Appendix 1
Planning and Affordable Housing for Build to Rent
Elmbridge Borough Council’s consultation response (April 2017) - draft

Q 1: Please provide your name and contact details in the box provided, and identify whether you are responding as (please tick one):

☐ A private individual?
☐ On behalf of an organisation?

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Q 2. If you are responding as a private individual, please identify in what capacity you are replying and whether your main interest is as:

☐ A person living in private rented accommodation?
☐ A person living in affordable housing?
☐ A private landlord?
☐ Other? (Please specify)

Q 3. If you are responding on behalf of an organisation, please identify in what capacity you are replying and the main interest of your organisation (tick all that apply):

☐ An investor in Build to Rent schemes
☐ A developer of Build to Rent homes
☐ A lender to Build to Rent schemes
☐ A supplier of management and/or other services to Build to Rent homes
☐ Other private landlord
☐ Social landlord (either Registered Provider or local authority)
☐ A developer of other housing tenures besides Build to Rent
☐ A trade or other representative body
☐ Local authority
☐ Other (please specify)

Q 4. Please specify the part(s) of England in which you live, or your organisation’s activities (or members) are principally located (you may tick more than one):

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

- Yes
- No
- Don’t know

The Government has and continues to frame the majority of its housing policy and market interventions in relation to homes to buy. The focus of the rented sector has by and large focussed on social landlords or the buy to let market. To grow the market beyond the small numbers set out in the consultation document will require more significant change. Based on the background contained within the consultation, the Council believes that there may be some regulatory failures around Build to Rent that might be remedied through national policy intervention. The lack of clarity and guidance as to the status and treatment of Build to Rent within national planning policy could lead to greater inconsistencies between local planning authorities in their treatment of Build to Rent when plan-making and determining planning applications. It would be understandable if the resultant uncertainty for prospective investors and developers deterred schemes from coming forward, although the Council has no evidence of this happening locally. However, the Government must recognise that build to rent development will still have an impact on infrastructure and the ability of local authorities to ensure sufficient contributions to support infrastructure delivery must not be compromised to improve viability of such build to rent schemes.

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

- Yes
- No
- Don’t know

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

- Yes
- No
- Don’t know
As the consultation document outlines, this makes sense, in so much as having a single organisation controlling the management of the entire development should deliver efficiencies. This approach should also avoid the complications that may arise from having one organisation managing the market dwellings and a second, typically a Registered Provider, from managing the affordable homes. However, the Council would want to have safeguards in place to make sure that Affordable Private Rent is managed effectively, is genuinely affordable (in relation to local housing costs and incomes) and that letting arrangements fit with local authority priorities.

As an aside, we anticipate that the proposed term, “Affordable Private Rent” may lead to confusion amongst stakeholders and the wider public. It does imply that the market rent making up the majority of provision in a Build to Rent scheme could be considered to be unaffordable, for example. This observation is borne out of our experience with Affordable Rent. For this reason, we suggest that the term “Discounted Market Rent” might be a better alternative to “Affordable Private Rent”.

Q 8: Will a policy expectation in the National Planning Policy Framework send a sufficiently strong signal to support Affordable Private Rent as the main vehicle for affordable housing in Build to Rent? (Please state your reasons)
☐ Yes
☐ No
☑ Don’t know

Ultimately, this is best answered once the NPPF has been amended and sufficient time has passed to assess its impact on schemes which are being delivered. It will also depend on the degree to which affordable private rents are considered to be affordable and as such meet the identified needs established by Local Planning Authorities. Whilst this new tenure may be the main vehicle to deliver affordable housing within Build to Rent, there should be flexibility to allow other affordable housing tenures to be provided in Build to Rent, where there may be a particular rationale on a scheme for doing so.

Q 9: Do you consider that Affordable Private Rent could play a useful role in the delivery of affordable housing in the area(s) where you live or operate?
☐ Yes
☑ No
☐ Don’t know
The Council’s initial view is that Elmbridge is unlikely to be a major destination for Build to Rent development in the short to medium-term, and that developers will initially be focussing on cities and larger towns, with good transport links and proximity to centres of employment. It may also be that house-builders developing homes for sale will continue to dominate the land market, which could also limit opportunities for Build to Rent. If our view is correct and there is limited Build to Rent developed locally, then it would follow that the opportunities to provide Affordable Private Rent ("Discounted Private Rent") would also be limited and the potential numbers developed would be small. In addition, our latest SHMA indicated that the predominant need for rented affordable housing is for social rent.

The usefulness of APR / DPR will depend, in part, on whether it delivers additional affordable housing or replaces delivery of other affordable tenures. It will also depend on who is housed within it and how that ties in with local priorities and how affordable it is. On one hand, it could help supplement existing social housing provision and assist with homelessness prevention initiatives, whereas if it were out of reach for lower-income groups but more targeted at those on slightly higher incomes, then it may help with recruitment and retention of local key workers, with anecdotal evidence indicating that the lack of housing which is affordable leading to difficulties in this area.

In terms of affordability, the Council would want safeguards in place to make sure that provision is accessible to households on housing benefit. Market rents in Elmbridge are amongst the highest in the country which means that a significant proportion of working households who rent within the borough claim housing benefit to help pay their rent. Figures from November 2016, indicate that 32% of households claiming housing benefit in Elmbridge were employed. If rents in APR / DPR were so high as to preclude households in receipt of housing benefit from being able to access it, then this would mean that working and non-working households would be denied access, which would significantly impact on its usefulness.

Q 10: Do you consider that the efficiencies arising through on-site provision of Affordable Private Rent can materially improve the viability of Build to Rent, compared to other affordable housing tenures?
☐ Yes
☐ No
☑ Don’t know

Without detailed knowledge of the different models and their respective financial models, it is difficult to compare them and say definitively that the delivery of Affordable Private Rent will be more viable than other forms of affordable housing within Build to Rent.

Q 11: Do you consider that there could be unintended consequences of Affordable Private Rent if it is accepted as a form of affordable housing?
☑ Yes
☐ No
☐ Don’t know
The Council believes that there are a number of potential unintended consequences which could result, all with adverse impacts.

Firstly, if developers see APR / DPR as being more financially advantageous (or less financially onerous) than other forms of rented affordable housing, then it is likely that they will push for APR to replace other affordable tenures on developments which are not Build to Rent. This would impact on the future delivery of affordable rent and social rent, for which there is a strong demand. As such, the Council believes that the Government should make it clear, either in the NPPF or the PPG, that APR / DPR can only be treated as affordable housing within Build to Rent schemes.

Secondly, Registered Providers are subject to a regulatory framework and there are checks and balances in place which should ensure that properties are managed effectively. The Council would be concerned that private providers of APR / DPR would not be subject to a similar level of regulation, which could result in poorer outcomes for tenants. The Council believes safeguards should be put in place to support the delivery of effective management of Build to Rent (which would have the added bonus of protecting the reputation of this nascent model) and this could be achieved through the development of a Code of Guidance or similar and a requirement that providers sign up to adherence.

Q 12: If your answer to Q11 is yes, would these consequences be mitigated by limiting Affordable Private Rent only to Build to Rent schemes?
☐ Yes
☐ No
☑☐ Don’t know

The first of our concerns could be addressed through confining APR only to Build to Rent, but the concern around regulation and the potential for management standards to drop is a more general issue.

Q 13: Do you think it is reasonable for Planning Authorities to specify minimum tenancy lengths in Build to Rent schemes? Please add your reasons, and give examples of such agreements where appropriate.
☑☐ Yes
☐ No
☐ Don’t know
One of the major disadvantages for tenants and prospective tenants within the private-rented sector is the lack of security of tenure, which can mean that, through no fault of their own, tenants are required to move after as little as six months. The termination of assured shorthold tenancies is one of the biggest causes of homelessness across the country. As Build to Rent is predicated on providing a long-term income stream for investors, there should be potential for tenants to be offered longer-term tenancies too. From a consumer perspective, this should help make Build to Rent more appealing and from a landlord perspective, it should help the scheme economics, by reducing the incidence of voids and the need for works between tenancies. However, the Government must recognise that there will be additional burdens placed on local planning authorities with regard to the effective monitoring of such conditions.

Q 14: Do you agree that Build to Rent tenancies should be for at least three years (with a one month break option for the tenant after the first six months), for all customers in the development who want one?
- Yes
- No
- Don’t know

Q 15: Does the definition of Build to Rent set out on page 20 capture all of the appropriate elements? (If not, please state why, and what criteria should apply).
- Yes
- No
- Don’t know

The Council believes there is an omission, in so much as the bullet points make no reference to household eligibility. We believe that the definition should include some reference to eligibility, as silence on this matter is likely to lead to confusion when applications for Build to Rent are being considered (and their contribution to meeting local housing need).

Q 16: Do you agree that the National Planning Policy Framework should put beyond doubt that Affordable Private Rent qualifies as affordable housing in Build to Rent schemes? (If not, please state why).
- Yes
- No
- Don’t know
Q 17: Do you agree with the proposed definition of Affordable Private Rent set out on page 21? (If not, please state why, and what criteria should apply).

☐ Yes
☑ ☐ No
☐ Don’t know

The Council has a number of concerns about the specifics of the proposed definition. The primary concerns are about rent levels, affordability and whether or not Affordable Private Rent (or “Discounted Private Rent”) will be a realistic option for lower-income households or not.

The Council believes that gross rents should be capped at no more than the lower of a) 80% of market rent and b) the relevant Local Housing Allowance (LHA) cap. In the Council’s view, there needs to be a linkage between planning and housing policies on the one hand and welfare policy on the other, and that reference to capping at LHA levels should mean that such homes are genuinely affordable to households on lower incomes. This issue is particularly relevant to areas like Elmbridge, where market rents can be so high, that even at 80% of these, many low-income households would not be able to afford the costs. If the definition solely refers to up to 80% of market rents, then it throws open the possibility that on high-end schemes, the rent levels of the affordable element will be higher than market rents in the surrounding area, thereby creating inconsistencies and confusion.

Q 18: The Government intends to set the parameters of Affordable Private Rent as:
- a minimum of 20 per cent of the homes to be discounted;
- the discount to be set at minimum of 20 per cent relative to the local market;
- an offer of longer tenancies of three years or more;
- the discount to apply indefinitely (subject to a “claw-back” arrangement if Affordable Private Rent homes are withdrawn).

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

☐ Reasonable
☐ Too onerous
☑ ☐ Insufficient
☐ Don’t know
The Council is not clear as to why the Government would want to set out a minimum proportion of the Affordable Private Rent (DPR) to be included within a qualifying development. Ordinarily, it should be for local planning authorities, based on local circumstances, its assessments of housing need and the viability of development to determine the degree to which a scheme can support affordable housing provision. It is understood that on mixed-tenure developments, Registered Providers may be reluctant to acquire a small number of units, because of the practicalities involved and issues around service charges etc. However, as Build to Rent entails control and management by one party, this should not be such an issue and it would seem reasonable to expect a provider to be able to manage a smaller number of APR homes within a larger development.

Linked to this, the application of a minimum percentage could lead to a case, where, if it was accepted that it was only viable to deliver 15% APR on a scheme, that the developer may then argue that no on-site affordable housing should be delivered, as it falls outside the Government’s parameters. That could be an unintended consequence of such an approach.

Again, the Council is not clear on why a percentage figure has been chosen. If a 100 unit scheme provides 15 APR dwellings (i.e. 15%) and a 50 unit scheme provides the same number of APR homes (30%) then what is the difference?

In terms of the minimum discount of 20%, please see our response to question 17 and the Council’s suggestion to use either the lower of this minimum or the relevant LHA cap. It is appreciated that pushing for a larger discount may have an impact on viability (or that landowners’ expectations on the value of their land may need to be managed).

The Council supports the parameters around length of tenancy and the discount applying indefinitely (subject to any clawback arrangements).

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

- ☐ National Planning Policy Framework
- ☑ Guidance
- ☐ Not helpful to specify parameters
- ☐ Don't know

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

- ☑ Support position
- ☐ Do not support position
- ☐ Will affect policy take-up
- ☐ Will not affect policy take-up
- ☑ Don't know
The Council believes that local negotiation is more appropriate and that in time local guidance could be contained within the relevant Supplementary Planning Document. It would however be helpful if Government could issue some good practice to help frame negotiations and indicating what is and what is not acceptable.

The consultation alludes to a possible tension between local authorities and Build to Rent operators in terms of their different expectations and experiences around lettings, nominations and tenant selection. The former will generally prioritise applicants for re-housing on the basis of housing need, whereas the latter are driven by more commercial considerations. The Council would urge the Government not to give free rein to Build to Rent operators in terms of tenant selection, as otherwise the usefulness of APR will be undermined in terms of meeting need and potentially, risks around equalities and adverse impacts on protected groups could rise. Instead, the Council would encourage the Government to take a position where Build to Rent providers were expected to have due regard to local authority housing allocations policies when developing lettings policies.

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

- [ ] Yes
- [x] No
- [ ] Don’t know

The Council's agreement with the suggestion to forgo the use of a minimum covenant period is conditional on the use of appropriate and robust claw-back arrangements. As the consultation document says, there is potential to create perverse incentives which developers could use to game the system and this can be avoided by putting in place arrangements which are not open to abuse.

**Q 22: Do you think Government should (a) prescribe the basis for calculating the amount of claw-back, (b) set a possible basis for calculating the amount of claw-back in guidance, or (c) leave the amount of claw-back to be agreed between the local authority and the applicant?**

- [ ] (a)
- [ ] (b)
- [ ] (c)
- [ ] Don’t know

In setting a possible basis for calculating clawback the Council would encourage the Government to adopt a starting point assumption that the scheme could deliver the full quantum of affordable housing as required by local policy. This would maximise the value if of the claw-back and deter speculative approaches to switch from Build to Rent.
Q 23: Should the Government’s Build to Rent and Affordable Private Rent policy be identical across the whole of England or does it need to be set differently between London and the rest of England? If it should be set differently, please use the comments box to tell us how and why the policy should vary in London from the rest of England.

☐ Identical across the whole of England
☐ Different for London
☒☐ Don’t know

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

☒☐ Yes
☐ No
☐ Don’t know

Q 25: Is a transitional period of six months appropriate for the introduction of the policy? (If not, why not?)

☐ Yes
☒☐ No
☐ Don’t know

As the Government seems to be indicating in the Housing White Paper consultation that it is minded to introduce the other changes to affordable housing planning policy in April 2018, it would seem to make sense to implement both at the same time.

Q 26: Does the summary Equalities Statement in Annex A represent a fair assessment of the equalities impacts of the policy proposals in this consultation? Please provide any further evidence on this issue, including how any negative impacts might be minimised and positive impacts enhanced.

☐ Yes, a fair assessment
☐ No, not a fair assessment
☒☐ Don’t know
One of the key determinants as to whether the proposed policy will have positive or negative impacts on protected groups revolves around the letting of the homes provided as Affordable Private Rent and who will be housed in them.

Until it is clear how the policy addresses this and to what extent these dwellings will be let in accordance with a needs-based approach (which should lead to more positive impacts) and what sort of equalities monitoring will be put in place, it is difficult to provide a definitive response.