

NOTE ON POLICY LPP34(B)
BRAINTREE DISTRICT COUNCIL

Introduction

1. Policy LPP34 of the Braintree Local Plan Section 2 (“the Section 2 Plan”) is a criteria-based policy concerning Affordable Housing in Rural Areas. It is an exception to the general restriction on development outside settlement boundaries in the countryside established by Policy LPP1.
2. Criterion (b) as drafted requires that *“The settlement within which the development is to take place should have a population of less than 3,000 in order to provide for affordable homes in perpetuity”*.
3. The purpose of the criterion is to restrict the application of the policy to developments where the statutory ‘Right to Acquire’ has been does not apply. This is to ensure that affordable homes provided on any sites which come forward under LPP34 remain affordable homes in perpetuity.
4. Having reflected on the drafting of the criterion, the Council are now of the view that, as drafted, it does not achieve the desired objective. It therefore wishes to propose alternative draft, as a main modification, which would achieve the intended objective.

Context

5. The ‘Right to Buy’ legislation introduced by Part 5 of the Housing Act 1985 was extended to tenants of housing associations and other tenants of registered social landlords by section 16 of the Housing Act 1996. It is known as the ‘Right to Acquire’. However, the Secretary of State is able to designate rural areas in relation to dwellings in which the right conferred by section 16 does not arise: s.17(1)(b) of the 1996 Act.
6. The Secretary of State exercised his powers under section 17 in respect of the East of England, including Braintree, by issuing the Housing (Right to Acquire or Enfranchise) (Designated Rural Areas in the East) Order 1997. This designated all rural parishes in the District - with the exception of the five largest - Coggeshall;

Earls Colne; Hatfield Peverel; Sible Hedingham and Silver End – as rural areas for the purposes of the 1996 Act.

7. In deciding whether to designate an area as ‘rural’, it is understood that the Secretary of State applies a number of criteria including whether the parish in question has more than 3,000 inhabitants. This was the source for the current drafting of criterion (b).
8. The Right to Acquire is now provided for by section 180 of the Housing and Regeneration Act 2008. However, section 17 of the 1996 Act – and accordingly any Orders made under that section – continues to apply to the right to acquire under section 180 of the 2008 Act: s.184(1) of the 2008 Act.

Proposed Main Modification

9. The intention behind the original draft of criterion (b) was to restrict the application of Policy LPP34 to those areas which the Secretary of State had designated as rural and, therefore, in respect of which the ‘Right to Acquire’ did not apply. However, the Council accepts that the original drafting would not achieve this objective.
10. The Council maintains that the intention underlying the proposed restriction – ensuring that only affordable housing which will remain affordable in perpetuity benefits from the exception policy in LPP34 – is a sound one.
11. Accordingly, the Council propose that criterion (b) be redrafted as follows:

“The appeal site is located within an area designated as a rural area by the Secretary of State under the Housing Act 1996 (or any successor legislation)”

12. The Council considers that this would amount to a main modification, but is plainly necessary for reasons of soundness, in particular to ensure that the Local Plan is effective.
13. The supporting text could also be amended to (a) briefly explain the rationale of the criterion and (b) refer to the relevant Order at the time the Plan is made (i.e. the Housing (Right to Acquire or Enfranchise) (Designated Rural Areas in the East) Order 1997) which lists the parishes currently designated as rural. It is considered

that the amendment to the supporting text could be achieved by way of minor modification.

12 July 2021