

Proposed designation of 'Rural area' for Herefordshire under the Housing Act 1985

Decision maker: Cabinet member finance, corporate services and planning

Decision date: 28 October 2022

Report by: Corporate Director – Economy & Environment

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

This report is to seek approval to apply to the Secretary of State to designate the rural parishes of Herefordshire as 'rural' under Section 157 of the Housing Act 1985. This will enable the Council flexibility to delivery of affordable housing on sites less than 10 units in rural areas as part of the emerging Local Plan 2021-2041.

Recommendation(s)

That:

- a) **an application under section 157 of the Housing Act 1985 be made to the Secretary of State to designate as 'rural' each of the qualifying parishes within the County of Herefordshire as listed in Appendix 3 to the report.**

Alternative options

1. If an application to designate a rural area is not made to the Secretary of State then future affordable housing planning policy will be subject to the restriction outlined within para 64 of the National Planning Policy Framework and para 023 of the National Planning Practice Guidance. These indicate that in areas not designated as rural or outside of an Area of Outstanding Natural Beauty, affordable housing contributions should not be sought on sites under 10 units

or if the site has an area of less than 0.5 hectares. The current threshold with Policy H1 of the Core Strategy would remain.

Key considerations

Background

2. The National Planning Policy Framework (NPPF) states that *'Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).'*

Designated rural areas are defined as National Parks, Areas of Outstanding Natural Beauty and areas designated as 'rural' under Section 157 of the Housing Act 1985. (para 64)

3. Although there are a number of definitions of 'rural'; the one relied upon for this aspect of planning policy is within the Housing Act 1985 and this is usually utilised to restrict the onward sale of properties purchased under 'Right to Buy' and limits such sales to people with a local connection to the area.
4. Herefordshire currently has no designated rural areas under s157 of the Housing Act but local authorities can apply to the Secretary of State for this designation.

Eligibility criteria

5. The Government is aware of concerns about the availability of affordable housing in rural areas. Guidance advises that Local Authorities may make applications for designation as a 'rural area' on a qualifying parish basis to the Secretary of State which is assessed by Department of Levelling Up, Housing and Communities (DLUHC).
6. The current eligibility criteria for a parish to be defined as 'rural' is:
 - Population density must normally be two persons or less per hectare and
 - Have a population of less than 3000 inhabitants
7. The first criteria can be applied flexibly. For example, some parishes just over the limits may be designated to avoid a 'patchwork' situation where the majority of parishes are designated but one might be excluded.
8. Appendix 1 shows parishes against the eligibility criteria, the areas of Herefordshire that are within an Area of Outstanding Natural Beauty or those which would meet the eligibility criteria are shown on the map in Appendix 2.

Timing of any future designation

9. The time taken for the Department of Levelling Up, Housing and Communities to approve applications is constrained, as it requires the laying of a statutory instrument. Therefore, the timing of any future designation may not run parallel with the drafting of the Local Plan 2021-2041.
10. Recently the neighbouring authorities of Malvern Hills District Council and Shropshire Council have made successful applications. These applications took around 18 months from application to decision.

Planning Policy Implications

11. In line with NPPF Core Strategy Policy H1 indicates that all open market housing proposals on sites of more than 10 units, which have a maximum combination of gross floor space of more than 1000m², are expected to contribute to meeting affordable housing.
12. This has meant that since the adoption of the Core Strategy in 2015, the Council has not been able to insist on affordable housing for sites under 10 units.
13. Designation of eligible parishes under s157 will enable new planning policy within the Local Plan 2021-2041 to apply a lower site threshold to all new market housing sites within designated parishes. This will maximise the opportunity for s106 commuted sum payments towards the delivery of new affordable housing. It will also be an additional mechanism to meeting the County Plan ambition to 'improve Herefordshire's house affordability ratio'.
14. Development opportunities in rural areas tend to be smaller, lower density sites. To support the Council's ambitions within the County Plan to provide and deliver more affordable housing, a formal designation under Section 157 of the Housing Act is recommended.
15. The absence of formal designation has had an impact on the ability of new affordable housing to be secured in rural villages and settlements. The current affordable housing threshold policy does not work successfully within rural areas as it often limits the supply of much needed affordable housing. A revised threshold can only be set in the Local Plan review after the approach has been viability tested.
16. In April 2021/2022 as an example, there were around 5400 net housing commitments countywide; of these around 1200 were on sites of less than 5 units and around 1600 were on sites less than 10 units. Therefore 30% of all commitments were on sites under the threshold within Policy H1. In rural areas this is more stark, of the around 2300 net commitments 60% were under the threshold within Policy H1 (970 on sites of less than 5 or 1350 on site of less than 10 units). In April 2021/22 - 76% of rural completions were on sites of under 10 units.
17. Since the introduction of the current threshold in 2015, potentially around 670 affordable units could have been achieved if a lower affordable housing threshold could have been applied.
18. Consultation on the emerging Local Plan and the work on numerous Neighbourhood Development Plans have demonstrated a local desire to have the potential ability to lower the affordable housing thresholds. 46% of respondents to the emerging Policy Options for the Local Plan indicated that they would like to see an affordable housing policy which included the designation of 'rural area' thresholds and 23% indicated they would like to see lower threshold in Areas of Outstanding Natural Beauty. 31% indicated a continuation of existing policy.
19. The designation of rural parishes under s157 of the Housing Act 1985 will provide the flexibility to enable the Council to apply a lower threshold for affordable housing contributions within the new Local Plan. This will maximise the contributions towards the delivery of affordable housing to meet local housing need and meet our housing targets within the County Plan.
20. An affordable housing policy will form part of the emerging Local Plan 2021-2041 and the implications and viability of lowering the affordable housing threshold can be investigated as part of the emerging policy work.

'Right to Buy' Implications

21. The primary purpose of the rural designation under s157 is to restrict the consequences of the Right to Buy. It allows the local authority to put restrictive covenants in place so that any homes can only be sold on to someone who has been living or working within the parish for 3 years. Alternatively, the local authority may require the tenant to offer the home back to them if the tenant wishes to sell within 10 years of buying.

22. The Local Authority can decide not to implement any such restrictive covenants. A covenant (if applied) could affect the value of the property or the willingness of equity release companies lending on the property.
23. Rural designation of all rural parishes may also help to reduce the consequences of the government's proposed Voluntary Right to Buy scheme that is intended to extend the Right to Buy to housing association tenants. A pilot has been running in the Midlands – this used guidance where housing associations could exercise discretion over sales which include properties in rural locations. The pilot finished in 2020 and the government has published the evaluation report. In May 2022, the government highlighted plans to extend the scheme but no implementation date has been announced.
24. Discussions are taking place with the Registered Providers within the county so that any implications are understood and they can formulate policy accordingly. At this stage the application to designate only gives the flexibility to apply covenant, it is discretionary to apply and enforce.

Application to the Secretary of State

25. To provide the Council the opportunity to protect the existing affordable housing stock and secure delivery of affordable housing in rural areas, it is proposed that an application for rural designation should be made to the Secretary of State.
26. 220 parishes are highlighted as meeting the eligibility criteria within the definition of a 'rural area'. These can be seen mapped within Appendix 2 and listed in Appendix 3. This is a significant proportion of Herefordshire rural communities.
27. It is recommended that under the flexibility clause the parish of Much Birch is also included as it has a population density of 2.02 people per hectare and is surrounded by qualifying parishes.
28. The Government introduced the policy on thresholds for affordable housing to reduce the burden of planning obligations on small sites to encourage their development and improve viability. Therefore, a whole local plan viability assessment will need to be undertaken as part of the Herefordshire Local Plan 2021-2041 to provide the appropriate lower threshold for affordable housing in rural areas, should the application for rural designation be successful.
29. The rural designation will assist with delivering County Plan priorities for delivering the housing needed in our rural communities.

Community impact

30. The application to the Secretary of State has no specific impacts itself but it does give potentially future flexibility when considering policy options for the emerging Local Plan 2021-2041. It will enable viability work to be undertaken in the production of planning policy to consider different and lower affordable housing thresholds. The designation of a rural area will have a positive impact on the availability of affordable housing for local people, through additional s106 contributions and the provision of the rural exceptions housing policy.
31. The designation of a rural area does not exclude tenants or exempt properties from the Right to Buy and therefore no community or equality implications relating to this decision from an existing housing stock perspective. Again, the designation allows flexibility but not the requirement to impose any covenants or enforce them.

Environmental Impact

32. The decisions to apply to the Secretary of State to designate a rural area in Herefordshire will not have direct environment impact. The implementation of any future affordable housing thresholds will be considered as part of the wider policy work on the emerging Herefordshire Local Plan 2021-2041. One of the primary aims of the Local Plan is to deliver the council's [environmental policy commitments](#) and aligns to the following success measures in the County Plan from a land-use perspective including;
- Increase flood resilience and reduce levels of phosphate pollution in the county's river
 - Reduce the council's carbon emissions
 - Work in partnership with others to reduce county carbon emissions
 - Improve the air quality within Herefordshire
 - Improve residents' access to green space in Herefordshire
 - Improve energy efficiency of homes and build standards for new housing
 - Increase the number of short distance trips being done by sustainable modes of travel – walking, cycling, public transport

Equality duty

33. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

34. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

35. There are no financial implications of making an application to the Secretary of State to designate rural areas within Herefordshire.

Legal implications

36. The application for rural designation must be made to the Secretary of State under section 157(1) of the Housing Act 1985. If the application is approved by the Secretary of State, then a Statutory Instrument must be laid before Parliament to enable the designated rural areas to be identified in statute.

37. Any remaining tenants with a contractual Right to Buy would be affected by the designation. However, as set out above, Section 157 merely provides the power to include a covenant in the conveyance limiting the freedom of the tenant to dispose of the property in the future; imposition of the covenant is not obligatory. The covenant prevents the disposal of the property without the local authority/housing association's consent. Where such a covenant has been imposed in the conveyance, Section 157 requires that consent must be given if the person to whom the disposal is made satisfies the statutory local connection test. This means that consent can be given in other instances if the local authority/housing association are minded to do so. The local authority/housing association will require a policy to ensure that applications for consent are considered consistently and fairly.
38. Whilst a restriction on disposals may affect the value of the property, and/or the willingness of lenders such as equity release companies to lend against the property, an appropriate policy and the discretion which can be applied to requests for consent will mean that tenants are not unduly prejudiced.

Risk management

39. Without a rural designation, there is the continuing risk of not being able to achieve affordable housing within many Herefordshire villages and settlements on any housing schemes of under 10 units during the next plan period.
40. There are no financial, legal, and reputation risk linked to making an application to the Secretary of State for rural area designation.

Consultees

41. Consultation has taken place within the Registered Social Landlords who have housing stock within the county. This meeting took place on the 6 September 2022 to outline the implication of an application to the Secretary of State. No objections were raised to the submission of an application to designate a rural area within Herefordshire and further discussions will be taking place as any resulting policy emerges.
42. The Cabinet Member for Housing, Regulatory Services and Community has been briefed (16 August 2022) on the proposed application and the implications of any rural designation. She expressed her full support for such an application to be made.
43. A joint letter is proposed to be sent from the Leader, Chief Executive and the Cabinet Member for finance, corporate and planning to the two local MPs seeking their support for the application prior to the application being made to the Secretary of State.

Appendices

- Appendix 1 - Parishes against the eligibility criteria
- Appendix 2 - Map showing parishes subject to the rural area designation application
- Appendix 3 - List of parishes subject to the rural area designation application
- Appendix 4 - Existing numbers tenants under the 'Right to Buy' scheme within the county
- Appendix 5 - April 2021/22 housing site commitment and completions in rural areas
- Appendix 6 - Rural Area Designation application process

Background paper

None

Report Reviewers Used for appraising this report:

Governance	Sarah Buffrey	Date 20/09/2022
Finance	Louise Devlin	Date 21/09/2022
Legal	Alexandra Reece	Date 26/09/2022
Communications	Luenne featherstone	Date 18/09/2022
Equality Duty	Carol Trachonitis	Date 16/09/2022
Procurement	Lee Robertson	Date 16/09/2022
Risk	Kevin Lloyd	Date 19/09/2022
Approved by	Ross Cook	Date 12/10/2022

Please include a glossary of terms, abbreviations and acronyms used in this report.