that remains important and relevant advice.

- 5.4 Circular 1/2009: Development Planning advises at paragraph 98 that:

*"[Supplementary] Guidance adopted in connection with a plan falls when the plan is replaced, but if it remains up to date, authorities may readopt it in connection with the replacement plan after limited re-consultation, provided a proper connection with the plan remains." (our emphasis)*

- 5.5 It follows, therefore, that in providing that advice to the LDP Examination Reporters in November 2011, the Council was satisfied that the approach to the valuation of commuted sums which they had put in place in 2008 not only remained "up to date" but also reflected the approach set out in Option 3 of the Chief Planner's letter of 28th October 2009, which had been thereafter identified in the Scottish Government's consultation as the option which had been selected by the majority of respondents as the most "appropriate basis on which to calculate commuted sums"

- 5.6 In providing this advice to the Scottish Government in November 2011 the Council would also have been aware of the enhanced status which their approved supplementary guidance on affordable housing (including the selected approach to the calculation of commuted sums) would acquire following the adoption of the new Local Development Plan.

- 5.7 Following submission of the proposed supplementary guidance to the Scottish Ministers in terms of the validation procedure set out in Section 22 (6) of the Supplementary Guidance on Affordable Housing referred to in Policy H5 was approved by the Council on 1st March 2012 ("the Existing Guidance").



- 5.8 In terms of Section 24 (1) (b) (ii) of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"), supplementary guidance "approved" by the Scottish Ministers in terms of the notification procedure set out in Section 22 (6), would become part of the statutory development plan.
- 5.9 Account too would have been taken by the Council when giving that advice concerning its selected approach to the valuation of commuted sums of the terms of Section 16 (1) (a) (ii) of the 1997 Act. This provides that local planning authorities are required to prepare a new local development plan "at intervals of no more than 5 years"(our emphasis).
- 5.10 Taken together the statutory and policy framework provides an implied promise on the part of the national and local planning authorities to the development industry that once supplementary guidance has been taken through the appropriate consultation and validation processes, it will remain in place, absent any supervening changes in the law, policy or material circumstances, for the life of the local development plan. In other words once those processes have been carried out and the relevant supplementary guidance is adopted, the legitimate substantive expectation of the development industry is that the guidance will remain in place until it either falls or is re-adopted when the local development plan is replaced.
- 5.11 Against that background, we would now propose to examine the scope of the review which the Council is entitled to carry out in terms of its statutory policy on commuted sums.

## **6. The Local Development Plan Policy on Commuted Sums**

6.1 The local statutory policy on affordable housing commuted sum payments is set out at Policy H5 of the Aberdeen Local Development Plan which was adopted on 29th February 2012.

6.2 Policy H5 provides that:

*"Housing developments of 5 units or more are required to contribute no less than 25% of the total number of units as affordable housing. Further guidance on the provision of affordable housing from new developments is available in Supplementary Guidance on Affordable Housing."*

6.3 It confirms that the approved supplementary guidance sets out the Council's detailed advice on how it expects commuted sums to be used in the context of affordable housing provision over the life of its current adopted local development plan.

## **7. The Approved Guidance**

7.1 In relation to the provision of commuted sums for affordable housing, and reflecting the advice which the Council gave to the Scottish government in November 2011 ahead of its formal adoption in March 2012, the Approved

Guidance advises developers at paragraph 2.1 that:

*"[a]ffordable housing requirements may be made on-site, off-site or by means of a commuted payment depending on the scale of development...Commuted sums will be negotiated between the developer and the Council. The figure for commuted sums is set by the Council, and the figure is currently £25,000 (as of August 2010). This figure is subject to change and the figure is reviewed annually. Any changes will be consulted on and published in advance of implementation on the Council's website."* (our emphasis)

7.2 At paragraph 2.4 the Existing Guidance advises that:

*"For developments of less than 20 units the provision of affordable housing may be on site, off site, or commuted payments."* (our emphasis), and

At paragraph 2.5 that:

*"For developments of 20 units or more the expectation is that the affordable housing contribution will be delivered on-site"* (our emphasis).

7.3 The circumstances in which the headline policy contribution may be reduced are explained at paragraphs 2.6-2.8 of the Approved Guidance. This provides that where by reference to a financial appraisal a developer can demonstrate to the Council that there are "exceptional costs", the requirement for affordable housing contributions may be reduced to "ensure the cumulative burden on the overall development does not make the site unviable" (our emphasis).

## **8. The Valuation Methodology underpinning the Approved Guidance**

8.1 It is clear from the advice which the Council gave to the Scottish Government on 1st November 2011 (see section 5 above) that the valuation method for the calculation of commuted sums as set out in the Approved Guidance is based on the third of the four approaches proposed by the Scottish Government in 2009 ie Option 3. As advised, that option proposed that the commuted sum could be *a standard sum set annually by the planning authority, being a typical or average sum calculated for the authority or housing market area as a whole, using one of the approaches [ ie Option 1 or Option 2] set out above.*"

8.2 Having selected the "standard sum" approach, it follows, that the next issue for the Council to consider was whether when calculating the "typical or average" standard sum for the Aberdeen Housing Market Area, it should use the approach set out in Option 1 or Option 2. Crucially, for the purposes of this consultation response, it was the approach set out in Option 1 that was selected, namely;

*"[f]or the commuted sum to be equal to the value of the land for affordable housing of that part of the original site that would otherwise have been used*



*for affordable housing if the planning authority had not determined that a commuted sum was acceptable (ie the amount required to allow an affordable housing provider to purchase an equivalent site identified for affordable housing elsewhere.)" (our emphasis)*

- 8.3 It follows, therefore, that at the point when the Approved Guidance was adopted by the Council on 1st March 2012 and hived up by application of Section 24 (1) (b) (ii) of the 1997 Act into the development plan, the Council had carefully considered and thereafter rejected the approach to the valuation of commuted sums set out in Option 2 of the Chief Planner's October 2009 letter.
- 8.4 In taking its decision to re-adopt the approach to the calculation of commuted sums which it had approved in the form of supplementary planning guidance in 2008, it is safe to assume, given the terms of the Approved Guidance, that the Council would have carefully considered the terms of the Summary of Contents report prepared by the Chief Planner and agreed with the comment that the use of the approach to the valuation of the standard commuted sum set out in Option 2 was inappropriate. The Summary of Comments report confirmed that the majority of respondents had recognised that, if that approach were to be implemented, it could potentially result in the value of the standard sum being set at such a high level that its practical effect would be to dis-incentivise developers from using commuted sums. As the Summary of Content report explains, it would act as a "penalty to encourage on site provision" in circumstances where such a requirement would otherwise have been regarded as "unsuitable" for any one or more of the reasons set out in paragraph 21 of PAN 2/2010 (see page 3 of the Summary of Comments and para. 3.1 above).
- 8.5 Indeed evidence supporting that assumption can be found at paragraph 2.4 of the Approved Guidance where the Council makes it clear that in sites involving 19 units or less, developers are to have the flexibility of delivering the headline 25% policy requirement in any one of three forms, including the payment of a commuted sum. Had Option 2 been selected as the Council's preferred approach to the valuation of the commuted sum, its acknowledged effect would have been to render their use unviable. The practical effect, therefore, had Option 2 been selected would have been to rule out the payment of a commuted sum on sites involving less than 20 units.

## **9. Development Plan Policy on Commuted Sums**

- 9.1 Against that legislative and planning policy background, we would now wish to consider the extent to which, as a matter of development plan policy, the Council is entitled to promote Proposed Alterations 1 and 2.
- 9.2 As part of that consideration it is important to understand what it is precisely that these Proposed Alterations involve.
- 9.3 It is clear from the terms of Proposed Alterations 1 and 2 that the Council is looking to substitute the approach to valuation of the commuted sum set out in



Option 1 of the Chief Planner's letter with the approach set out in Option 2. These two alterations, if approved, would have the effect of not only removing the Option 3 "standards sum" approach and replacing it with "site by site negotiation", they would also, crucially, change the underlying basis on which the commuted sum is calculated. The commuted sum would no longer be established and thereafter reviewed by reference to the price that affordable housing providers were actually paying for serviced land for affordable housing within the Aberdeen housing Market Area but rather by reference to a formula that purports to provide an estimate of the difference between the open market housing and the affordable housing residual land values.

- 9.4 On any objective assessment these proposed changes to an important part of the Statutory Guidance, were they to be implemented, would remove the flexibility of using commuted sum payments as a means of addressing the Council's affordable housing policy requirements. So far as Homes for Scotland's members are concerned, the implementation of these proposed alterations to the current Approved Guidance would have a major adverse impact on the delivery of housing development right across the Aberdeen Housing Market Area.
- 9.5 Turning now to consider whether the Council would be entitled, as a matter of law and planning policy, to press forward with and adopt Proposed Alterations 1 and 2 following the outcome of this consultation exercise.
- 9.6 The Council's statutory policy on the use of commuted sums in the context of affordable housing is set out in Policy H5 of the adopted Aberdeen Local Development Plan as supplemented by the Approved Guidance ("the Statutory Guidance").
- 9.7 When read against the legal and policy background and the level of previous consultation referred to in section 2-9 of this response, it is clear that the Statutory Guidance anticipates that it is only the headline figure of £25,000 which is to be subject to the annual review. In other words the scope of the annual review referred to in paragraph 2.1 of the Approved Guidance is expected to be confined to a consideration of the extent or otherwise to which the average amount required to allow an affordable housing provider to purchase an equivalent site may have either increased or decreased over the course of the preceding year.
- 9.8 If the average price paid for a plot of serviced land for an affordable house can be shown to have decreased over the course of the period since the figure of £25,000 was last reviewed in 2010, then, in term of the Statutory Guidance, that reduction in value should be reflected in a corresponding decrease in the level of the commuted sum payment set for the next year. Conversely, if the land prices paid by affordable housing prices has increased that increase too should be reflected through a corresponding increase in the current £25,000 figure.
- 9.9 What the Statutory Guidance does not anticipate, therefore, outside of a review of the local development plan itself, is that the underlying "approach" to



the valuation of the commuted sum should itself be the subject of annual review.

- 9.10 Having selected Option 1 as its preferred approach in terms of the calculation of the value of the standard sum following consultation and thereafter ratified that selection through the validation process enshrined in Section 22 of the 1997, the Council have created a legitimate substantive expectation on the part of the house building industry in Grampian. As indicated, this means that, as a matter of law, in the absence of the current valuation approach set out in the Statutory Guidance being superseded by more recent law or national planning policy or it being required to be reviewed as a consequence of any supervening material changes in circumstances, developers operating in the Aberdeen Housing Market Area are entitled to expect that it will remain in place throughout the duration of the current local development plan period. This ensures that the outcome of planning applications for housing development involving affordable housing can be decided with a degree of certainty and efficiency." (see paragraph 5 of Circular 1/2009)
- 9.11 Since the Approved Guidance was adopted by the Council in March 2012 it is self-evident that there have been no changes to either the relevant law or planning policy. It follows, therefore, that the issue then arising is whether Proposed Alterations 1 and 2 can be justified by reference to any supervening material change in circumstances that may have occurred since the current guidance on the issue of commuted sum payments was adopted in March 2012.
- 9.12 When considering this issue, regard has to be had of the explanations which the Council have given as justification for the proposed amendments.

## **10. Reasons provided for the proposed alteration to the Valuation Approach**

- 10.1 The Council's justification for Proposed Amendments 1 and 2 is set out in the 22nd January 2013 Report from the Council's planning department to its Enterprise Planning & Infrastructure Committee entitled "Aberdeen Local Development Plan Policy on Affordable Housing Requirements for New Development" ("the Committee Report").
- 10.2 The Committee Report put forward two reasons to justify the Proposed Amendments, namely, a reduction in Government funding for affordable housing and the need to strengthen the policy regarding on-site affordable housing provision (see paragraphs 5.6-5.11 and of the Committee Report).
- 10.3 By changing the method of calculating the commuted sum from the "standard sum" approach outlined in Option 3 ( whereby the value of that standard sum is established by reference to the value of the land for affordable housing as set out in Option 1) to the site by site valuation approach outlined in Option 2 (whereby the value of the commuted sum is set at a level that is deemed to represent the difference between the value of the land for market and affordable housing) the amount of commuted sum payable would increase significantly. The benefit of this proposed increase, according to the Council,



would be to *"make the option of a commuted sum less attractive"* with the result that *"the delivery of on-site [affordable housing] may become more attractive or a more realistic commuted payment will be received, which can meet a greater proportion of housing need."* (our emphasis)

10.5 Dealing with each reason in turn:

Reduction in Government Funding for Affordable Housing

10.6 At paragraph 5.5 of the Committee Report the Council acknowledge the terms of the letter dated **15th March 2011** which it and other planning authorities received from the Chief Planner highlighting the desire on the part of the Scottish Government to remove "constraints to the development of housing land in the current economic climate.

10.7 We have drawn attention to the date of this letter and to the advice from the Chief Planner to local planning authorities in March of 2011 that when drawing up planning policies on affordable housing that the level of requirement should not be set at a level that had the counter-productive effect of stifling mainstream housing development.

10.8 As indicated, it has to be assumed that when drawing up and consulting upon the Statutory Guidance over the course of the twelve month period leading up to its adoption on **1st March 2012**, the Council gave due and proper regard to the terms of the Scottish Government's advice. If that assumption is correct, as we have suggested it must be given the clear and unequivocal support set out in its letter to the Scottish Government dated 1st November 2011, it follows that in selecting both the standard sum approach set out in Option 3 and the method of calculating it set out in Option 1 rather than Option 2, the Council had concluded that that approach was the one that was most likely of the four options proposed by the Scottish Government to facilitate the delivery of affordable housing over the life of the new plan period. If that was not the case, why was Option 2 not selected and taken through a thorough consultation exercise ahead of the guidance on the subject acquiring development plan status in March 2012

10.9 Against that background, it seems illogical and indeed somewhat irrational for the Council to now put forward the fact that significantly lower levels of public funding are likely to be available during the plan period to support the development of affordable housing as a reason for changing its approach to the calculation of commuted sum payments in circumstances where:

- (a) it was already aware of the issue of reduced funding at the point at which it approved the current valuation approach and
- (b) rejected the alternative valuation approach which it is now proposing to introduce through Proposed Alterations 1 and 2 on the grounds that its introduction would be likely to stifle overall levels of housing development with the Aberdeen Housing Market Area.



- 10.10 It follows, therefore, that the reduction in public funding available for affordable housing does not constitute a relevant supervening change in circumstance justifying the promotion of Proposed Alterations 1 and 2.

Need to Strengthen the Policy regarding On-Site Delivery

- 10.11 The second reason which the Council has advanced as justification for the promotion of the Proposed Alterations 1 and 2 is that it would strengthen the presumption in the Statutory Guidance in favour of on-site delivery. If the value of the commuted sum is more "closely matched" to the increase in the value of the land that arises, as a consequence of the removal of the on-site affordable housing requirement, it follows, according to the Council, that the resulting reduction in the benefit to the developer that would otherwise be gained from making a commuted payment would improve the prospects of on-site delivery (see paragraph 5.14 of the Committee Report).
- 10.12 So far as Homes for Scotland is concerned, this second explanation is not only also illogical it is also contrary to national and local planning policy.
- 10.13 Dealing with each point in turn. Proposed Alterations 1 and 2 are intended to apply to all housing development proposals involving 5 or more units. No apparent account is taken of the fact that in terms of the advice set out in paragraph 2.4 of the Statutory Guidance (reflecting the national guidance set out in paragraph 16 of PAN 2/2010) there is no hierarchy of preferred form of delivery in terms of the way in which the H5 Policy requirement may be provided for developments of less than 20 units. The Statutory Guidance makes it clear that on such smaller sites the requirement can be delivered on-site, off-site or in the form of a commuted sum. It is, therefore, illogical for the Council to propose an amendment to the Statutory Guidance which would have the effect of raising the value of the commuted sum payment to a level that would effectively remove it as a viable option for a developer to put forward when promoting a site for less than 20 units.
- 10.14 As it would be extremely unlikely that a developer promoting a site of that size would be able to provide a similar amount of serviced land with planning permission elsewhere within the Aberdeen Housing Market Area, the practical effect of Proposed Alterations 1 and 2, were they to be introduced, would be to remove entirely the flexibility which PAN 2/2010, the Statutory Guidance and the Chief Planner (in terms of his letter of 15th March 2011) expects developers to have in terms of the form in which the affordable housing requirement is delivered. The effect, as indeed would appear to be the Council's intention, would be to restrict a developer's options to on-site delivery only.
- 10.15 Setting aside the "flexibility" issue, PAN 2/2010 in any event also makes it clear that there will be circumstances where "for a variety of reasons" a site may be "unsuitable for affordable housing". Given the clear and unequivocal terms of the Scottish Government's guidance, it again appears to be illogical and thus irrational for the Council to promote a proposed amendment to its Statutory Guidance which would effectively force affordable housing onto



unsuitable sites. If, as a result of the Proposed Alterations 1 and 2 the payment of a commuted sum was no longer a viable alternative option because it was set as a consequence of the change in the method by which it was calculated at an "unaffordable" level, it follows that the inevitable (and previously recognised and accepted) outcome would be that the development of the site would be stifled.

- 10.16 So far as the application of the Proposed Alterations 1 and 2 to the payment of commuted sums in relation to developments involving 20 or more units is concerned, the obvious question to be asked, given the clear advice set out in paragraphs 2.6- 2.8 of the Approved Guidance is why the Council has concluded that an increase in the amount of commuted sum sought would strengthen the existing policy presumption in favour of on-site delivery.
- 10.17 The Statutory Guidance makes it quite clear that on sites involving 20 or more units, 25% of the total number of units that are authorised to be constructed will require to be sold or let subject to a recognised category of affordable housing occupancy restriction. The Statutory Guidance makes it quite clear that that presumption in favour of on-site delivery will only be set aside in circumstances where the developer has been able to demonstrate by reference to "detailed financial information on the development costs and viability" that the site cannot afford the headline 25% on-site requirement.
- 10.18 On the basis that the Statutory Guidance is being followed by planning officers, it follows that an increase in the value of the commuted sum payment ought to have no impact whatsoever on the issue of whether or not a site is able to deliver the requisite headline number of affordable units on-site. The Statutory Guidance makes it clear that the purpose of the financial appraisal is to demonstrate to the Council why either the headline number of units should be reduced to a number that the site can afford or alternatively why the affordable housing requirement should be removed entirely. An issue concerning site viability should not be seen as an opportunity on the part of the Council to extract an enhanced financial payment. If that point is accepted, as Homes for Scotland would suggest it must, it follows that the reasoning behind the promotion of the Proposed Alterations 1 and 2 is fundamentally flawed.
- 10.19 Further support for the illogicality of the Council's position concerning the proposed changes to the way in which the commuted sum is calculated can also be found by contrasting those proposed changes with the terms of Proposed Alteration 3. This is the proposal that the headline 25% on-site affordable housing requirement for sites involving the promotion of 20 or more units should be amended so that the requirement can be delivered by means of a "mix of affordable housing and commuted payments."
- 10.20 If the principal objective behind the proposed changes to the way in which the commuted sum payment is calculated as set out in Proposed Alterations 1 and 2 is to make the delivery of on-site affordable housing "more attractive", why would the Council wish at the same time to promote a further amendment to the Statutory Guidance through Proposed Alteration 3 which had as its



primary objective the promotion of a reduction in the delivery of on-site affordable housing in favour of a mix of housing and commuted sum payments? Whilst for other reasons (see below), Homes for Scotland can see merit in this "mixed delivery" proposal, its promotion at the same time as the promotion of a policy alteration that is intended to strengthen the focus of on-site affordable housing simply serves to highlight the flaws in the Council's reasoning as regards why these proposed changes to the existing guidance are necessary.

- 10.21 It follows, therefore, that the assertion on the part of the Council that there is a need to strengthen the existing policy presumption in favour of on-site delivery on sites involving the promotion of 20 or more units is without foundation. If officers are allowing commuted sums to be paid in lieu of on-site affordable housing then that dispensation is presumably being given in the light of viability issues evidenced in a financial appraisal, which is precisely what the PAN 2/2010 and the Statutory Guidance expects. If, however, in what might otherwise be regarded as an informal "trial run" of the approach that the Council is now apparently looking to introduce in terms of Proposed Alteration 3, offers of commuted sum payments on larger sites are being accepted by the Council that would reflect a decision on its part to attach more weight in the decision-making process to the benefits of receiving a financial contribution towards the procurement of affordable housing rather than insisting that the policy presumption is followed and the 25% headline requirement is met in full on-site. Either way the matter lies entirely within the Council's own hands.
- 10.22 In the absence of (a) any supervening changes to the law or to national planning policy and (b) any other relevant material considerations which might suggest that the Proposed Alterations were justified, it follows that, as a matter of law, developers in the position of Homes for Scotland's members have a legitimate substantive expectation that the Statutory Guidance will remain unchanged until the current Aberdeen Local Development Plan is reviewed at which time it will either fall to be the subject of a fundamental overhaul or be re-adopted.
- 10.33 So far as Homes for Scotland is concerned, for the reasons outlined above, nothing has happened in terms of law or planning policy and no other material considerations have arisen since the Statutory Guidance was adopted in March 2010 which would justify the promotion far less the introduction of Proposed Alterations 1 and 2. For that reason Homes for Scotland is of the view that, as a matter of law, developers in the position are entitled to expect that the existing Statutory Guidance will continue in its current form.
- 10.34 Over and above the issue of their members' legitimate expectation, Homes for Scotland is also of the view that for the reasons outlined above Proposed Alterations 1 and 2 are in any event contrary to:
- (i) the national planning guidance set out in paragraph 21 of PAN 2/2010;
  - (ii) paragraphs 2.4 and 2.5 of the Approved Guidance, and
  - (iii) the advice set out in the Chief Planners Letter of 15th March 2011.



- 10.35 It is also of the view that the reasons put forward by the Council to justify Proposed Alterations 1 and 2 are illogical and thus *Wednesbury* unreasonable.
- 10.36 For the reasons outlined in paragraphs 10.33-10.35 above, Homes for Scotland has concluded that it would be ultra vires for the Council to implement Proposed Alterations 1 and 2. It, therefore, requests on behalf of its members that they are withdrawn pending the statutory review of the adopted Aberdeen Local Development Plan (February 2012).

## **11 Proposed Alteration 3**

- 11.1 Homes for Scotland's members see a deal of merit in the proposal that further flexibility ought to be introduced into the practical application of Policy H5 so that the option of delivering a significant proportion of the headline 25% affordable housing requirement on large sites in the form of a commuted sum payment rather than on-site units was supported in policy terms.
- 11.2 A worked example may be of assistance in demonstrating the point. A 400 unit site would involve a 100 unit AH requirement. Fully funding such a 100 scheme for affordable housing would almost be impossible for an affordable housing provider (AHP) in the current economic climate. However, if 50 of the required 100 units were notionally delivered in the form of a commuted sum, it would raise £1.25m (50 x £25k). This sum could then be used to cross-fund the other 50 units through either an AHP (or by LCHO) thereby bringing the overall viability of the site to a point where at least 50% of the affordable housing project was capable of being delivered.
- 11.3 Notwithstanding these apparent merits, it has to be recognised too that this proposal is contrary to the provisions of paragraph 21 of PAN 2/2010 which advises local planning authorities that commuted sums should only be used "sparingly". For the reasons outlined in paragraphs 10.19-10.21 of this response, it is also contrary to the provisions of the Council's own Statutory Guidance insofar as it has the potential to undermine the strong presumption set out at paragraph 2.5 of the Approved Guidance that in sites involving 20 or more units the headline requirement will be delivered "on-site".
- 11.4 In the interests of consistency Homes for Scotland would also point out that if this proposed change to the existing guidance is to be promoted ahead of the review of the current local development plan, there would need to be evidence before the Council which suggested that an increased use of commuted sums on larger sites would have the potential to increase the delivery of both mainstream and affordable housing across the Aberdeen Housing Market Area. Given the fact that Proposed Alteration 3 is being promoted in the first place, it may well be that the Council has already reached that conclusion. But where it has misdirected itself is in concluding that that otherwise worthwhile objective would be achieved by altering the basis on which commuted sum is calculated so that a significantly increased (but unviable) level of payment is required.



## 12. The Proposed Formula

- 12.1 Setting aside the legal and policy issues outlined above, (and without prejudice to its right to challenge the introduction of Proposed Alteration 1 and 2 should the Council decide at the end of the current consultation exercise to adopt it and the Scottish Ministers endorse that decision by not serving a notice in terms of Section 22 (8) of the 1997 Act requiring that those alterations are not adopted) Homes for Scotland's members are united in their conclusion that the proposed formula that the Council has put forward as a means of calculating commuted sums on a site by site basis is unworkable.
- 12.2 If adopted, it would be counter-productive and stifle the delivery of both mainstream and affordable housing as officers and applicants tried to reach agreement on the level at which the commuted sum payment should be set. The "certainty, consistency and speed" of the current approach would be lost.
- 12.3 To appreciate how inappropriate this revised methodology would be, an understanding of how land values are calculated is necessary. Most development land is contracted on the basis of an estimated residual land value (RLV) carried out at the outset of the development process. Broadly speaking, RLV is the surplus remaining after deducting costs and the required profit margin from sales income. This is the price that is left to pay for the land. Costs include the costs of planning gain contributions and the cost of affordable housing provision.
- 12.4 It can be seen from this that RLV is dependent on the cost of providing AH, including commuted payments, and is a cyclical process. How can a developer proceed to acquire land if all such costs cannot be established as far as is reasonably possible up front. It should also be borne in mind that at this point in the calculation of RLV, sales income is also an estimate based on prevailing market conditions. The Council must appreciate that a developer takes a considerable risk when projecting future sales revenue as conditions can either deteriorate or improve over the course of what might be a considerable lead-in period between site acquisition and sales income being received. Actual sales income is not known until the last house is sold. Actual uplift in land value is accordingly contingent on site completion. So if commuted sums are to be dependent on sales income, the question that immediately arises is which figures are to be used, and at which point is the commuted sum to be paid. Should it be the estimated sales values at the point of contract (putting aside for the moment that there may be uplift involved) or the final sales figures which might emerge years later. If it is paid 'up-front' then all parties, including the Council, would be exposed risk. In the current risk averse climate the proposed approach would not be supported by the lenders.
- 12.5 The suggested use of the figure of 33% deduction from sales revenue as providing a reasonable means of assessing the RLV is also extremely problematic. As outlined above, costs have to be expended to deliver the sales income. For mainstream units (even as substitutes for affordable



housing) landowners expect a land value, construction costs have to be met and funded, and a profit is still required by lenders. To take 33% of revenue 'off the top' would clearly impact significantly on viability and (on the basis of our research to date) mean that very few projects could proceed.

- 12.6 Homes for Scotland would wish to remind the Council that Option 1 and Option 2 are both based on land values. As advised Option 1 is based on the amount required to allow an affordable housing provider to purchase an equivalent site identified for affordable housing whilst Option 2 is based on the difference between that amount and the amount that would be needed to allow an affordable housing provider to purchase an equivalent site for housing on the open market. To the extent that the 33% deduction exceeded the difference between those two land values it would constitute an unlawful development tax.
- 12.7 Homes for Scotland also have a significant issue with the proposal that in the absence of concluded missives between the developer and an AHL being exhibited to the Council, the calculation of the commuted sum payable in respect of the individual site should proceed on the basis that the land with affordable housing at its end use has a nil value. Given that the current £25,000 figure is based on comparison evidence of what AHPs are actually paying for sites for affordable housing within the Aberdeen HMA, it seems unreasonable in the extreme for the Council to promote a formula that assumes that the value of the land for that purpose is nil.
- 12.8 Perhaps even more significantly in terms of the unfairness of the proposed methodology, 33% is nowhere near a reasonable reflection of the 'land' element of average sales income. If, for example, a house builder were to promote a development of 5 high value (£600k) units of which one was to be deemed be affordable with the policy requirement stipulating that a commuted sum calculated at 33% of the sales price had to be paid, it follows that a commuted sum of £200k would require to be paid. This would represent an uplift of 800% on the current level. At such a level the commuted sum would be significantly greater than the actual open market residual land value. The Council will be aware that there is a significant demand for new housing at this price range. If this proposed amendment to the Statutory Guidance were to be approved it would inevitably lead to house price inflation in the Grampian housing market area.
- 12.9 The proposed formula is fraught with difficulties. As such its introduction would run counter to the clear advice which the Chief Planner gave to Heads of Planning in March 2011 regarding the need for "realism" when it comes to the drawing up and implementation of affordable housing policies.

### **13 Conclusion**

- 13.1 For the reasons outlined above the Proposed Alterations are:

\* contrary to the doctrine of legitimate expectation;

\* contrary to national and local planning policy and the advice set out in the Chief Planners letter of 15th March 2010, and

\* illogical and to that extent unreasonable.

13.2 Setting aside its members' principal objections to these Proposed Alterations the proposed formula is unworkable. If adopted, it would stifle the delivery of housing development across the Aberdeen HMA leading to house price inflation.

13.3 For the foregoing reasons Homes for Scotland request that the Council do not adopt it.

#### **14. Response to the Questions**

14.1 **Question 1** - Is it appropriate to link the value of the commuted sum payment to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement?

14.2 No. For the reasons set out in section 13 of this response, it would not only be inappropriate but also unlawful for the Council to change the Statutory Guidance so that the value of the commuted sum payment was linked to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement.

14.3 **Question 2** - If the answer to the first question is that it would be inappropriate to make that link, how might the method of valuing the commuted sum be otherwise amended to ensure that it "operates more fairly"?

14.4 Implicit in this question is the suggestion that the current method of valuation is somehow operating "unfairly". So far as Homes for Scotland's Grampian members are concerned, the current method of valuation is entirely fair because it achieves the objectives of "certainty consistency and speed" for developers and the Council alike. These were the benefits which the majority of the respondents to the Scottish Government's 2009 consultation believed the current method of valuation would deliver. It must be assumed that it was the underlying fairness that lay behind these recognised benefits which prompted the Council to re-adopt the current method of valuation in 2010 when it promoted it as part of its first edition of statutory guidance on affordable housing made under and in terms of Sections 22 and 24 of the 1997 Act.

14.5 So far as Homes for Scotland are concerned, the current approach to the valuation of commuted sums in the Aberdeen Housing Market Area is certain, consistent and speedy and for those reasons it is fair. Neither it nor its members see any reason for it to be changed.

14.6 **Question 3** - Would the proposal to allow a mix of on-site delivery and commuted sum payments help improve the overall delivery of affordable housing?



- 14.7 Homes for Scotland see a great deal of merit in this proposal as its members believe it would improve the delivery of both mainstream and affordable housing.
- 14.8 Indeed Homes for Scotland would suggest that there would be a great deal of merit in the current housing market if complete flexibility were to be introduced into the Existing Guidance whereby a developer was permitted to deliver the headline 25% policy requirement entirely in the form of a commuted sum in circumstances where it was known at the point in time when an application was submitted that no HAG funding would be available.
- 14.9 However, for the reasons set out at paragraph 11.4 of this response, Homes for Scotland is of the view that the Council would have to provide valid reasons for seeking to introduce the proposed "mixed delivery" option.

## **15. Proposed Changes to the Existing Guidance**

- 15.1 Taking these points together and in order to address the queries in the consultation letter as regards (a) how the methodology might be amended to operate more fairly and (b) whether increased flexibility in the use of commuted sum payments might improve the overall deliverability of both mainstream and affordable housing, Homes for Scotland would recommend that whilst the existing approach to the valuation of commuted sum payments as set out in SG 5.1 should (and indeed must) remain, the remainder of the policy guidance would benefit from the following changes to its wording.
- 15.2 These proposed changes are set out as follows:

Paragraph 2.1 should be amended so that the following sentences are removed:

*"Committed sums will be negotiated between the developer and the Council. The figure for committed sums is set by the Council, and the figure per plot is currently £25,000 (as of August 2010). This figure is subject to change and the figure is reviewed annually. Any changes will be consulted on and published in advance of implementation on the Council's website."*

and replaced with the following:

*"2.2 Committed sums will be calculated initially on a fixed contribution per unit basis (currently £25,000) and thereafter reviewed by the Council annually, following consultation with the house building industry, by reference to appropriate comparison evidence of sale prices of development land for the average price for affordable housing within the Aberdeen Housing Market Area or, in the absence of such evidence, the residual land value method set out in the relevant edition of the RICS Guidance Note, Scotland on the "Valuation of land for affordable housing". In the absence of agreement as regards the appropriateness or availability of the available comparison evidence or,*



*as the case may be, the assessment of the average residual land value, the Council will refer the matter to an independent expert for final and binding determination.*

2.3 *The date of the annual review shall be fixed by reference to the month (currently August) on which the commuted sum for the preceding year was agreed or, as the case may be, determined. The figure fixed for the preceding year shall continue to be the relevant figure for the purposes of the application of Policy H5 until such time as the reviewed figure has been agreed or, as the case may be, determined.*

2.4 *The reviewed figure will be published on the Council's website."*

15.3 The remaining paragraphs in SG 5.1 should be re-numbered accordingly.

## **16 Rejection of the Proposed Alterations**

Homes for Scotland respectfully request that the Council rejects the Proposed Alterations and approves the modification to the wording of the Approved Guidance proposed in section 15 of this response.

***DLA Piper Scotland LLP***

## **CONSULTATION ON COMMUTED PAYMENTS IN LIEU OF AFFORDABLE HOUSING**

### **RESPONSE BY STEWART MILNE HOMES**

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#### **1.0 INTRODUCTION**

- 1.1 We write in to object in the strongest terms to Aberdeen City Council's consultation on commuted payments in lieu of affordable housing. Before detailing our objection we wish to express our dismay at the way in which this consultation has been carried out. Stewart Milne Homes is a member of the City's Affordable Housing Forum. The group was set up in order to discuss and agree "best practice" in terms of the provision of affordable housing recognising the challenges faced by the public and private sector in this matter. The group which, is made up of expertise from ACC planning and housing departments, members of the house building and construction industries, the Scottish Government Housing Division and Housing Associations, has actively looked at means of unlocking the delivery of affordable housing. One of the means that has been discussed and supported has been the encouragement and use of commuted sums to acquire land for RSLs or the Council to build affordable homes. What the council is now proposing is the converse of this and will actively discourage the use of commuted systems and is likely to frustrate the provision of affordable homes more than ever. It is extremely disappointing that this policy change is being brought forward when it contradicts the recommendations of the Forum.
- 1.2 The current commuted sum arrangement was agreed following extensive dialogue with the house building industry, housing associations and the planning gain teams and is based on the assessed market value for land for affordable housing. This was based on comparable evidence of actual affordable land transactions. Whilst we accept that the actual sums of money should be reviewed on a regular basis, we do not accept that there has been a policy change which warrants the introduction of a new methodology for calculating the funds as ACC now propose.
- 1.3 We welcome ACC's recognition that they support the use of commuted sums to deliver affordable housing. It is disappointing however that the proposed methodology contradicts that statement.

#### **2.0 OBJECTION**

##### **2.1 Planning Policy Background**

- 2.1.1 Scottish Planning Policy (SPP) requires the Scottish planning system to help provide affordable housing through the development plan where a need is found through an up to date Housing Needs and Demand Assessment. SPP requires policies on affordable housing to be realistic and take into account considerations such as development viability and the availability of funding (Para 87). PAN 2/2010 provides further guidance on affordable housing. This sets out that the decision to accept a commuted sum is one for the planning authority (Para 21). Where it is agreed that an alternative to a contribution of land within the proposed development site is acceptable by the local authority, the developer will provide either land or homes or a commuted sum of "a value equivalent to the cost of providing the percentage of serviced land required by the policy" (Para 22). It further advises that the commuted sum is a matter for negotiation between

the developer and the local authority, having regard to development costs, other contributions that are being sought, and other relevant factors such as layout and design.

- 2.1.2 PAN 2/2010 replaced Planning Advice Note 74. Affordable Housing (PAN 74) which was issued by the then Scottish Executive in March 2005. The section on commuted sums (Para 48 and 49) does not differ from PAN 2/2010.
- 2.1.3 The approved Aberdeen City and Shire Structure Plan (2009) and the emerging Strategic Development Plan defer to Local Development Plan to provide policy guidance on affordable housing. The Local Development Plan which was approved in February 2012 defers to Supplementary Guidance on Affordable Housing. It does recognise however at Para 3.46 that the provision of affordable housing should not jeopardise delivery of housing as this would counter-productive and would increase affordability constraints across the city.
- 2.1.4 Aberdeen City Council published its Supplementary Guidance on Affordable Housing in March 2012 which purely makes reference to the use of commuted sums and them being currently being set at a rate of £25,000. It further advises that the figure of £25,000 per plot is subject to change and the figure is reviewed annually.

## 2.2 Response to Consultation

- 2.2.1 The current sum set for commuted payment was calculated using comparable transactional evidence of affordable housing land purchases. The figure was agreed with the Planning Gain Service for Aberdeenshire in 2006 and when the Planning Gain Service took responsibility for Aberdeen City in 2007, it was agreed between the housebuilding industry, housing associations and the Planning Gain Service that based on evidence this sum was also an appropriate amount for land for affordable housing in the City. Stewart Milne Homes do not object to the figure being reviewed on a regular basis based on evidence of affordable housing land purchase transactions.
- 2.2.2 Our objection relates to Aberdeen City's attempt to change the methodology for calculating the commuted sum. Section 2.1 sets out the planning policy background to affordable housing and commuted sums. Since the methodology for assessing the value of commuted payments was agreed, there has been no policy change through national, regional or local planning documents that warrant a change in the methodology for calculating committed sums. ACC's Supplementary Guidance advises "the **figure** per plot is currently £25,000 (as of August 2010). This **figure** is subject to change and the **figure** is reviewed annually". This is clear that it is the sum that is subject to review and not the methodology for arriving at that sum without change in the overarching policy there is no locus for reviewing the methodology for arriving at that figure.
- 2.2.3 Notwithstanding the above, we do not accept the methodology proposed by ACC is a reasonable interpretation of guidance and the current policy position. The consultation document advises that methodology amounts to the increase in the land value created by the substitution of the affordable housing for private housing. Not only is this a massive assumption (as no guarantee there will be any increase in land value) but, in our view, there is no justification in planning policy terms for this and it is noted that the consultation does not give any policy justification for this revised approach. PAN 2/2010 in paragraphs 21 and 22 makes it clear that our obligations relate to providing "land, homes or a commuted sum of a value equivalent to the cost of providing serviced land."

It does not say that the housebuilding industry will have to pay for any perceived benefit they might get in not providing affordable housing on site. Commuted sums have nothing to do with the value of private development land and nothing to do with housing revenues. Commuted sums are related to the value of land for affordable housing. The housebuilding industry does not have the responsibility of filling any deficits created by a reduction in government funding for affordable housing.

- 2.2.4 It is our opinion that Aberdeen City Council is being contradictory in what they are seeking to achieve. On one hand, they are advising they wish to be flexible and secure additional commuted sums to help deliver affordable homes but on the other hand are seeking to implement a tax that in our opinion, will not only slow down the delivery of affordable housing but will slow down the delivery of all housing as a result of a convoluted negotiation process. A shortage of housing supply will only serve to increase the cost of homes and will exacerbate rather than improve the situation.
- 2.2.5 We are of the opinion that the methodology is effectively a tax for a number of reasons. ACC's Convenor of Finance has spoken in the press of securing a "share of developer's profits" as more money is required for affordable homes (a copy of this is attached for ease of reference). This has followed through to the formula being proposed which considers only the sales price of any resultant properties. As this does not reflect any increased costs associated with the development, the council are assuming a share of "profit". This is a wholly unreasonable position to take.
- 2.2.6 Further, the formula being proposed makes no sense and has no grounding in development economics, for example, there is absolutely no justification for the use of 0.33 as a ratio as an estimate of the residual land value. Indeed the only thing close to 0.33 in land and development economics is a typical *Stokes v Cambridge* "ransom value" which is what the council appear to be applying here.
- 2.2.7 Notwithstanding the fundamentally flawed nature of the formula, both in policy and land economic terms, the approach of the council to introduce a formula is flawed at a practical level. What is being proposed will lead to a long drawn out negotiation process, adding further delay to the execution of planning consents. Each developer would have to prepare at least 2 development appraisals. We question whether the council have the skills and resources to consider these in a professional and expeditious manner.

### 3.0 **CONCLUSIONS AND ALTERNATIVES**

- 3.1 We object in the strongest terms to ACC's proposed methodology for commuted sums in lieu of on-site affordable housing. We believe that the current approach to arriving at the value of the commuted sum based on comparable evidence is the correct way in which to value such monies. The contribution should be based on the cost of land for affordable housing. There has been no change in policy which has provided a need to change the methodology in arriving at such sums.
- 3.2 We accept, as suggested by ACC's Supplementary Guidance on Affordable Housing, the figure should be reviewed on a regular basis. Indeed, we have offered to do this through Aberdeen City's Affordable Housing Forum and again at the meeting between ACC, the housebuilding industry and housing associations on 22 August 13.
- 3.3 We wholeheartedly support the use of commuted sums based on land value being used to cross fund the building of affordable homes on larger sites. The challenges to deliver 9000 home equivalents (25% of the Structure Plan Requirements in Aberdeen City)

cannot be underestimated and this has been one of the key topics of debate at the Affordable Housing Forum for the last few years. The benefit of using commuted sums, based on affordable land value, has been recognised in this Forum and agreed at officer level and with the support of housing association as a good way forward to help with current funding constraints. The proposed tax based on the formula proposed will only frustrate the delivery of both affordable and mainstream housing at a time supply is critical in the northeast to meet demand and secure the economic viability of the area.



# FRAMEWORK FOR MORE HOMES

Council plans to change fee rules

HUNDREDS of cheap new homes could be built across Aberdeen, the Evening Express can reveal today.

City council chiefs want to shake up the way "affordable" housing is delivered and grab a share of developers' profits.

A report has proposed relaxing planning rules that require a number of cut-price properties to be built on site by the developer.

They would instead

**By David Ewen**  
chief reporter

be asked to hand over a slice of the cash they make that the council would use for social housing across the city.

Finance convener Councillor Willie Young said: "Developers and housebuilders have to do more to help us get more affordable housing."

"We need to get a better deal for the people of Aberdeen."

A report for councillors said that in some instances

providing on-site affordable housing could guarantee buyers and help finance other parts of the development.

But it also said that in some locations there could be "significant gains in providing more private housing on-site instead of affordable housing".

Under current planning rules developments of more than 20 units must be 25% affordable housing.

In exceptional circumstance developers can hand over

a "commuted" payment in place of each affordable house.

This is a flat fee of £25,000.

The report by planner Daniel Harrington said the current arrangement did not reflect "the different land values across the city".

He suggested linking the payment to "the increase in land value" resulting from replacing affordable housing with private housing. The proposed formula - which would be a starting point for negotiations - is that developers

hand over a third of the sale price.

Mr Harrington warned the changes, if progressed, were "not likely to be welcomed by housebuilders" because of the "additional costs of development".

But Cllr Young said: "At the moment we are getting only £25,000 in place of an affordable home."

"We can mix and match affordable houses and commuted payments."

"If we operate it correctly, it will allow us to build more

affordable homes."

The aim of the report - to be considered on May 21 - was to spell out ways to "maximise the delivery of affordable housing" and "reduce levels of inequality and meet national targets."

The review was triggered after Cala entered talks with the council about affordable housing after 81 units were approved for Friarsfield Road, Cults.

● 'Affordable homes vital for city', Page 6

dewen@ajl.co.uk

## £3 million worth of contributions

THE council has so far raked in more than £3 million of developer contributions towards affordable housing.

A further £1m is set to be negotiated for the next year.

Of the money received, £1.8m has been paid out to registered social landlords. These grants have helped provide seven special needs flats, 39 very sheltered apartments, 43 affordable rented flats, four wheelchair accessible houses and 28 mid-market rented flats.

Other forms of "affordable housing" can include purchases in which the Scottish Government takes a stake.

The council recognises that housing projects need to be "viable".

If a developer has to make contribution towards major new infrastructure, such as schools, drainage, water and roads, the affordable housing element can be reduced. According to the council, the high cost of housing in Aberdeen has resulted in "severe affordability pressures" on people.

## Bridge repair to top £2m

By Chris Foote

A CRUMBLING former rail bridge could cost hundreds of thousands of pounds to repair.

Aberdeen City Council plans to spend £200,000 on repairs to the historic Formartine Way Bridge - also known as the Buchan Way Bridge.

The centuries-old railway bridge is in need of works including the replacement of missing brickwork and some major masonry repairs.

An Aberdeen City Council spokeswoman said: "The bridge is in need of repair and we have put it out to tender."

"The repair work required includes re-pointing the masonry and the brick arches, spandrels, voussoirs and piers, replacement of missing brickwork on the arches and voussoirs, as well as some waterproofing of the deck area."

"The bridge is shared by both Aberdeen City and Aberdeenshire councils. Aberdeen City Council is lead partner in the repair works."

The bridge - which crosses the River Don to the North of Dyce - is 50 metres long, with three-span masonry and a brick archway structure.

Despite the Formartine Way falling mostly within Aberdeenshire, the city council has put the

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## HISTORIC BY AIR



Departing  
August 11 & 18, 2011

They are the crown jewels of British history. They are home to Kings and Queens. They are dazzling examples of gilded elegance. They are your heritage;

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Artwork sees traffic message set in stone



Daniel Harrington  
Senior Planner  
Aberdeen City Council  
Marischal College  
Broad Street  
Aberdeen  
AB10 1AB

13 September 2013

Dear Mr Harrington

**BARRATT NORTH SCOTLAND  
ABERDEEN CITY COUNCIL  
ABERDEEN LOCAL DEVELOPMENT PLAN  
REPORT NUMBER: EPI/13/093: POLICY ON AFFORDABLE HOUSING  
REQUIREMENTS FOR NEW DEVELOPMENT  
CONSULTATION RESPONSE**

We refer to the above matter.

Please find enclosed Barratt North Scotland's response regarding the proposed alterations to the Council's adopted statutory guidance on the valuation and use of commuted sums for affordable housing. Barratt North Scotland is the largest private housebuilder in the Aberdeen Housing Market Area operating across a variety of locations and providing a wide range of housing.

In summary, Barratt North Scotland oppose the proposed alteration to the current approach to the valuation of commute sums for affordable housing on the grounds that:

- (i) as a matter of law, in the absence of any relevant supervening change in law, policy or economic circumstance, the development industry is entitled to expect that the current approach will remain in place during the life of the Aberdeen Local Development Plan (February 2012), and
- (ii) the proposed "site by site" formula is unworkable and to the extent that it has the potential to set the value of the commuted sum at a level that is greater than the difference between the open market and affordable housing residual land values that it purports to capture, it would constitute an unlawful "tax" on housing development within the Aberdeen Housing Market Area.

For those reasons Barratt North Scotland would ask the Council to reject the proposed alterations to the current approach to the valuation of commuted sums pending the next review of the local development plan.

So far as the proposed increased use of commuted sums payments in developments of 20 or more units is concerned, whilst Barratt North Scotland is very supportive of the increased flexibility that an amendment of that nature would provide, it is conscious too of the fact that the introduction of an amendment of that nature would also run

contrary to the adopted statutory guidance. In the interests of consistency, therefore, Barratt North Scotland, are of the view that unless valid reasons can be put forward by the Council to justify the introduction of this proposed change at this point in the life of the development plan, the guidance should remain in its current form until the Aberdeen Local Development Plan (February 2012) is itself reviewed.

As our consultation response makes clear, the issue which Barratt North Scotland has with the introduction of this otherwise worthwhile alteration is that no valid reasons have been put forward by the Council to justify it. Barratt North Scotland would welcome the opportunity to assist the Council in setting out reasoned justification for the introduction of a policy change in relation to an increase in the use of commuted sum payments at this point in time. As we see it, this would require to be done as part of a further but limited standalone consultation exercise.

Barratt North Scotland would wish to make it clear, however, that its support for this "mixed use" of on-site and commuted sum provision is predicated on the assumption that the method of valuation would continue to be based on the current approach whereby the value of the standard sum is calculated by reference to the average price that an affordable housing provider would pay for land for affordable housing within the Aberdeen HMA.

We should be grateful if you would acknowledge safe receipt of this letter and the enclosed consultation response and confirm that the content of both will be taken into account by the Council when it takes its decision on whether or not to adopt the proposed alterations.

Finally we are also instructed to advise the Council that Barratt North Scotland will reserve its position meantime regarding the instigation of judicial review proceedings in the event that the Council decides to reject its views and press ahead with the proposed changes.

We look forward to hearing from you.

Yours faithfully

**BARRATT NORTH SCOTLAND**



## **Barratt North Scotland**

### **Consultation Response to Aberdeen City Council's ("the Council") proposed variation to SG 5.1 Affordable Housing (March 2102)**

#### **1. Introduction**

1.1 Barratt North Scotland have now had the opportunity to review and consider the alterations which the Council proposes to make to the subject statutory supplementary guidance.

1.2 In summary the proposed variations are that instead of having;

1.2.1 the value of the commuted sum payment established by reference to a value that is equal to the amount that an affordable housing provider would need in order to purchase an equivalent site identified for affordable housing, as is the current policy position, its value should be established by reference to a value that is equal to the difference between that affordable housing value (which is to be assumed to be nil unless contractual evidence to the contrary is exhibited) and the value of an equivalent site identified for open market housing (which is to be assumed to be 33% of the mean estimated open market selling price for the mix of housing units that would be delivered on-site in lieu of the affordable housing units) ("Proposed Alteration 1")

1.2.2 a standard sum for the Grampian housing market area that is reviewed annually, as is the current policy position, the value of the commuted sum payment should be agreed or, as the case may be, determined, on a site by site basis at the point when an application for planning permission is submitted ("Proposed Alteration 2"), and

1.2.3 a requirement to provide 25% affordable housing units on-site in circumstances where the number of units authorised to be constructed is greater than 20, as is the current policy position, consideration should be given in pre-application discussions to the policy requirement being provided in the form of a mix of on-site affordable housing units and commuted sum payments (Proposed Alteration 3").

1.3 In putting forward these proposed alterations for consultation, the Council has asked respondents to address the following questions, namely:

1.3.1 Is it appropriate to link the value of the commuted sum payment to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement?

1.3.2 If the answer to the first question is that it would be inappropriate to make that link, how might the method of valuing the commuted sum be otherwise amended to ensure that it "operates more fairly"?

1.3.3 Would the proposal to allow a mix of on-site delivery and commuted sum payments help improve the overall delivery of affordable housing?

1.4 The Council has confirmed that if these proposed alterations are approved (in whatever finalised form they may take) then ahead of formal adoption they will be notified to the Scottish Ministers in terms of Section 22 (6) of the Town and Country Planning (Scotland) Act 1997 .

## **2. Documents**

2.1 In preparing this consultation response, Barratt North Scotland has taken account of the planning policy and other advice contained in the following documents:

2.2 In chronological order in terms of publication these are:

- \* Circular 1/2009: Development Planning (February 2009);
- \* Chief Planner's Letter dated 28th October 2009;
- \* Consultation on Calculating Commuted Sums for Affordable Housing;
- \* Chief Planner's Summary of Comments regarding the said Consultation;
- \* PAN 2/2010: Affordable Housing and Housing Land Audits (August 2010);
- \* Chief Planner's Letter dated 15th March 2011;
- \* Aberdeen City Council letter dated 1 November 2011 to the Scottish Government;
- \* Policy H5 on Affordable Housing - Aberdeen Local Development Plan (February 2012)
- \* Supplementary Guidance 5.1: Affordable Housing (March 2012)
- \* Report to Enterprise Planning & Infrastructure Committee dated 22nd January 2013, and
- \* Report to Enterprise Planning & Infrastructure Committee dated 21st May 2013

2.3 Before we address the issues raised by the questions which the Council has asked respondents to consider, Homes for Scotland would wish to remind the Council of the level of consultation which both it and the Scottish Government carried out on the issue of commuted sum valuation ahead of the Scottish Government's publication of PAN 2/2010: Affordable Housing and Housing Land Audits in August 2010 and the Council's subsequent adoption of its current supplementary guidance on affordable housing in March 2012.

## **3. Chief Planner's Letter dated 28th October 2009**

2.1 Ahead of the publication of PAN 2/2010 in 2010 (and as part of the review of PAN 74) the Chief Planner wrote to Homes for Scotland, the Scottish Federation of Housing Associations, District Valuer Services and the Heads of Planning in October 2009 to seek their comments on "four options for the appropriate basis on which to calculate commuted sums" (see PAN 2/2010

Consultation on Calculating Commuted Sums for Affordable Housing: Summary of Contents report published by the Scottish Government.)

2.2 These options were:

Option 1

"For the commuted sum to be equal to the *value of the land for affordable housing* of that part of the original site that would otherwise have been used for affordable housing if the planning authority had not determined that a commuted sum was acceptable (ie the amount required to allow an affordable housing provider to purchase an equivalent site identified for affordable housing elsewhere.)"

Option 2

"For the commuted sum to be equal to the *difference* between the value identified at Option 1 and the value of this land for market housing (ie the amount required to allow an affordable housing provider to purchase an equivalent site for housing on the open market.)"

Option 3

"For the commuted sum to be a standard sum set annually by the planning authority, being a typical or average sum calculated for the authority or housing market area as a whole, using one of the approaches [ ie Option 1 or Option 2] set out above."

Option 4

"For the PAN to focus on planning advice and not to provide advice to planning authorities on land valuation or suitable approaches to commuted sums, referring to instead the forthcoming Royal Institution of Chartered Surveyors guidance."

2.4 In his Summary of Comments concerning the outcome of the consultation exercise, the Chief Planner confirmed that "the majority of respondents supported Option 3 as the most appropriate basis on which to calculate commuted sums because it provided certainty, consistency and speed." (our emphasis).

2.5 The Chief Planner also advised that the respondents who had selected Option 3 had also taken the view that clear details of a standardised method would be needed in order to create certainty, confidence and consistency between Councils and to avoid challenges to the Councils preferred approach.

2.6 Respondents also suggested that the "standard sum" approach proposed in terms of Option 3 should be:

\* set annually;

- \* standardised/based on average values (the DV or an independent valuer can provide such values);
- \* relate to the housing market area or local authority boundaries, different sums can be used in different areas, and
- \* based on regularly reviewed, published data (to aid transparency)."

2.7 The advice set out in the Summary of Comments would have been an important relevant material consideration which the Scottish government would have taken into account when drafting PAN 2/2010. Given the subject matter of the consultation exercise, the advice set out in the Summary of Comments document would also have been an important relevant material consideration which the Council would have taken into account when it drew up its existing supplementary guidance on affordable housing. It remains relevant and important advice in terms of the Council's current consultation exercise.

### 3. PAN 2/2010

3.1 Having taken cognisance of the consultation responses on commuted sum valuation when drafting PAN 2/2010, the Scottish Government's guidance on the use of commuted sums in lieu of on-site affordable housing provides:

at paragraph 19 that:

*"the contribution from the developer of a market housing site will normally be the provision of serviced land eg a proportion of the site which can be developed by or for a RSL or local authority. Such land can be transferred either at a value relating to its end use for affordable housing or by agreement between the developer and the RSL or local authority, at a lower value."*

at paragraph 21 that:

*"[e]xceptionally a site may be unsuitable for affordable housing for a variety of reasons, including the size of the site, location, topography, conversion of buildings where relevant standards cannot be met and other local circumstances such as whether an appropriate tenure mix can be delivered. In such circumstances the developer may offer to provide the contribution on another viable site within their ownership or in some cases provide a commuted sum as long as the proposed alternative will help to meet an affordable need in the same housing market area. Commuted sums should only be used sparingly. The decision to accept a commuted sum is one for the planning authority and the rationale for accepting a commuted sum should be set out clearly in local policy."* (our emphasis)

and at paragraph 22 that:

*"[w]here it is agreed that as an alternative to a contribution of land within the*

*proposed development site is acceptable the developer will provide either land or homes or a commuted sum of a value equivalent to the cost of providing the percentage of serviced land required by the policy."*

*"Planning authorities may wish to consider a policy for calculating a commuted sum, but this should be the subject of consultation with stakeholders before being applied."*

- 3.2 It was this national guidance which informed the Council's local development plan policy on the use of commuted sums in lieu of on-site affordable housing provision.

#### **4. Chief Planner's Letter dated 15th March 2011**

- 4.1 On 15th March 2011 the Chief Planner wrote again to the Heads of Planning in Scotland to remind them of the importance which the Scottish Government placed on "removing constraints to the development of housing land in the current economic climate."

- 4.2 The latest constraint which the Scottish Government had identified was the impact of cuts in public spending on affordable housing on the delivery of mainstream housing development in those parts of the country where local planning authorities already had or were proposing to put planning policies in place to deliver more affordable housing as part of private sector open market housing development. The Chief Planner highlighted the need for "realism and flexibility" in the drawing up and implementation of such policies.

- 4.3 Specifically he advised the Heads of Planning that:

*"authorities will also be aware of the significantly lower levels of public funding that are likely to be available to support the development of affordable housing in the coming years. In these circumstances [the Chief Planner] suggest[s] that authorities in drawing up and implementing planning policies on affordable housing should consider whether contributions of 25% or more are likely to be deliverable in the current economic climate. Levels of affordable housing that act to stifle overall levels of housing development are likely to be counter-productive. In certain cases the effect could be that development would not proceed at all."* (our emphasis)

- 4.4 The advice contained in the Chief Planner's letter would have been an important consideration which the Council took into account when it drafted its local development plan policy on the use of commuted sums in lieu of on-site affordable housing. It is also a relevant material consideration for the Council to take into account in the context of its current consultation.

#### **5. Aberdeen City Council letter to the Scottish government dated 1st November 2011**

- 5.1 The content of this letter is also relevant for the purposes of the current consultation exercise. In this letter officers set out the Council's response to



the Reporters carrying out the Section 19 examination into the proposed Aberdeen Local Development Plan regarding certain representations which it had received regarding the calculation of commuted sums.

- 5.2 The advice which the Council gave at that time, having considered the terms of the Chief Planner's letters, the Summary of Comments and the guidance set out in PAN 2/2010, was that:

*"The current commuted sum was set on 1st January 2008, and is £25,000. Prior to implementation of this sum notification was sent to developers, and from 1st January this fee (sic) has been used for all commuted sum payments in the Aberdeen Housing Market Area. An assessment was made into what the average cost to a developer was to provide an affordable house or serviced land. This fee has the benefit of providing clarity to the development industry on the likely costs of providing affordable housing.*

*Supplementary Guidance 5.1 allows for the commuted sum payment to be altered, but that this is to be the subject of consultation with the development industry and notice of any change in fee will be given."*

- 5.3 For the purposes of the current consultation exercise that remains important and relevant advice.

- 5.4 Circular 1/2009: Development Planning advises at paragraph 98 that:

*"[Supplementary] Guidance adopted in connection with a plan falls when the plan is replaced, but if it remains up to date, authorities may readopt it in connection with the replacement plan after limited re-consultation, provided a proper connection with the plan remains." (our emphasis)*

- 5.5 It follows, therefore, that in providing that advice to the LDP Examination Reporters in November 2011, the Council was satisfied that the approach to the valuation of commuted sums which they had put in place in 2008 not only remained "up to date" but also reflected the approach set out in Option 3 of the Chief Planner's letter of 28th October 2009, which had been thereafter identified in the Scottish Government's consultation as the option which had been selected by the majority of respondents as the most "appropriate basis on which to calculate commuted sums"

- 5.6 In providing this advice to the Scottish Government in November 2011 the Council would also have been aware of the enhanced status which their approved supplementary guidance on affordable housing (including the selected approach to the calculation of commuted sums) would acquire following the adoption of the new Local Development Plan.

- 5.7 Following submission of the proposed supplementary guidance to the Scottish Ministers in terms of the validation procedure set out in Section 22 (6) of the Supplementary Guidance on Affordable Housing referred to in Policy H5 was approved by the Council on 1st March 2012 ("the Existing Guidance").

- 5.8 In terms of Section 24 (1) (b) (ii) of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"), supplementary guidance "approved" by the Scottish Ministers in terms of the notification procedure set out in Section 22 (6), would become part of the statutory development plan.
- 5.9 Account too would have been taken by the Council when giving that advice concerning its selected approach to the valuation of commuted sums of the terms of Section 16 (1) (a) (ii) of the 1997 Act. This provides that local planning authorities are required to prepare a new local development plan "at intervals of no more than 5 years"(our emphasis).
- 5.10 Taken together the statutory and policy framework provides an implied promise on the part of the national and local planning authorities to the development industry that once supplementary guidance has been taken through the appropriate consultation and validation processes, it will remain in place, absent any supervening changes in the law, policy or material circumstances, for the life of the local development plan. In other words once those processes have been carried out and the relevant supplementary guidance is adopted, the legitimate substantive expectation of the development industry is that the guidance will remain in place until it either falls or is re-adopted when the local development plan is replaced.
- 5.11 Against that background, we would now propose to examine the scope of the review which the Council is entitled to carry out in terms of its statutory policy on commuted sums.

## **6. The Local Development Plan Policy on Commuted Sums**

- 6.1 The local statutory policy on affordable housing commuted sum payments is set out at Policy H5 of the Aberdeen Local Development Plan which was adopted on 29th February 2012.
- 6.2 Policy H5 provides that:
- "Housing developments of 5 units or more are required to contribute no less than 25% of the total number of units as affordable housing. Further guidance on the provision of affordable housing from new developments is available in Supplementary Guidance on Affordable Housing."*
- 6.3 It confirms that the approved supplementary guidance sets out the Council's detailed advice on how it expects commuted sums to be used in the context of affordable housing provision over the life of its current adopted local development plan.

## **7. The Approved Guidance**

- 7.1 In relation to the provision of commuted sums for affordable housing, and reflecting the advice which the Council gave to the Scottish government in November 2011 ahead of its formal adoption in March 2012, the Approved Guidance advises developers at paragraph 2.1 that:

*"[a]ffordable housing requirements may be made on-site, off-site or by means of a commuted payment depending on the scale of development....Commuted sums will be negotiated between the developer and the Council. The figure for commuted sums is set by the Council, and the figure is currently £25,000 (as of August 2010). This figure is subject to change and the figure is reviewed annually. Any changes will be consulted on and published in advance of implementation on the Council's website."* (our emphasis)

7.2 At paragraph 2.4 the Existing Guidance advises that:

*"For developments of less than 20 units the provision of affordable housing may be on site, off site, or commuted payments."* (our emphasis), and

At paragraph 2.5 that:

*"For developments of 20 units or more the expectation is that the affordable housing contribution will be delivered on-site"* (our emphasis).

7.3 The circumstances in which the headline policy contribution may be reduced are explained at paragraphs 2.6-2.8 of the Approved Guidance. This provides that where by reference to a financial appraisal a developer can demonstrate to the Council that there are "exceptional costs", the requirement for affordable housing contributions may be reduced to "ensure the cumulative burden on the overall development does not make the site unviable" (our emphasis).

## **8. The Valuation Methodology underpinning the Approved Guidance**

8.1 It is clear from the advice which the Council gave to the Scottish Government on 1st November 2011 (see section 5 above) that the valuation method for the calculation of commuted sums as set out in the Approved Guidance is based on the third of the four approaches proposed by the Scottish Government in 2009 ie Option 3. As advised, that option proposed that the commuted sum could be *a standard sum set annually by the planning authority, being a typical or average sum calculated for the authority or housing market area as a whole, using one of the approaches [ ie Option 1 or Option 2] set out above."*

8.2 Having selected the "standard sum" approach, it follows, that the next issue for the Council to consider was whether when calculating the "typical or average" standard sum for the Aberdeen Housing Market Area, it should use the approach set out in Option 1 or Option 2. Crucially, for the purposes of this consultation response, it was the approach set out in Option 1 that was selected, namely;

*"[f]or the commuted sum to be equal to the value of the land for affordable housing of that part of the original site that would otherwise have been used for affordable housing if the planning authority had not determined that a*



commuted sum was acceptable (ie the amount required to allow an affordable housing provider to purchase an equivalent site identified for affordable housing elsewhere.)" (our emphasis)

- 8.3 It follows, therefore, that at the point when the Approved Guidance was adopted by the Council on 1st March 2012 and hived up by application of Section 24 (1) (b) (ii) of the 1997 Act into the development plan, the Council had carefully considered and thereafter rejected the approach to the valuation of commuted sums set out in Option 2 of the Chief Planner's October 2009 letter.
- 8.4 In taking its decision to re-adopt the approach to the calculation of commuted sums which it had approved in the form of supplementary planning guidance in 2008, it is safe to assume, given the terms of the Approved Guidance, that the Council would have carefully considered the terms of the Summary of Contents report prepared by the Chief Planner and agreed with the comment that the use of the approach to the valuation of the standard commuted sum set out in Option 2 was inappropriate. The Summary of Comments report confirmed that the majority of respondents had recognised that, if that approach were to be implemented, it could potentially result in the value of the standard sum being set at such a high level that its practical effect would be to dis-incentivise developers from using commuted sums. As the Summary of Content report explains, it would act as a "penalty to encourage on site provision" in circumstances where such a requirement would otherwise have been regarded as "unsuitable" for any one or more of the reasons set out in paragraph 21 of PAN 2/2010 (see page 3 of the Summary of Comments and para. 3.1 above).
- 8.5 Indeed evidence supporting that assumption can be found at paragraph 2.4 of the Approved Guidance where the Council makes it clear that in sites involving 19 units or less, developers are to have the flexibility of delivering the headline 25% policy requirement in any one of three forms, including the payment of a commuted sum. Had Option 2 been selected as the Council's preferred approach to the valuation of the commuted sum, its acknowledged effect would have been to render their use unviable. The practical effect, therefore, had Option 2 been selected would have been to rule out the payment of a commuted sum on sites involving less than 20 units.

## **9. Development Plan Policy on Commuted Sums**

- 9.1 Against that legislative and planning policy background, we would now wish to consider the extent to which, as a matter of development plan policy, the Council is entitled to promote Proposed Alterations 1 and 2.
- 9.2 As part of that consideration it is important to understand what it is precisely that these Proposed Alterations involve.
- 9.3 It is clear from the terms of Proposed Alterations 1 and 2 that the Council is looking to substitute the approach to valuation of the commuted sum set out in Option 1 of the Chief Planner's letter with the approach set out in Option 2.

These two alterations, if approved, would have the effect of not only removing the Option 3 "standards sum" approach and replacing it with "site by site negotiation", they would also, crucially, change the underlying basis on which the commuted sum is calculated. The commuted sum would no longer be established and thereafter reviewed by reference to the price that affordable housing providers were actually paying for serviced land for affordable housing within the Aberdeen housing Market Area but rather by reference to a formula that purports to provide an estimate of the difference between the open market housing and the affordable housing residual land values.

- 9.4 On any objective assessment these proposed changes to an important part of the Statutory Guidance, were they to be implemented, would remove the flexibility of using commuted sum payments as a means of addressing the Council's affordable housing policy requirements. So far as Barratt North Scotland is concerned, the implementation of these proposed alterations to the current Approved Guidance would have a major adverse impact on the delivery of housing development right across the Aberdeen Housing Market Area.
- 9.5 Turning now to consider whether the Council would be entitled, as a matter of law and planning policy, to press forward with and adopt Proposed Alterations 1 and 2 following the outcome of this consultation exercise.
- 9.6 The Council's statutory policy on the use of commuted sums in the context of affordable housing is set out in Policy H5 of the adopted Aberdeen Local Development Plan as supplemented by the Approved Guidance ("the Statutory Guidance").
- 9.7 When read against the legal and policy background and the level of previous consultation referred to in section 2-9 of this response, it is clear that the Statutory Guidance anticipates that it is only the headline figure of £25,000 which is to be subject to the annual review. In other words the scope of the annual review referred to in paragraph 2.1 of the Approved Guidance is expected to be confined to a consideration of the extent or otherwise to which the average amount required to allow an affordable housing provider to purchase an equivalent site may have either increased or decreased over the course of the preceding year.
- 9.8 If the average price paid for a plot of serviced land for an affordable house can be shown to have decreased over the course of the period since the figure of £25,000 was last reviewed in 2010, then, in term of the Statutory Guidance, that reduction in value should be reflected in a corresponding decrease in the level of the commuted sum payment set for the next year. Conversely, if the land prices paid by affordable housing prices has increased that increase too should be reflected through a corresponding increase in the current £25,000 figure.
- 9.9 What the Statutory Guidance does not anticipate, therefore, outside of a review of the local development plan itself, is that the underlying "approach" to the valuation of the commuted sum should itself be the subject of annual

review.

- 9.10 Having selected Option 1 as its preferred approach in terms of the calculation of the value of the standard sum following consultation and thereafter ratified that selection through the validation process enshrined in Section 22 of the 1997, the Council have created a legitimate substantive expectation on the part of the house building industry in Grampian. As indicated, this means that, as a matter of law, in the absence of the current valuation approach set out in the Statutory Guidance being superseded by more recent law or national planning policy or it being required to be reviewed as a consequence of any supervening material changes in circumstances, developers operating in the Aberdeen Housing Market Area are entitled to expect that it will remain in place throughout the duration of the current local development plan period. This ensures that the outcome of planning applications for housing development involving affordable housing can be decided with a degree of certainty and efficiency." (see paragraph 5 of Circular 1/2009)
- 9.11 Since the Approved Guidance was adopted by the Council in March 2012 it is self-evident that there have been no changes to either the relevant law or planning policy. It follows, therefore, that the issue then arising is whether Proposed Alterations 1 and 2 can be justified by reference to any supervening material change in circumstances that may have occurred since the current guidance on the issue of commuted sum payments was adopted in March 2012.
- 9.12 When considering this issue, regard has to be had of the explanations which the Council have given as justification for the proposed amendments.

## **10. Reasons provided for the proposed alteration to the Valuation Approach**

- 10.1 The Council's justification for Proposed Amendments 1 and 2 is set out in the 22nd January 2013 Report from the Council's planning department to its Enterprise Planning & Infrastructure Committee entitled "Aberdeen Local Development Plan Policy on Affordable Housing Requirements for New Development" ("the Committee Report").
- 10.2 The Committee Report put forward two reasons to justify the Proposed Amendments, namely, a reduction in Government funding for affordable housing and the need to strengthen the policy regarding on-site affordable housing provision (see paragraphs 5.6-5.11 and of the Committee Report).
- 10.3 By changing the method of calculating the commuted sum from the "standard sum" approach outlined in Option 3 ( whereby the value of that standard sum is established by reference to the value of the land for affordable housing as set out in Option 1) to the site by site valuation approach outlined in Option 2 (whereby the value of the commuted sum is set at a level that is deemed to represent the difference between the value of the land for market and affordable housing) the amount of commuted sum payable would increase significantly. The benefit of this proposed increase, according to the Council, would be to *"make the option of a commuted sum less attractive"* with the



result that *"the delivery of on-site [affordable housing] may become more attractive or a more realistic commuted payment will be received, which can meet a greater proportion of housing need."* (our emphasis)

10.5 Dealing with each reason in turn:

Reduction in Government Funding for Affordable Housing

10.6 At paragraph 5.5 of the Committee Report the Council acknowledge the terms of the letter dated **15th March 2011** which it and other planning authorities received from the Chief Planner highlighting the desire on the part of the Scottish Government to remove "constraints to the development of housing land in the current economic climate.

10.7 We have drawn attention to the date of this letter and to the advice from the Chief Planner to local planning authorities in March of 2011 that when drawing up planning policies on affordable housing that the level of requirement should not be set at a level that had the counter-productive effect of stifling mainstream housing development.

10.8 As indicated, it has to be assumed that when drawing up and consulting upon the Statutory Guidance over the course of the twelve month period leading up to its adoption on **1st March 2012**, the Council gave due and proper regard to the terms of the Scottish Government's advice. If that assumption is correct, as we have suggested it must be given the clear and unequivocal support set out in its letter to the Scottish Government dated 1st November 2011, it follows that in selecting both the standard sum approach set out in Option 3 and the method of calculating it set out in Option 1 rather than Option 2, the Council had concluded that that approach was the one that was most likely of the four options proposed by the Scottish Government to facilitate the delivery of affordable housing over the life of the new plan period. If that was not the case, why was Option 2 not selected and taken through a thorough consultation exercise ahead of the guidance on the subject acquiring development plan status in March 2012

10.9 Against that background, it seems illogical and indeed somewhat irrational for the Council to now put forward the fact that significantly lower levels of public funding are likely to be available during the plan period to support the development of affordable housing as a reason for changing its approach to the calculation of commuted sum payments in circumstances where:

- (a) it was already aware of the issue of reduced funding at the point at which it approved the current valuation approach and
- (b) rejected the alternative valuation approach which it is now proposing to introduce through Proposed Alterations 1 and 2 on the grounds that its introduction would be likely to stifle overall levels of housing development with the Aberdeen Housing Market Area.

10.10 It follows, therefore, that the reduction in public funding available for

affordable housing does not constitute a relevant supervening change in circumstance justifying the promotion of Proposed Alterations 1 and 2.

#### Need to Strengthen the Policy regarding On-Site Delivery

- 10.11 The second reason which the Council has advanced as justification for the promotion of the Proposed Alterations 1 and 2 is that it would strengthen the presumption in the Statutory Guidance in favour of on-site delivery. If the value of the commuted sum is more "closely matched" to the increase in the value of the land that arises, as a consequence of the removal of the on-site affordable housing requirement, it follows, according to the Council, that the resulting reduction in the benefit to the developer that would otherwise be gained from making a commuted payment would improve the prospects of on-site delivery (see paragraph 5.14 of the Committee Report).
- 10.12 So far as Barratt North Scotland is concerned, this second explanation is not only also illogical it is also contrary to national and local planning policy.
- 10.13 Dealing with each point in turn. Proposed Alterations 1 and 2 are intended to apply to all housing development proposals involving 5 or more units. No apparent account is taken of the fact that in terms of the advice set out in paragraph 2.4 of the Statutory Guidance (reflecting the national guidance set out in paragraph 16 of PAN 2/2010) there is no hierarchy of preferred form of delivery in terms of the way in which the H5 Policy requirement may be provided for developments of less than 20 units. The Statutory Guidance makes it clear that on such smaller sites the requirement can be delivered on-site, off-site or in the form of a commuted sum. It is, therefore, illogical for the Council to propose an amendment to the Statutory Guidance which would have the effect of raising the value of the commuted sum payment to a level that would effectively remove it as a viable option for a developer to put forward when promoting a site for less than 20 units.
- 10.14 As it would be extremely unlikely that a developer promoting a site of that size would be able to provide a similar amount of serviced land with planning permission elsewhere within the Aberdeen Housing Market Area, the practical effect of Proposed Alterations 1 and 2, were they to be introduced, would be to remove entirely the flexibility which PAN 2/2010, the Statutory Guidance and the Chief Planner (in terms of his letter of 15th March 2011) expects developers to have in terms of the form in which the affordable housing requirement is delivered. The effect, as indeed would appear to be the Council's intention, would be to restrict a developer's options to on-site delivery only.
- 10.15 Setting aside the "flexibility" issue, PAN 2/2010 in any event also makes it clear that there will be circumstances where "for a variety of reasons" a site may be "unsuitable for affordable housing". Given the clear and unequivocal terms of the Scottish Government's guidance, it again appears to be illogical and thus irrational for the Council to promote a proposed amendment to its Statutory Guidance which would effectively force affordable housing onto unsuitable sites. If, as a result of the Proposed Alterations 1 and 2 the

payment of a commuted sum was no longer a viable alternative option because it was set as a consequence of the change in the method by which it was calculated at an "unaffordable" level, it follows that the inevitable (and previously recognised and accepted) outcome would be that the development of the site would be stifled.

- 10.16 So far as the application of the Proposed Alterations 1 and 2 to the payment of commuted sums in relation to developments involving 20 or more units is concerned, the obvious question to be asked, given the clear advice set out in paragraphs 2.6- 2.8 of the Approved Guidance is why the Council has concluded that an increase in the amount of commuted sum sought would strengthen the existing policy presumption in favour of on-site delivery.
- 10.17 The Statutory Guidance makes it quite clear that on sites involving 20 or more units, 25% of the total number of units that are authorised to be constructed will require to be sold or let subject to a recognised category of affordable housing occupancy restriction. The Statutory Guidance makes it quite clear that that presumption in favour of on-site delivery will only be set aside in circumstances where the developer has been able to demonstrate by reference to "detailed financial information on the development costs and viability" that the site cannot afford the headline 25% on-site requirement.
- 10.18 On the basis that the Statutory Guidance is being followed by planning officers, it follows that an increase in the value of the commuted sum payment ought to have no impact whatsoever on the issue of whether or not a site is able to deliver the requisite headline number of affordable units on-site. The Statutory Guidance makes it clear that the purpose of the financial appraisal is to demonstrate to the Council why either the headline number of units should be reduced to a number that the site can afford or alternatively why the affordable housing requirement should be removed entirely. An issue concerning site viability should not be seen as an opportunity on the part of the Council to extract an enhanced financial payment. If that point is accepted, as Barratt North Scotland would suggest it must, it follows that the reasoning behind the promotion of the Proposed Alterations 1 and 2 is fundamentally flawed.
- 10.19 Further support for the illogicality of the Council's position concerning the proposed changes to the way in which the commuted sum is calculated can also be found by contrasting those proposed changes with the terms of Proposed Alteration 3. This is the proposal that the headline 25% on-site affordable housing requirement for sites involving the promotion of 20 or more units should be amended so that the requirement can be delivered by means of a "mix of affordable housing and commuted payments."
- 10.20 If the principal objective behind the proposed changes to the way in which the commuted sum payment is calculated as set out in Proposed Alterations 1 and 2 is to make the delivery of on-site affordable housing "more attractive", why would the Council wish at the same time to promote a further amendment to the Statutory Guidance through Proposed Alteration 3 which had as its primary objective the promotion of a reduction in the delivery of on-site



affordable housing in favour of a mix of housing and commuted sum payments? Whilst for other reasons (see below), Barratt North Scotland can see merit in this "mixed delivery" proposal, its promotion at the same time as the promotion of a policy alteration that is intended to strengthen the focus of on-site affordable housing simply serves to highlight the flaws in the Council's reasoning as regards why these proposed changes to the existing guidance are necessary.

- 10.21 It follows, therefore, that the assertion on the part of the Council that there is a need to strengthen the existing policy presumption in favour of on-site delivery on sites involving the promotion of 20 or more units is without foundation. If officers are allowing commuted sums to be paid in lieu of on-site affordable housing then that dispensation is presumably being given in the light of viability issues evidenced in a financial appraisal, which is precisely what the PAN 2/2010 and the Statutory Guidance expects. If, however, in what might otherwise be regarded as an informal "trial run" of the approach that the Council is now apparently looking to introduce in terms of Proposed Alteration 3, offers of commuted sum payments on larger sites are being accepted by the Council that would reflect a decision on its part to attach more weight in the decision-making process to the benefits of receiving a financial contribution towards the procurement of affordable housing rather than insisting that the policy presumption is followed and the 25% headline requirement is met in full on-site. Either way the matter lies entirely within the Council's own hands.
- 10.22 In the absence of (a) any supervening changes to the law or to national planning policy and (b) any other relevant material considerations which might suggest that the Proposed Alterations were justified, it follows that, as a matter of law, developers have a legitimate substantive expectation that the Statutory Guidance will remain unchanged until the current Aberdeen Local Development Plan is reviewed at which time it will either fall to be the subject of a fundamental overhaul or be re-adopted.
- 10.33 So far as Barratt North Scotland is concerned, for the reasons outlined above, nothing has happened in terms of law or planning policy and no other material considerations have arisen since the Statutory Guidance was adopted in March 2010 which would justify the promotion far less the introduction of Proposed Alterations 1 and 2. For that reason Barratt North Scotland is of the view that, as a matter of law, developers in the position are entitled to expect that the existing Statutory Guidance will continue in its current form.
- 10.34 Over and above the issue of their legitimate expectation, Barratt North Scotland is also of the view that for the reasons outlined above Proposed Alterations 1 and 2 are in any event contrary to:
- (i) the national planning guidance set out in paragraph 21 of PAN 2/2010;
  - (ii) paragraphs 2.4 and 2.5 of the Approved Guidance, and
  - (iii) the advice set out in the Chief Planners Letter of 15th March 2011.

- 10.35 It is also of the view that the reasons put forward by the Council to justify Proposed Alterations 1 and 2 are illogical and thus *Wednesbury* unreasonable.
- 10.36 For the reasons outlined in paragraphs 10.33-10.35 above, Barratt North Scotland has concluded that it would be ultra vires for the Council to implement Proposed Alterations 1 and 2. It, therefore, requests that they are withdrawn pending the statutory review of the adopted Aberdeen Local Development Plan (February 2012).

## **11 Proposed Alteration 3**

- 11.1 Barratt North Scotland see a deal of merit in the proposal that further flexibility ought to be introduced into the practical application of Policy H5 so that the option of delivering a significant proportion of the headline 25% affordable housing requirement on large sites in the form of a commuted sum payment rather than on-site units was supported in policy terms.
- 11.2 A worked example may be of assistance in demonstrating the point. A 400 unit site would involve a 100 unit AH requirement. Fully funding such a 100 scheme for affordable housing would almost be impossible for an affordable housing provider (AHP) in the current economic climate. However, if 50 of the required 100 units were notionally delivered in the form of a commuted sum, it would raise £1.25m (50 x £25k). This sum could then be used to cross-fund the other 50 units through either an AHP (or by LCHO) thereby bringing the overall viability of the site to a point where at least 50% of the affordable housing project was capable of being delivered.
- 11.3 Notwithstanding these apparent merits, it has to be recognised too that this proposal is contrary to the provisions of paragraph 21 of PAN 2/2010 which advises local planning authorities that commuted sums should only be used "sparingly". For the reasons outlined in paragraphs 10.19-10.21 of this response, it is also contrary to the provisions of the Council's own Statutory Guidance insofar as it has the potential to undermine the strong presumption set out at paragraph 2.5 of the Approved Guidance that in sites involving 20 or more units the headline requirement will be delivered "on-site".
- 11.4 In the interests of consistency Barratt North Scotland would also point out that if this proposed change to the existing guidance is to be promoted ahead of the review of the current local development plan, there would need to be evidence before the Council which suggested that an increased use of commuted sums on larger sites would have the potential to increase the delivery of both mainstream and affordable housing across the Aberdeen Housing Market Area. Given the fact that Proposed Alteration 3 is being promoted in the first place, it may well be that the Council has already reached that conclusion. But where it has misdirected itself is in concluding that that otherwise worthwhile objective would be achieved by altering the basis on which commuted sum is calculated so that a significantly increased (but unviable) level of payment is required.

## **12. The Proposed Formula**

- 12.1 Setting aside the legal and policy issues outlined above, (and without prejudice to its right to challenge the introduction of Proposed Alteration 1 and 2 should the Council decide at the end of the current consultation exercise to adopt it and the Scottish Ministers endorse that decision by not serving a notice in terms of Section 22 (8) of the 1997 Act requiring that those alterations are not adopted) Barratt North Scotland conclude that the proposed formula that the Council has put forward as a means of calculating commuted sums on a site by site basis is unworkable.
- 12.2 If adopted, it would be counter-productive and stifle the delivery of both mainstream and affordable housing as officers and applicants tried to reach agreement on the level at which the commuted sum payment should be set. The "certainty, consistency and speed" of the current approach would be lost.
- 12.3 To appreciate how inappropriate this revised methodology would be, an understanding of how land values are calculated is necessary. Most development land is contracted on the basis of an estimated residual land value (RLV) carried out at the outset of the development process. Broadly speaking, RLV is the surplus remaining after deducting costs and the required profit margin from sales income. This is the price that is left to pay for the land. Costs include the costs of planning gain contributions and the cost of affordable housing provision.
- 12.4 It can be seen from this that RLV is dependent on the cost of providing AH, including commuted payments, and is a cyclical process. How can a developer proceed to acquire land if all such costs cannot be established as far as is reasonably possible up front. It should also be borne in mind that at this point in the calculation of RLV, sales income is also an estimate based on prevailing market conditions. The Council must appreciate that a developer takes a considerable risk when projecting future sales revenue as conditions can either deteriorate or improve over the course of what might be a considerable lead-in period between site acquisition and sales income being received. Actual sales income is not known until the last house is sold. Actual uplift in land value is accordingly contingent on site completion. So if commuted sums are to be dependent on sales income, the question that immediately arises is which figures are to be used, and at which point is the commuted sum to be paid. Should it be the estimated sales values at the point of contract (putting aside for the moment that there may be uplift involved) or the final sales figures which might emerge years later. If it is paid 'up-front' then all parties, including the Council, would be exposed risk. In the current risk averse climate the proposed approach would not be supported by the lenders.
- 12.5 The suggested use of the figure of 33% deduction from sales revenue as providing a reasonable means of assessing the RLV is also extremely problematic. As outlined above, costs have to be expended to deliver the sales income. For mainstream units (even as substitutes for affordable housing) landowners expect a land value, construction costs have to be met



and funded, and a profit is still required by lenders. To take 33% of revenue 'off the top' would clearly impact significantly on viability and (on the basis of our research to date) mean that very few projects could proceed.

- 12.6 Barratt North Scotland would wish to remind the Council that Option 1 and Option 2 are both based on land values. As advised Option 1 is based on the amount required to allow an affordable housing provider to purchase an equivalent site identified for affordable housing whilst Option 2 is based on the difference between that amount and the amount that would be needed to allow an affordable housing provider to purchase an equivalent site for housing on the open market. To the extent that the 33% deduction exceeded the difference between those two land values it would constitute an unlawful development tax.
- 12.7 Barratt North Scotland also have a significant issue with the proposal that in the absence of concluded missives between the developer and an AHL being exhibited to the Council, the calculation of the commuted sum payable in respect of the individual site should proceed on the basis that the land with affordable housing at its end use has a nil value. Given that the current £25,000 figure is based on comparison evidence of what AHPs are actually paying for sites for affordable housing within the Aberdeen HMA, it seems unreasonable in the extreme for the Council to promote a formula that assumes that the value of the land for that purpose is nil.
- 12.8 Perhaps even more significantly in terms of the unfairness of the proposed methodology, 33% is nowhere near a reasonable reflection of the 'land' element of average sales income. If, for example, a house builder were to promote a development of 5 high value (£600k) units of which one was to be deemed be affordable with the policy requirement stipulating that a commuted sum calculated at 33% of the sales price had to be paid, it follows that a commuted sum of £200k would require to be paid. This would represent an uplift of 800% on the current level. At such a level the commuted sum would be significantly greater than the actual open market residual land value. The Council will be aware that there is a significant demand for new housing at this price range. If this proposed amendment to the Statutory Guidance were to be approved it would inevitably lead to house price inflation in the Grampian housing market area.
- 12.9 The proposed formula is fraught with difficulties. As such its introduction would run counter to the clear advice which the Chief Planner gave to Heads of Planning in March 2011 regarding the need for "realism" when it comes to the drawing up and implementation of affordable housing policies.

### **13 Conclusion**

13.1 For the reasons outlined above the Proposed Alterations are:

- \* contrary to the doctrine of legitimate expectation;
- \* contrary to national and local planning policy and the advice set out in

the Chief Planners letter of 15th March 2010, and

\* illogical and to that extent unreasonable.

13.2 Setting aside its principal objections to these Proposed Alterations the proposed formula is unworkable. If adopted, it would stifle the delivery of housing development across the Aberdeen HMA leading to house price inflation.

13.3 For the foregoing reasons Barratt North Scotland request that the Council do not adopt it.

#### **14. Response to the Questions**

14.1 **Question 1** - Is it appropriate to link the value of the commuted sum payment to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement?

14.2 No. For the reasons set out in section 13 of this response, it would not only be inappropriate but also unlawful for the Council to change the Statutory Guidance so that the value of the commuted sum payment was linked to the consequential increase in the open market residual land value of the site arising from the discharge of the on-site affordable housing requirement.

14.3 **Question 2** - If the answer to the first question is that it would be inappropriate make that link, how might the method of valuing the commuted sum be otherwise amended to ensure that it "operates more fairly"?

14.4 Implicit in this question is the suggestion that the current method of valuation is somehow operating "unfairly". So far as Barratt North Scotland is concerned, the current method of valuation is entirely fair because it achieves the objectives of "certainty consistency and speed" for developers and the Council alike. These were the benefits which the majority of the respondents to the Scottish Government's 2009 consultation believed the current method of valuation would deliver. It must be assumed that it was the underlying fairness that lay behind these recognised benefits which prompted the Council to re-adopt the current method of valuation in 2010 when it promoted it as part of its first edition of statutory guidance on affordable housing made under and in terms of Sections 22 and 24 of the 1997 Act.

14.5 So far as Barratt North Scotland is concerned, the current approach to the valuation of commuted sums in the Aberdeen Housing Market Area is certain, consistent and speedy and for those reasons it is fair. It sees no reason for it to be changed.

14.6 **Question 3** - Would the proposal to allow a mix of on-site delivery and commuted sum payments help improve the overall delivery of affordable housing?

14.7 Barratt North Scotland sees a great deal of merit in this proposal as it

believes it would improve the delivery of both mainstream and affordable housing.

- 14.8 Indeed Barratt North Scotland would suggest that there would be a great deal of merit in the current housing market if complete flexibility were to be introduced into the Existing Guidance whereby a developer was permitted to deliver the headline 25% policy requirement entirely in the form of a commuted sum in circumstances where it was known at the point in time when an application was submitted that no HAG funding would be available.
- 14.9 However, for the reasons set out at paragraph 11.4 of this response, Barratt North Scotland is of the view that the Council would have to provide valid reasons for seeking to introduce the proposed "mixed delivery" option.

## **15. Proposed Changes to the Existing Guidance**

- 15.1 Taking these points together and in order to address the queries in the consultation letter as regards (a) how the methodology might be amended to operate more fairly and (b) whether increased flexibility in the use of commuted sum payments might improve the overall deliverability of both mainstream and affordable housing, Barratt North Scotland would recommend that whilst the existing approach to the valuation of commuted sum payments as set out in SG 5.1 should (and indeed must) remain, the remainder of the policy guidance would benefit from the following changes to its wording.
- 15.2 These proposed changes are set out as follows:

Paragraph 2.1 should be amended so that the following sentences are removed:

*"Committed sums will be negotiated between the developer and the Council. The figure for committed sums is set by the Council, and the figure per plot is currently £25,000 (as of August 2010). This figure is subject to change and the figure is reviewed annually. Any changes will be consulted on and published in advance of implementation on the Council's website."*

and replaced with the following:

*"2.2 Committed sums will be calculated initially on a fixed contribution per unit basis (currently £25,000) and thereafter reviewed by the Council annually, following consultation with the house building industry, by reference to appropriate comparison evidence of sale prices of development land for the average price for affordable housing within the Aberdeen Housing Market Area or, in the absence of such evidence, the residual land value method set out in the relevant edition of the RICS Guidance Note, Scotland on the "Valuation of land for affordable housing". In the absence of agreement as regards the appropriateness or availability of the available comparison evidence or, as the case may be, the assessment of the average residual land value, the Council will refer the matter to an independent expert for*

*final and binding determination.*

2.3 *The date of the annual review shall be fixed by reference to the month (currently August) on which the commuted sum for the preceding year was agreed or, as the case may be, determined. The figure fixed for the preceding year shall continue to be the relevant figure for the purposes of the application of Policy H5 until such time as the reviewed figure has been agreed or, as the case may be, determined.*

2.4 *The reviewed figure will be published on the Council's website."*

15.3 The remaining paragraphs in SG 5.1 should be re-numbered accordingly.

## **16 Rejection of the Proposed Alterations**

Barratt North Scotland respectfully request that the Council rejects the Proposed Alterations and approves the modification to the wording of the Approved Guidance proposed in section 15 of this response.

**Barratt North Scotland**