

## Affordable Housing: A CAJ briefing note

### Issue summary:

The Department for Communities is proposing a change to the definition of affordable housing in order to expand the range of intermediate housing products.<sup>1</sup> The stated goal is to expand housing options for people who are on the social housing waiting list but **who do not qualify** as being in housing stress. The Department also appears to be expanding the definition of affordable housing to facilitate increased mixed tenure development. While there may be benefits associated with mixed tenure development, the clear and identified detriment is that social housing will decrease. The current equality screening does not identify this risk or mitigate against it.

### Background:

- On 24 June 2019, the Department for Communities (DfC) published a consultation and screening on their proposed definition of affordable housing.
- The Department stated that the purpose of the proposed change was to “improve access to suitable housing and therefore contributing to reducing housing stress.” The current definition of affordable housing encompasses two main provisions, 1) social housing and 2) intermediate housing. The proposed definition of affordable housing is to be expanded to include “a wider range of intermediate housing products.”<sup>2</sup> The Department also stated that “the new definition of affordable housing will not impact on access to social housing.”
- The screening of the proposed change only examined the impact on the people deemed to benefit from the expanded housing options and did not consider how those currently in housing stress would be impacted. The screening also failed to consider the current disproportionate level of Catholic people identified in housing stress. On 9 October 2019, in light of the lack of data and potential negative impacts on protected groups of people, The Committee on the Administration of Justice (CAJ), in collaboration with Participation and the Practice of Rights (PPR) requested the DfC to review their screening decision to not proceed to an Equality Impact Assessment.
- On 4 November 2019, DfC informed us that they reviewed their screening, and maintained the decision to not proceed to an EQIA. Their revised screening did not respond to the concerns that we raised and actually raised new concerns as a result of the added “evidence” to the category of “Religious Belief”. This concerning new evidence stated, among other things, that the reason why Catholics spend longer than Protestants on the social housing waiting lists is “a consequence of wider factors including the relationships with diverging demographics (between Catholics and Protestants), inward migration, social preference (and capital), [and] the individuals choice.”
- It is alarming that when we presented the Department with evidence of a stark disparity in housing need along the religious divide, the Department’s response was not to include the data in its screening form and to analyse how the existing inequality would be affected by promoting more options for developers to build intermediate housing (particularly in areas with low housing need), but to ignore it and to blame Catholic

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<sup>1</sup> The Department states “The current definition of affordable housing was drafted to reflect the affordable housing products available at the time of its development, namely social housing and [intermediate housing which consists primarily of] shared ownership housing. The Department considers that it is now timely to provide a revised definition of affordable housing which incorporates a wider range of intermediate housing products.” (see Department’s screening form [Definition of Affordable Housing](#), page 2).

<sup>2</sup> <https://www.communities-ni.gov.uk/news/consultation-launched-proposed-changes-definition-affordable-housing>

housing need on “wider factors” such as “individual choice”, thereby leaving the impression that the Department is unable to work to remedy the inequality.

- On 2 December 2019, we submitted a complaint to the equality commission for Northern Ireland that DfC breached their equality scheme commitment in failing to consider the available evidence in making the decision to not proceed to an EQIA. We are currently waiting for the Equality Commission to decide whether or not to investigate the complaint.
- It is still unclear why the Department has focused their efforts on increasing housing for people with low or no points on the social rented housing waiting list, as these people by definition have less housing need than the people with more than 30 points currently on the social housing waiting list. This has raised questions for us around why the Department is choosing to do this now, and what impact the new definition really will have on the provision of social housing.

## **Why is the Department expanding the definition of affordable housing to increase intermediate housing products?**

### **1. To increase housing options for the least needy on the social housing waiting list.**

In the equality screening of the proposed change to the definition of affordable housing, the Department states that the policy “is intended to provide a framework for increasing housing options for those whose housing needs are not currently being met from the market.” **The Department defines ‘people whose housing needs are currently not being met from the market’ as primarily people in the private rented sector who have low or no points on the social waiting list.** As of March 2019, there were **37,859** applicants on the social housing waiting list, with **26,387** designated as in housing stress (having 30 or more points), and **11,472** people with less than 30 points.<sup>3</sup> The Department focuses their evidence to support the equality screening on:

“a variety of sources, including on those individuals and households that apply for our current intermediate housing products (primarily Co-Ownership) and the profile of individuals/households in the private rented sector and, **in particular, those households who have low or no points on the social rented housing waiting list.**” (emphasis added).

However, the purpose of an equality screening is not to examine the impact of a proposed policy on only the population deemed to benefit from the policy, but rather to examine the policy as it affects all relevant Section 75 groups in Northern Ireland, to identify potential adverse impacts as a result of the policy and to mitigate against those impacts, or if necessary, to conduct an equality impact assessment. There is no reasonable rationale for why the Department has focused their definition (and subsequent collection of evidence) of people ‘whose housing needs are not currently being met’ as people with low or no points on the social rented housing waiting list, as these people by definition have less housing need than the people currently on the social rented housing waiting list. If the Department wanted to truly examine how their policy will impact upon people whose housing options are not currently being met, they should have also considered the people affected by housing stress, and people in households with FDA homeless status. By deliberately ignoring this evidence, the Department’s proposed policy runs the risk of increasing existing inequalities by not focusing on addressing the housing requirements of people with the greatest objective need.<sup>4</sup>

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<sup>3</sup> <https://www.communities-ni.gov.uk/system/files/publications/communities/ni-housing-stats-18-19-full-copy.PDF> (page one).

<sup>4</sup> The argument that the social housing waiting list reflects objective need has previously been criticised. The 2017 Housing Symposium report states that “In Northern Ireland, for example, the term “objective housing need” is sometimes used to reflect housing need calculated on the basis of the “urgent need” expressed via

In changing the definition of affordable housing, the Department is choosing to deliberately focus on expanding housing options for the minority of people with the least objective need on the Social Housing waiting list. At best, this policy is not changing the current unacceptable shortage of social housing, and at worst, this policy is exacerbating existing inequalities and resulting adverse impacts on S. 75 groups (including religious groups, children, the elderly, women and the disabled).

In the accompanying consultation document, the Department answers the question “Why do we need a new definition of Affordable Housing now?” In answering, the Department states

“5.1 The overall policy and funding environment has moved on somewhat since the SPPS was developed. New Government funding streams, **the housing association sector’s desire to diversify and grow, and innovative new construction methods and products from private developers** are all opening up opportunities for new affordable housing products.” (emphasis added).

Notably absent is an articulation of objective need in relation to affordable housing and how the proposed definition will fulfil the objective need. In the following section, the Department does mention that “housing challenges are broader than the need for social rented housing and shared ownership housing needs and demands” and that their priority is to assist the needs of “a wider range of groups, some of whom are not currently finding their needs adequately met by the market.”<sup>5</sup> The Department provides no evidence to support their claim that the greatest social need at the moment is to focus on increasing shared ownership opportunities for the people who do not qualify for socially rented housing. There is also no mention of the possibility of expanding the definition of socially rented housing to allow more people to qualify. **It would appear that the Department’s new definition of affordable housing has been made to reflect the needs and priorities of the housing association sector and private developers, rather than people living in Northern Ireland who cannot afford housing.**

The Department argues that this broad range of intermediate housing products will create more ‘balanced sustainable communities’ and should ensure that ‘the operation of planning conditions is more practicable, particularly in areas where social housing need is low.’ When we queried what the Department meant by this statement, they responded to say:

*“Currently if the need for social housing is low in a particular area it may not always be feasible to expect the quota for affordable housing to be met mainly through the use of shared ownership. The ability to offer a greater range of affordable housing models, for example intermediate rental properties, should make it more feasible for developers to meet planning obligations for affordable housing, developing products that will contribute to supporting a range of housing needs of that area.”<sup>6</sup>*

The Department appears to be prioritising building houses in areas with no need for social housing, and therefore is attempting to find ways in which Developers can bypass planning restrictions in order to meet their quota for “affordable housing” in these areas with little objective housing need.

It is also worth noting that it is not clear that there is objective need for intermediate rental properties. One report identifies that “mid-market rentals” or affordable rentals, are an attractive way to increase housing supply to people with low priority for social housing but who

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the Common Waiting list for social housing. The actual process of estimating urgent housing need is undertaken in an objective manner, but the concept and the criteria are essentially subjective.” However, the same report admits that “Despite these concerns, however, O’Sullivan (2010) concludes that waiting list data is at least as good as bespoke evidence for assessing social housing need.” (page 40). <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-housing-market-symposium-report-2017.pdf>

<sup>5</sup> <https://www.communities-ni.gov.uk/sites/default/files/consultations/communities/dfc-consultation-paper-affordable%20Housing.pdf> (page 16).

<sup>6</sup> From email correspondence with the Department, dated 18 November 2019.

cannot afford to buy or rent privately. However, this same report identifies that “further work is needed to determine the viability of MMR models for Northern Ireland’s local markets”.<sup>7</sup> A separate report identified that

*“Instinctively several housing associations have indicated that they feel an intermediate rental product would be supported in Northern Ireland, but this is based on experience and a general awareness of the market rather than quantitative evidence.”<sup>8</sup>*

Intermediate rentals are provided by a Housing Association or Registered Social Landlord. Social housing landlords provide “affordable rent” which can be up to 80% of what it would cost to be rented privately.<sup>9</sup> Part of the proposed definition is to expand affordable housing to include affordable rent products.<sup>10</sup>

## **2. To support more mixed tenure development**

The goal of using broadened intermediate housing product to create ‘balanced sustainable communities’ most likely refers to mixed tenure development.<sup>11</sup> On page 20 of the revised equality screening form, the Department states that the “introduction of new affordable housing is expected to support more mixed tenure development”. Mixed tenure development is an urban planning strategy of mixing social and private housing in the same development. There are elements of mixed tenure development in Northern Ireland that may be beneficial, including potentially integrating currently segregated communities, and reducing the “stigma” of social housing.<sup>12</sup> However one of the identified dangers of mixed tenure development is the subsequent reduction in the provision of social housing.

CAJ and PPR raised concerns to the Department that social housing provision would be negatively affected by the increase in intermediate housing products being considered as ‘affordable housing’. On 4 November 2019, David Polley responded to our concerns by stating

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<sup>7</sup> <http://www.cih.org/resources/PDF/NI%20policy%20docs/RSH%20NI%20final%20report.pdf> (page 41).

<sup>8</sup> <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-mixed-tenure-in-northern-ireland-report.pdf> (page 41).

<sup>9</sup> <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-mixed-tenure-in-northern-ireland-report.pdf> (page 50-51).

<sup>10</sup> See the reviewed equality screening document on page 2.

<sup>11</sup> Additionally, see email correspondence from the Department on 18 November 2019 which states: “The idea that communities ought to contain a greater mix of housing types and residents is a key component of UK Government’s policies on housing and neighbourhoods.

The Strategic Planning Policy Statement (SPPS) for Northern Ireland recognises that good quality housing is a fundamental human need that plays a significant role in shaping our lives and our communities. A home is a vital part of people’s lives and contributes to creating a safe, healthy and prosperous society. The SPPS states that the planning system can play a positive and supporting role in the delivery of homes to meet the full range of housing needs of society, within the wider framework of sustainable development. The policy approach must be:-

- to facilitate an adequate and available supply of quality housing to meet the needs of everyone;
- to promote more sustainable housing development within existing urban areas; and
- **to provide mixed housing development with homes in a range of sizes and tenures.**

It is expected that this approach to housing will support the need to maximise the use of existing infrastructure and services, and the creation of more balanced sustainable communities. Updating the current definition will allow for the creation of alternatives to the traditional forms of affordable housing models thereby providing a variety of affordable housing models will help support and enable people living in communities (i.e. Northern Ireland in the broadest sense) to access appropriate housing suitable to their affordability and diverse needs.” (emphasis added).

<sup>12</sup> <http://www.cih.org/resources/PDF/NI%20policy%20docs/RSH%20NI%20final%20report.pdf> (at page 43).

that social housing would be unaffected by the proposed policy change (and subsequent increase in mixed tenure development).

*“I want to reassure you that the purpose of the Social Housing Development Programme (to provide additional social homes for households with identified housing need) will not be adversely impacted by any change to the Affordable Housing definition....In your request for a review of the screening document, you have expressed concerns that changing the definition will have a detrimental impact on the delivery of social housing in Northern Ireland. I can assure you that this is not the case. Social and Intermediate housing policies are two distinctly different policy objectives and the provision of social housing remains a priority for the Department.”*

However, the Department has previously issued a report which contradicts this statement.<sup>13</sup> In 2018, the Department for Communities and the Northern Ireland Federation of Housing Associations (NIFHA) co-wrote a report entitled Mainstreaming Mixed-Tenure in Northern Ireland, which determined that:

*“In shifting the focus to mixed-tenure development, **there is a risk of reduced housing supply, particularly of social housing**, at least in the short term... If housing associations are to play a greater emphasis on delivering new homes of all tenure, **in the short term, fewer new social rented homes may be built.**”<sup>14</sup> (emphasis added)*

The same report also identified that if mixed tenure development was widely introduced in Northern Ireland, Housing Associations would essentially become for-profit entities, drastically impacting their primary purpose.

*“Housing associations were established for social and charitable purposes around the provision of housing for those most in need. There is some concern that diversifying the business model to include other forms of tenure provision could negatively impact on their core societal purpose.”<sup>15</sup>*

The report did not propose any significant safeguards against this occurring other than to state that “as mature organisations with strong leadership and focus and with both the capacity and willingness to learn lessons from the successes and failures of counterparts in Great Britain, this is a risk that housing associations should be able to successfully guard against.” This is hollow reassurance against such a substantive risk to the provision of social housing.

Finally, the report identifies the risk of reduced government funding dedicated to social housing if the housing associations start to make a profit from the ‘mixed tenure’ development, stating:

*“For housing associations, there is a risk that generating increased revenue through cross-subsidy will negatively impact on the level of Government funding they receive and that, as a result, overall funding available for social and affordable housing may stay the same or even reduce.”<sup>16</sup>*

The report goes on to say that this will potentially release much needed funding for Government to direct towards other priority areas.

In Scotland, mixed tenure has been criticised as a vehicle for gentrification “since any ‘mixing’ typically involves more private and less social housing, and is generally targeted at predominately social rented neighbourhoods.”<sup>17</sup> One potential way to mitigate against this is to

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<sup>13</sup> The Department is clearly aware of this report, as they co-wrote it, and cited it in the equality screening of the proposed policy on page 20.

<sup>14</sup> <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-mixed-tenure-in-northern-ireland-report.pdf> (page 19)

<sup>15</sup> See above at page 19.

<sup>16</sup> See above at page 19.

<sup>17</sup> <https://bellacaledonia.org.uk/2018/03/30/nothing-exceptional-scottish-housing-associations-and-the-erasure-of-scottish-social-housing/>

have a designated ratio of social housing tenure in any proposed mixed-tenure development. However, the Department has stated that the tenure mix ratios are

*“first and foremost an economic and commercial decision and in this context land value is a key driver and tenure mix becomes a pragmatic decision to be determined by demand, viability and return on investment.”<sup>18</sup>*

When viewing tenure mix as primarily an economic concern, there is little to no reassurance that social housing will be equally or predominately represented in proposed development. Compounding these concerns is the fact that where examples of ‘good practice’ mixed tenure development have been highlighted, there has also been a robust system of developer contributions.<sup>19</sup> Northern Ireland “remains the sole region across the UK and Ireland without a region-wide system of developer contributions for social and affordable housing”.<sup>20</sup> Instead, local councils have attempted to institute developer contribution specifications into local development plans, which lacks consistency.

Ultimately, it appears that the Department is focusing their efforts on expanding the definition of affordable housing to facilitate mixed tenure development. While mixed tenure developments may be beneficial, there are clear and identified detriments that need to be mitigated against, including the significant risk that under the expanded definition of affordable housing, vitally needed social housing will not be built.

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<sup>18</sup> <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-mixed-tenure-in-northern-ireland-report.pdf> (page 33).

<sup>19</sup> <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-mixed-tenure-in-northern-ireland-report.pdf> (see the Yorkshire housing example).

<sup>20</sup> <http://www.cih.org/resources/PDF/NI%20policy%20docs/RSH%20NI%20final%20report.pdf> (page 43).