

## Development Management Practice Note: DMH1: New Affordable Housing consultation.

### Member Comments

*NB. The detailed comments below are from Mr Patrick Brady. Other members' comments were received and addressed by minor amendments to the Practice Note, so are not listed. Paragraph numbers in the body of the text refer to paragraph numbers in the consultation draft Practice Note, appended at the end of this document.*

#### PART 1: THE DRAFT OF THE PRACTICE NOTE

##### 1. Status

The status of the document should be clearly stated. Is it merely interpretive or is it something else? What weight should be placed upon it and what is the justification for this?

Is this to be a public document? Will it be used in planning appeals?

##### 2. Purpose

The Practice Note says it applies to applications by individuals seeking to meet their **own** housing needs. For the avoidance of doubt, does it apply to private individuals building for others, such as the rented properties in Litton Dale or School lane, Taddington? A clear statement is needed as to why categories of dwelling, incl. social housing, are dealt with differently.

##### 3. Consultation

If there is a need for a practice note, it would arise because the wording of Policy DMH1 and the explanation of it in the note fails to make clear what officers say it was intended to mean. The officer interpretation has come as a surprise to a number of people. The Practice Note itself is so much more flexible than previous advice given to the Planning Committee that there is clearly scope for interpretation. Para 1.2 emphasises fairness and transparency. It would be right and proper to consult publicly on what is being proposed.

##### 4. Other comments on the Introduction

1.2 "**some** dwellings are more likely to remain affordable..."

1.3 Especially if this is to be a public document it should be stand-alone and complete in itself.

1.4 This is not true. The decision to refer the matter to the Local Plan Group was taken by officers even though the subject is outside the Local Plan Group's remit, as has already been made clear to officers.

##### 5. Policy DMH1

The wording in the policy (or its explanation) that links the size of house to need, as envisaged in 3.2 should be clearly stated at the outset so that the document is complete in itself - and also so that thinking can be clearly directed. (see also PART 2 below)

##### 6. Comments on "Background"

2.2 If DMH1 really does do that, set out the precise wording and **in its context**.

2.3 This is misleading. 6.48 applies when **already built** houses are sold on and takes no account of DMH7.

2.4 The purpose of the policy as described here does not appear anywhere within the approved policy documents. Moreover, no reference is made to the overarching objective of thriving and sustainable communities - which the previously quoted National Parks Circular strongly promotes.

The reference to Policy DMH7 is **very misleading**. An extra 3.9 or even 7 sq.m will not in any way meet the needs of a growing family. Indeed, should the officers' new policy be proceeded with, it should be a clear part of the practice note that all applicants are made aware of DMH7 and warned that they will be unable to extend their property in any meaningful way.

## 7. Implementation of Policy DMHC1

For comments on the merits/legality of the new policy, see PART 2 below. Working on the basis that the new policy is what the Practice Note claims it to be:

- a) First bullet point: 39 sq.m. presumably
- b) The flexibility, especially for families, is to be welcomed. However, there is no explanation or rationale given as to why it is flexible at the upper size range (which is more vulnerable to higher valuations) and so inflexible at the bottom end.
- c) What does "Single people should still satisfy a house size restriction" mean?
- d) Once new criteria are introduced, the way they are to be used and interpreted becomes crucial. No indication is given as to what might be deemed "personal circumstances" nor as to why they could be taken into consideration for single people, but not, eg couples. Who is making these judgements?
- e) Would personal circumstances include, for example, home working?
- f) What is a couple or a family of three? Do they have to be living together or can they have an intention to do so? Would it include a brother and sister, for example, or a mother and daughter? Would "three" include an unborn baby? Etc
- g) What will be the role of the local housing authority in this in the future? Is it just to assess whether a need exists, or something more than that? This should be clear.
- h) How does this relate to Paras 12.19 of the Core Strategy and 6.25 of the DMP (NB: PART 2 below)?

Para 3.4: It is not clear what this is trying to say, but it appears to be a repeat of the point in relation to 2.4 above, in which case the same comments apply.

## PART 2: LEGAL AND POLICY CONSIDERATIONS

### 8. Central Issue

The first issue is not about merit of the officers' new policy but whether either the Core Strategy or the Development Management Policies require or enable the Authority to refuse a planning application on the grounds that a house that is within any of the limits of DMH1 is nonetheless too big.

To enable that to happen, the policy has to be clear and unambiguous, but Officers have relied upon the wording in Para 6.48 which, in its proper context, is set out in Appendix 1.

The wording used in Para 6.48, **does not apply here but clearly refers to what happens once a more affordable house has been built and is being sold on to new owners.**

This has been pointed out before. (What needs to be asked is what “In these cases greater flexibility will be afforded in terms of the size requirement up to the maximum of 97m<sup>2</sup> in accordance with policy DMH1” is intended to mean, because that could be interpreted, even on the officers’ own arguments, as meaning size related to need is not an issue.)

In fact, the reason that Policy DMH1 **could/does not say** that house size must be limited to the immediate needs of the applicant or first intended occupier because Paras 12.19 of the Core Strategy and 6.25 of the DMP both acknowledge the role of the private housebuilder building for a **general need** in the area.

Under the Core Strategy in particular, private developers only have to take into account a variety of house size and type if they build **three or more** houses. This arrangement has continued for nine years without officers raising issues. Even after the DMP was introduced in 2019, house size was never raised as an issue until approx. one year ago.

(It is assumed that all this has suddenly arisen because one or two “more affordable” houses have been sold for a price above the assumed maximum of £250K for an affordable house - a value that in the present market is increasingly unreal. In at least one such case the s106 agreement did not allow the National Park Authority to challenge the valuations that caused concern, which is not a reason for introducing the new policy.)

The situation seems to be that, in an area where a recent housing needs survey has been undertaken, the private developer can build two houses to meet “the needs of the area” but a private individual in the same area can only build to the size dictated by the Practice Note. That needs justification.

## 9. Policy Considerations

### a) Some background

In June 2019 there had been applications for approx. 24 privately built/converted affordable dwellings **of which only one** had been recommended for approval by Officers. **Twenty** out of twenty four were approved by the Committee (figures sent to officers at the time and not challenged).

Since then, officers are known to have approved two more.

Last year, applications for seven private affordable houses came before the Committee **all** recommended for refusal. The Committee has approved **five** of those houses.

### b) Implications

There are two clear conclusions from this:

- A very different approach by members from officers, which suggests a certain dysfunctionality in the organisation;
- The very real discouragement any young applicant (they are almost invariably young) has to face even to get a planning permission. What is not known is how many young people are dissuaded from proceeding at pre-application advice level.

With rare exceptions, Officer advice to refuse has usually been site based, eg landscape etc. The different approach taken by members seems to be that they see affordable housing provision as essential not just for individuals but for the health and population profile of the community at large and of the National Park. They also recognise that alternatives do not exist under present policy. It is arguable that none of the applications so far implemented has harmed National Park interests and, in some cases, they can be argued to have enhanced them.

### c) Merit

The new policy as envisaged by the Practice Note will only have one effect. A rudimentary understanding of human nature says that few if any people at a young age would overcome the discouragement and spend the time, money and effort of building a one or two bedroom house in the knowledge that they may in two/three years time have a partner and children and, under DMH Policy 7, they could never meaningfully extend to provide for what most of them hope will be their growing family.

There will be no new “variety” of housing types and sizes and no new single person dwellings. Particularly, if (as should be the case) applicants are warned of the effects of Policy DMH7, new houses will **not** be built. The policy’s only effects will be to discourage investment in privately owned affordable housing (contrary to Government advice) and to force more and young people away from villages because in reality there are no other choices (Taddington has recently lost a family to Buxton because they were not able to extend their house). This has been what members of the authority have been anxious to avoid over a long period of time.

The message from the Practice Note seems clear: “get her pregnant or get pregnant and then you can have the house you reasonably need for a stable and constructive life in the village where you belong.” Is that really what this National Park Authority is about?

As an aside, it should be asked whether, and if so how many, 39 sq.m affordable houses have been built in the private and social sector anywhere in the park in recent times. Neither of the large social housing developments in Bakewell or Tideswell offer such accommodation.

## **Appendix 1**

### **Extract from the Development Management Policies: DMH1**

**6.46 Homes built by individuals to meet their own need** are classified as intermediate houses (between pure affordable rent and shared ownership prices and unencumbered open market rent and sale prices) because they can be sold on or rented by the first owner and occupant after a period of three years to persons who are not in housing need provided the persons satisfy the local connection criteria.

6.47 The requirement for the first occupant to live in the property for three years is intended to encourage only those in genuine housing need to apply for new housing. The period is seen as long enough to enable genuine need to be met but not so long that it would unfairly restrict the owner’s ability to move in the event that their circumstances change. The Section 106 Agreement allows for a move within three years in the event of unforeseen circumstances. The requirement for the first occupant to live in the property for a minimum of three years was established through the Supplementary Planning Guidance titled ‘Meeting the local need for affordable housing in the Peak District National Park’, which was adopted

in July 2003. The requirement has become accepted practice in applying the Section 106 Agreement.

6.48 The **ongoing** value of **these** houses will be higher because of the less stringent occupancy conditions, but the size of the housing will nevertheless be controlled in line with the **original** applicant's housing need. In **these** cases greater flexibility will be afforded in terms of the size requirement up to the maximum of 97m<sup>2</sup> in accordance with policy DMH1.

## Appendix 2: Consultation Draft of Practice Note

### 1. Introduction

- 1.1. This practice note sets out how Development Management Policies (DMP) Policy DMH1 should be applied when considering applications for **new houses by individuals seeking to meet their own housing needs**.
- 1.2. This practice note aims to ensure a fair and transparent approach to the consideration of such planning applications so that applicants are able to meet their needs, and dwellings are more likely to remain affordable in perpetuity, in accordance with strategic policy and national guidance.
- 1.3. A report to Planning Committee on the 16<sup>th</sup> April 2021<sup>1</sup> set out the background to policy DMH1, the purpose of floorspace size thresholds and issues arising with regard to the clarity and intent of policy and consequent effect on decision-making.
- 1.4. In accordance with the recommendations of this Committee, a special meeting of the Local Plan Review Steering Group<sup>2</sup> was convened in order to discuss these issues and agree a pragmatic solution in advance of any changes to policy that could be brought about through the formal plan review.

### 2. Background

- 2.1. The NPPF and the National Parks Vision and Circular (2010) acknowledge the need for affordable housing in National Parks. Paragraph 79 of the Circular states:

‘The Government expects the Authorities to maintain a focus on affordable housing and to work with local authorities and other agencies to ensure that the needs of local communities in the Parks are met *and that affordable housing remains so in the longer term.*’

- 2.2. In accordance with national guidance, Core Strategy Policy HC1 makes provision for new housing that addresses eligible local need and remains affordable. Restricting size and occupancy can help properties to remain more affordable. DMP policy DMH1 restricts size to what is needed by the applicant and policy DMH2 restricts occupancy to those who have lived in the National Park for 10 years.
- 2.3. The size of houses is controlled in line with the applicants housing need. However it is acknowledged that flexibility may be necessary, for example in cases where changing needs can be anticipated or expected. Paragraph 6.48 of the DMP states that where individuals are building affordable housing to need their own need,

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<sup>1</sup> [Planning Committee 18 November 2005 Item 6.1 \(peakdistrict.gov.uk\)](https://www.peakdistrict.gov.uk/planning/18-november-2005-item-6.1)

<sup>2</sup> Members attending the meeting were Patrick Brady, Janet Haddock-Fraser, Robert Helliwell, Ken Smith and Yvonne Witter.

*'greater flexibility will be afforded in terms of the size requirement up to the maximum of 97m<sup>2</sup> in accordance with policy DMH1'.*

- 2.4. However, the purpose of the policy is not to predict the future need of the applicant, but to address their current need. Policy DMH7 allows for extensions to a property to cater for changes in circumstances.

### 3. Implementation of Policy DMHC1

- 3.1. Policy DMH1 requires any new build housing to be within the following size thresholds:

Number of bed spaces	Maximum Gross Internal Floor Area (m2)
One person	39
Two persons	58
Three persons	70
Four persons	84
Five persons	97

- 3.2. To address the need for flexibility without compromising the purpose and intent of the policy, different size thresholds can be applied in the circumstances outlined below. In all situations, the development shall address eligible local need in accordance with Core Strategy policy HC1 and DMP DMH2.
- Single people should still satisfy a house size restriction of 39sqm. In cases where flexibility is required based on personal circumstances, or in locations where for reasons relating to valued landscape character or the style and traditions of the locality, a 2-storey house is most appropriate, single people can apply for homes up to a maximum of 58sqm.
  - Couples can apply for homes up to 70sqm.
  - Families of 3 or more can apply for homes up to 97sqm.
- 3.3. DMP para 6.52 addresses the circumstances in which a property exceeding 97sqm may be justified.
- 3.4. In cases where additional floorspace is required to address individual circumstances that are a material consideration and which cannot be met by the above thresholds, policy DMH7 which allows for extensions to affordable houses up to a total maximum floor area of 97sqm can be considered as a material consideration in the decision making process.