

Consultation response

Shelter submission to Department for Communities and Local Government

Planning and Affordable Housing for Build to Rent

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Shelter helps millions of people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own

Summary

- To end our chronic housing crisis there must be an increase in supply of all types of housing, for both rent and owner-occupation. More rental homes are needed for those unable to buy¹.
- Shelter welcomes the encouragement of Build to Rent (BTR). We agree rental developments can have supply benefits in terms of quicker build out rates, and being more suitable for some sites, than market sale.
- BTR could provide an opportunity to incentivise and mainstream the use of off-site construction techniques to further speed up delivery, although such building methods should be encouraged in all tenures.
- We also support institutional investment in the development of better quality, better managed and more stable private rented homes (see our response to the Montague Review²). BTR could provide a limited alternative to the PRS for those who can afford it.
- **Consequently, we support the proposal that the National Planning Policy Framework (NPPF) is amended so that local planning authorities know they should plan proactively for BTR where there is a locally identified need.**
- However, BTR is likely to be aimed at the higher end of the market, for those earning above average local incomes, because higher levels of service and amenity provided by BTR (e.g. concierges and on-site gyms) are likely to be reflected in the cost. It is unlikely to be affordable to lower-income households, including those in work.
- Given there are limited suitable development sites in town and city centres, policy intervention and subsidy (e.g. public land) to make a development viable should be targeted at the provision of genuinely affordable homes. So it is important that BTR developments are also required to include genuinely affordable rentals linked to average local incomes to meet local housing need.
- LPAs should have the scope to decide that Affordable Private Rent (APR) should make up some of the BTR development as a form of intermediate housing to meet locally identified need. **But we oppose the proposal to amend the NPPF to make it easier for BTR developers to offer APR homes instead of other types of affordable housing. This should be at the discretion of LPAs so they can meet local need.**
- **We particularly oppose the explicit addition of APR in the NPPF as another form of affordable housing. This further shifts the concept of ‘affordable housing’ away from genuinely affordable, stable homes for people who are most disadvantaged in the local market.**
- We strongly support the proposal that BTR developments should be let on family friendly tenancies. **We urge the Government to go further and legislate to require that all tenancies are let on Stable Rental Contracts of 5 years, rather than expecting tenancies of 3 years (or more) will become the norm.** The British Property Federation’s Build to Rent Pledge on longer tenancies shows that the industry is ready for longer tenancies and that they pose no threat to the growth of the sector.

¹ Bibby, J. (2014) [In the Mix: the need for a diverse mix of new homes](#) (Shelter)

² [Shelter response](#) to DCLG consultation on Private rented homes: review of the barriers to institutional investment (March 2012)

Response to consultation questions

Barriers and the case for intervention

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.

No.

BTR is a market product and, as such, should be viable without government intervention. There is no evidence that intervention is needed to deal with market and regulatory failures in BTR. In fact, the main barriers highlighted by the industry (e.g. lack of industry benchmarking data and the lack of a secondary market) would still not be addressed by the interventions the Government is proposing.

With limited suitable development sites in town and city centres, policy interventions and subsidy (e.g. public land) to make development viable should be targeted at the provision of genuinely affordable homes.

Otherwise, the housing benefit bill will increase and local authorities may have to pick up the costs of providing financial and practical assistance to people threatened with homelessness because they cannot access an affordable rent within LHA rates.

Re-aligning National Planning Policy

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

Yes.

We support institutional investment in development of better quality, better managed and more stable homes for market rent (see our response to the Montague Review)³. BTR could provide a limited alternative to other forms of PRS for those who can access and afford it.

We therefore support the proposal that the National Planning Policy Framework (NPPF) is amended so that local planning authorities know they should plan proactively for BTR where there is a need. LPAs should have the scope to decide that Affordable Private Rent (APR) should make up some of the BTR development as a form of intermediate housing to meet locally identified need.

BTR is likely to be aimed at the higher end of the market, for those earning above average local incomes, because higher levels of service and amenity provided by BTR (e.g. concierges and on-site gyms) are likely to be reflected in the cost. It is unlikely to be affordable to those who might have to rely on local housing allowance to pay the rent, which will include low paid workers.

So it is important that LPAs are able to require BTR developments to include genuinely affordable rentals linked to average local incomes and allocated via the local authority, where this is necessary to meet their obligations to meet local housing need.

³ Shelter (2012) [Response to Independent Review](#) of the barriers to institutional investment in private rented homes (led by Sir Adrian Montague)

Delivering Affordable Private Rent

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).

No.

We oppose a change to the NPPF so that APR is explicitly listed as a form of affordable housing. This is because, at a 20% market discount, its affordability is not linked to average local incomes and will, in some localities, be unaffordable to people on average or below-average local incomes, who already have very few housing options.

Shelter research (2016) found that 80% market rent is unaffordable to households earning a National Living Wage in 47% of local authority areas in England. In London, it is unaffordable in 100% of local authority areas.⁴

Furthermore, we do not feel that a change to the definition is necessary. APR is an intermediate rental product, and the NPPF already allows for provision of intermediate housing by non-registered providers. If APR were to be specifically listed it could be used to expect LPAs to accept proposals for APR in lieu of any form of genuinely affordable housing, such as Social Rent.

We are concerned that explicit listing of APR could result in it being proposed in non-BTR schemes and becoming more commonplace as an acceptable form of affordable housing. This could be particularly worrying in a downturn, when developers may argue they can't deliver agreed s106 requirements and so apply to switch the negotiated affordable units from Social Rent, or Affordable Rent let via the social housing allocation scheme, to APR.

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, although we don't support APR being the main vehicle for affordable housing.

For the same reasons as set out in our response to Q7, we are opposed to the NPPF setting an expectation that, where Affordable Private Rent is offered, it should be accepted instead of other forms of affordable housing, and that local authorities would be expected not to require alternative affordable housing products to Affordable Private Rent in Build to Rent schemes.

If it leads to BTR becoming more viable than a mix of market rent and Affordable Rent or Social Rent homes, it could make it more challenging to deliver the latter, even where it is needed to meet identified local need.

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, although only where there is locally identified need.

⁴

https://england.shelter.org.uk/_data/assets/pdf_file/0009/1289628/2016_10_21_How_affordable_are_rents_for_NLW_families.pdf

APR could play a useful role in some localities and on some developments, but – as the Government recognises – it is already implicitly allowed in the NPPF and so it should be left to local discretion where there is a locally identified need for this type of accommodation above other types of affordable housing.

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, however this is because the rents will be higher than other types of affordable housing.

We recognise that on-site provision of APR could materially improve the viability of BTR, compared to other affordable housing tenures. But we would prefer to see interventions that improve the viability of genuinely affordable homes, linked to average local incomes and within local housing allowance limits.

We appreciate that, as a fairly new housing product, the methodology for ascertaining viability for Build to Rent is less well understood by local planning authorities than for other tenures, such as market sale. Therefore, we recommend that DCLG guidance on this would be helpful.

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, very strongly.

As set out in our response to Q7 above, if APR is accepted as a form of affordable housing, it could squeeze out genuinely affordable housing, let on permanent – or at the very least five-year – tenancies and let via the local housing authority housing allocation scheme on the basis of meeting local statutory duties to meet objectively assessed housing need. In 2016, there were 1,183,779 households on local authorities' housing waiting lists⁵ in England. In London, there are almost 349,000 households in some form of backlog need in 2013⁶, including 102,000 in market housing but in need affordable housing, and 126,000 overcrowded households in affordable housing who need to move to an affordable home of a more suitable size.

This could be particularly worrying in a downturn, when developers may argue they can't deliver agreed s106 requirements and so apply to switch the negotiated affordable units from Social Rent, or Affordable Rent let via the social housing allocation scheme, to APR.

⁵ DCLG (January 2017) [Live tables on rents, lettings and tenancies](#): Table 600

⁶ Mayor of London (2013) [The 2013 London Strategic Housing Market Assessment](#)

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.

At the very least, APR should be limited to BTR schemes.

But, as indicated in our response to Q7, APR is an intermediate rental product and, as such, we do not support the proposed expectation that APR should be the expected form of affordable housing provision on all BTR developments. This should be left to local discretion depending on local identified need, viability and wider strategic objectives, such as town centre improvement or creating mixed-income neighbourhoods.

Family Friendly Tenancies

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, very strongly.

We believe the British Property Federation's Build to Rent Pledge on longer tenancies shows that the industry is ready for longer tenancies and that they pose no threat to the growth of the sector. However, we think the government should go further.

We have been campaigning for the introduction of longer tenancies as a default in the private rented sector for all tenancies. Our preferred approach would be five year tenancies with a rolling break clause for the tenant, so that they could leave at any point by giving two months' notice. We call this the Stable Rental Contract⁷. Landlords would still be able to regain possession with grounds, but renters would have the security that in most cases they would have a home for the long term.

This change would reflect a balanced approach that acknowledges the needs of landlords and tenants. With far more families with children and older people private renting for the long term their need for greater security is growing. It also reflects the needs of landlords to have the time to find a new tenant where their existing tenant gives notice or regain possession where they have a genuine reason.

While requiring longer tenancies on new build to rent schemes would help to increase security for some, the much larger number of tenants who live in existing homes owned by institutional investors or small landlords would miss out. For example, the Resolution Foundation estimate of the future pipeline of build to rent homes is currently only 66,000¹, set against the circa 1.5 million families with dependent children who rent and total 4.5 million private renting households.

We urge the Government to go further and legislate to require that all tenancies are let on Stable Rental Contracts of 5 years, rather than expecting tenancies of 3 years (or more) will become the norm.

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, very strongly, but it should go much further.

⁷ De Santos, R (2012) [A better deal - towards more stable private renting](#) (Shelter)

We agree that, at the very least, BTR tenancies should be for at least 3 years. However, we would like to see the Government go further and require Stable Rental Contracts of five years.

Shelter research shows that families with children and older people who rent today value long term stability and want a place they can put down roots⁸. Many families renting on short-term tenancies worry that they are going to lose their current home – 43% of renting families with children say this applies to them⁹.

A lack of security also makes many private renters feel like control over their lives is out of their hands. The Prime Minister has said that giving ordinary working families more ‘control over their lives’ is a central mission of her government: 7 in 10 private renters say having a longer tenancy would do this¹⁰.

Evidence from Europe shows that the use of longer fixed terms is both low risk and achievable¹¹. Across Europe, in the largest and most mature renting markets, it is the absolute norm to give tenants much greater security of tenure than in England. This not only applies to tenants living in Germany, the Netherlands or Sweden, but also in less affluent economies like Poland, Slovakia and Greece. In fact, the UK is so unusual in its lack of security that there are more renters living in the UK with poor security from no fault eviction than in all the other countries reviewed put together.

Furthermore, the Tenancy Standard¹² requires registered providers to grant general needs tenants either a permanent (secure or assured) tenancy or a minimum fixed term of five years. Shorter fixed terms are only allowable in exceptional circumstances. For the sake of consistency, other forms of long-term institutional rented housing should have the same minimum tenure lengths, especially if they are homes developed for families.

Definition of Build to Rent

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).

No.

We strongly recommend a covenant on rental for a minimum time period. BTR developments are likely to be in prime sites, close to transport hubs and town or city centres. There is a strong risk that BTR homes could later be converted to market sale. There could be a strong incentive for this if values have significantly, perhaps as a result of the BTR development being part of wider town centre regeneration. If rented homes, and particularly affordable rented homes, are needed at such locations, provided much-needed housing for households unable to buy or to ensure labour mobility, then the homes should remain as rentals in the long-term.

Covenants

We are concerned that the Government is not minded to include a minimum covenant period in the definition to avoid this being too rigid.

Shelter strongly recommends absolute national minimum covenants of 15 years (affordable units in perpetuity) in line with the London Supplementary Planning Guidance. This will avoid BTR schemes being ‘flipped’ to market sale once the scheme has been built out or to take advantage of an increase in

⁸ For example, for tenants between 45 and 54 being able to stay in a home for long term is more important than its location, condition, size, the neighbourhood that it’s in or its proximity to their family and friends. YouGov for Shelter, base: English private renters 45-54: 591. Survey conducted between 22nd June and 13th July 2015

⁹ YouGov for Shelter; base: 784 private renters with children in household, England, July 2015, online, weighted.

¹⁰ Results are based on a YouGov survey of 3262 private renters in England, aged 18+, September 2016, online, weighted to fit profile of England’s private rented sector. Excludes don’t knows

¹¹ Bibby, J. (October 2016) [Time for Reform: How our neighbours with mature private renting markets guarantee stability for renters](#), Shelter

¹² Homes and Communities Agency (2012) [Tenancy Standard](#), paragraph 2.2.2

market prices, perhaps before an anticipated fall. These should have scope to be renewed once the original covenant period expires, with renewal based on current objectively assessed housing need and local strategic priorities.

To allow flexibility for both developers and local authorities, details of the covenant could vary depending on the locality and individual sites, but we believe that a national minimum covenant period would send a clear message that the policy expectation is for the homes to remain in the rented sector in the long-term, unless local needs substantially change.

Scheme size

We agree that Build to Rent is a tenure that lends itself to development at scale.

We do not think it is necessary to set a minimum scheme size (e.g. 50 units), but we recommend that only schemes of over 50 units should be able to use APR as the affordable housing element. Otherwise, there is a risk that smaller developments, including those where the specifics of the site and viability could easily bear other types of affordable housing, e.g. Social Rent

Individual aspects of definition

We understand that the Government does not consider a detailed definition is necessary since it could be over-rigid or inflexible and constrain options in operating this new sector.

However, we urge the Government to go further on some aspects to ensure that the new product is delivering good quality, stable homes.

Feature/principles of BTR	Government proposal	Shelter's response
Tenure	BTR buildings will typically be 100% rented out, albeit they may form part of a wider multi-tenure development	Support
Typology	BTR schemes can be either flats or houses, but will have to be on the same site and/or contiguous	Support
Tenancy length	BTR schemes will as a norm offer longer tenancy agreements of three years or more (to those tenants who want a longer tenancy)	Support but there should be a legal requirement of a minimum of <u>5 year Stable Rental Contracts</u> .
Management and ownership	BTR schemes will typically be professionally managed stock in single ownership and management control	Strongly support See point below
Affordable Private Rent	This will be the normal vehicle for providing the affordable homes element in schemes (as opposed to other forms negotiated through S106).	Oppose. LPAs may decide APR is appropriate on some schemes <u>But all forms of affordable housing should be considered.</u> This should be locally determined, depending on local need, strategy and viability.

On management, we acknowledge that institutional investors and managers are less likely to breach housing law (e.g. unlawful eviction) than an individual landlord. As larger organisations, they are likely to be more professionally run and mindful of bad publicity. However, experience from some student developments suggests that service can still be poor and, in areas of high demand, customer retention via good service may not be a priority, although it could allow for longer tenancies. So we suggest BTR managers should be part of an accredited Ombudsman Scheme (for example in London BTR must be managed under the London Rental Standard) and a member of a recognised professional body.

Definition of Affordable Private Rent

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).

No, we strongly disagree.

See our response to Q7 and Q8 above.

We do not feel that a change to the definition is necessary. APR is an intermediate rental product, and the NPPF already allows for provision of intermediate housing by non-registered providers.

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).

No. We don't agree with the proposed definition, namely:

- Affordable Private Rent housing is housing that is particularly suited for providing affordable housing as part of Build to Rent Schemes.
- It is made available for rent at a level at least 20 per cent below local market rent.
- Eligibility is determined with regard to local incomes and local house prices.
- It should include provisions to remain at a discount for future eligible households or for alternative affordable housing provision to be made if the discount is to be withdrawn.

This is because, in principle, we disagree with the NPPF explicitly listing Affordable Private Rent as a form of affordable housing (see above).

If the Government proceeds, we disagree with the proposed definition. This is because it should be covenanted to remain BTR for at least 15 years; the affordable units in perpetuity and tenancies should be at least 3 years and preferably Stable Rental Contracts.

Parameters of Affordable Private Rent

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

- (a) a minimum of 20 per cent of the homes to be discounted;**
- (b) the discount to be set at minimum of 20 per cent relative to the local market;**
- (c) an offer of longer tenancies of three years or more;**
- (d) 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?

Taken as a whole, they are insufficient.

(a) If 20% of homes on a BTR scheme are APR, this will squeeze out other forms of affordable housing, such as Affordable or Social Rent, even where this is viable and necessary to meet housing need. However, we support a tenure-blind approach to development. We should not be “locking-in” tenure by built form. Not only does this devalue any sub-market product and identifies its occupiers, but takes no account of the need for a dwelling to change tenure over time and as market conditions, and policy, adapt to new circumstances.

(b) We support the discount being 20% relative to the local market, rather than the specific scheme. Higher levels of service and amenity (e.g. concierge's and on-site gyms) are likely to be reflected in the cost resulting in this being a product aimed at the higher end of the market. If rents were based on 20% of the value of properties in the scheme, they may not be 20% more affordable than average local rents.

(c) As set out in response to Q13 and Q14 above, we would like to see all tenancies in BTR schemes to be a minimum of five-year Stable Rental Contracts.

(d) We strongly agree that the discount should apply indefinitely. However, as set out below, we would like to see covenants requiring that the affordable homes on BTR schemes remain affordable in the scheme in perpetuity.

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

Don't know.

Eligibility

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.

Do not support position.

We recommend that eligibility should be linked to average local incomes. For example, the London Supplementary Planning Guidance states that Discounted Market Rent may be let at the GLA's current London Living Rent levels at the start of each new tenancy. London Living Rents are linked to local incomes at ward level.

On nominations, because we see Affordable Private Rent as an intermediate product, we support the determination of nomination criteria being left to local negotiation as with other intermediate products, such as shared ownership. However, it is for this reason that we would like LPA discretion to require other forms of affordable housing, such as Social and Affordable Rent (which are allocated via the local allocation scheme) to be the affordable element in BTR schemes.

Change of Use and “clawback”

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?

No.

We don't agree there is no need for a fixed minimum covenant period because of claw-back. To ensure the development continues to provide the homes agreed when planning permission was granted for a reasonable period, we recommend a covenant period of an absolute minimum of 15 years before homes can be flipped to market sale.

Otherwise, BTR developments could be used as a back-door way to build homes for market sale on prime sites with a commuted sum paid to provide affordable housing elsewhere. In some cases, there will be no other viable sites in the locality for affordable homes built with the commuted sum.

However, if the Government does go ahead, we agree that viability should be determined as of the time at which the application is made to remove the S106 agreement to avoid developers taking advantage of a rising housing market.

Fixing initial market value upfront, or retrospectively, would not remove the incentive for flipping into market sale to capitalise on an upswing. However, with the market value of homes being up for debate (particularly on 100% BTR sites where there are less comparator properties for valuation purposes), determining valuation at the time of receipt of an application to remove the s106 agreement also runs into problems, as it allows a further discussion around viability/valuation of requirements to be introduced – so there could be two rounds of viability/valuation discussions, one to decide initially how much APR should be provided, and then one about how much claw-back should be given when the tenure is flipped post-completion.

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) We think Government should prescribe the basis for calculating the amount of claw-back.

However, as set out in response to Q above, we recommend the use of covenants and so clawback should only come at the end of the covenant period.

London

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.

Don't know.

Other Implementation Issues

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.

With quite severely stretched resources in some LPAs, then model clause are always helpful.

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

No.

We do not consider that six months is long enough for LPAs to adapt their local plans – and could lead to developers looking to renegotiating viability assessments on existing developments. We would favour a transition period of at least 12 months.

Equalities

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.

We dispute the suggestion that only a proportion of Build to Rent homes will displace housing that would otherwise have been built for sale. The most likely sites for BTR will be town and city centre sites near transport hubs and amenities. They may even use public land.

It's unlikely that these sites would not be developed for other uses, such as market sale, student development or a mix of market and Affordable and Social Rent homes built by a registered provider.

Where there is a possibility that BTR schemes might displace developments containing Social and Affordable Rent, allocation via the local allocations scheme, then households which fall into the protected categories, such as disabled people, BAME people and certain religious groups may be disproportionately affected. Such groups are disproportionately overrepresented in social housing allocations.

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