

## **Changes in National Planning Policy and implications for policy CS09 of the adopted Core Strategy 2011**

In early 2014 the Government consulted on a new 10 unit threshold for section 106 affordable housing contributions within national policy (NPPG) to reduce planning costs to developers. The changes mean that only developments of more than 10 dwellings or a 1,000 square metre gross floorspace and above would be liable for affordable housing contributions through S.106 agreements unless the Local Authority has discretion to apply a lower threshold.

On the 28<sup>th</sup> November 2014 the results of the consultation were published by Department for Communities and Local Government (DCLG) along with a Ministerial Statement introducing the new threshold. Full details of both the consultation response and Ministerial statement can be found by clicking on the below links.

<https://www.gov.uk/government/consultations/planning-performance-and-planning-contributions>

<http://www.parliament.uk/documents/commons-vote-office/November%202014/28%20Nov%202014/2.%20DCLG-SupportForSmallScaleDevelopersCustomAndSelf-Builders.pdf>

In May 2016 The Court of Appeal ruled that the written ministerial statement was lawful. This judgment set aside an earlier ruling of the High Court (West Berkshire District Council v Secretary of State for Communities and Local Government [2015]) which had upheld the council's claim that the ministerial statement was unlawful.

Along with the threshold changes a 'vacant building credit' was also introduced. This applies where existing vacant dwellings regardless of use are brought back into any lawful use or demolished for re-development. The credit does not apply to buildings that have been abandoned.

### **Threshold changes**

Whilst the threshold changes as set out above have been introduced discretion has been given to Local Authorities in certain areas to have a lower 5 unit threshold as opposed to 10. The option of applying a lower threshold only applies to Local Authorities who have;

- Designated rural areas under section 157 of the Housing Act 1985
- Areas of Outstanding Natural Beauty
- National Parks

For designated rural areas under section 157 of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty, authorities may choose to implement a lower threshold of 5-units or less, below which affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions. Within these designated areas, if the 5-unit threshold is implemented then payment of affordable housing and tariff style contributions on developments of between 6 to 10 units should also be sought as a **cash payment only** and be commuted until after completion of units within the development.

95 out of the 101 parishes in West Norfolk have designated rural area status under section 157 of the Housing Act 1985 and are therefore eligible for the lower threshold. The remaining 6 parishes that are not listed are as follows;

- Dersingham,
- Downham Market
- Heacham
- Hunstanton,
- South Wootton
- Terrington St Clement.

In these areas along with the unparished area of King's Lynn town the 10 threshold applies ie affordable housing contributions can only be sought on sites of 11 dwellings or more provided that the Gross Internal Floor (GIA) area of all dwellings does not exceed 1000m<sup>2</sup>.

Settlements in an Area of Outstanding Natural Beauty (AONB) are also eligible for the lower threshold. The majority of AONB areas in the Borough fall within designated rural areas and therefore the lower threshold of 5 already applies. However, for any developments coming forward in an AONB within a non designated rural area (these are likely to be within the 'parish' but outside of the named settlement) the 5 threshold will also apply. A map highlighting these areas can be found at appendix A.

These changes will not apply to Rural Exception Sites which, subject to the local area demonstrating sufficient need, remain available to support the delivery of affordable homes for local people.

## **The Borough approach**

On 29th January 2015 Council agreed to adopt the option offered by Government to seek the provision of **financial contributions** towards affordable housing in the Borough on sites between 6 and 10 units in designated rural areas and with a combined maximum floor space of 1000m<sup>2</sup>. For the avoidance of doubt affordable

housing contributions of any kind will not be sought on sites of 5 dwellings or less where the combined GIA of all dwellings does not exceed 1000m<sup>2</sup>.

### **Calculating the financial contribution**

National guidance suggests that cash equivalent sums should be broadly equivalent to the cost of providing affordable housing on site. The Council favours a fixed sum as an affordable housing contribution rather than using a formula. The sum sought will be £60,000 per equivalent whole dwelling.

### **Payment triggers**

The new guidance suggests that where financial contributions are sought on lower threshold sites that payment be commuted until after completion of units within the development. Typically payment is required on 50% of the scheme being completed. This trigger may vary if required to on the grounds of scheme viability that has been clearly demonstrated.

### **Worked examples of threshold changes**

For clarity worked examples of the threshold changes are shown below;

#### **Example A**

A site of 8 dwellings comes forward in a designated rural parish and has a combined maximum GIA of **less 1000m<sup>2</sup>**. Under policy CS09 a 20% affordable housing contribution would be sought.

20% of 8= 1.6 dwellings

1 dwelling = £60,000

0.6 of £60,000= £36,000

**Total affordable housing contribution =£96,000**

### Example B

A site of 9 dwellings comes forward in King's Lynn, Hunstanton, Downham Market, Heacham, Dersingham, Terrington St Clement or South Wootton and has a combined maximum GIA of **less than 1000m<sup>2</sup>**. **No affordable housing contribution will be sought.**

### Example C

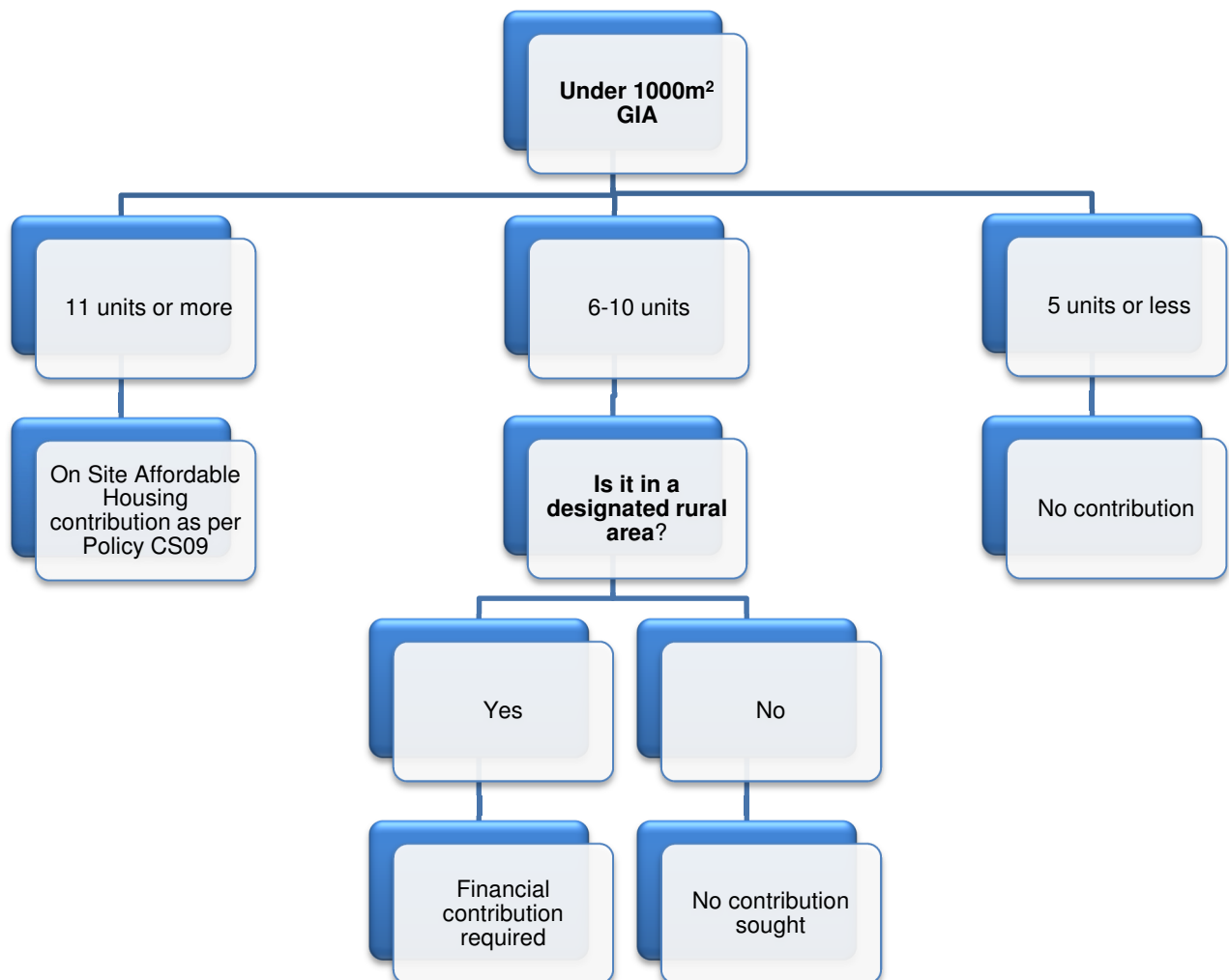
A scheme of 5 or less dwellings comes forward in any area of the Borough with a combined maximum GIA of less than 1000m<sup>2</sup>. **No affordable housing contribution will be sought.**

### Floorspace (1000m<sup>2</sup>)

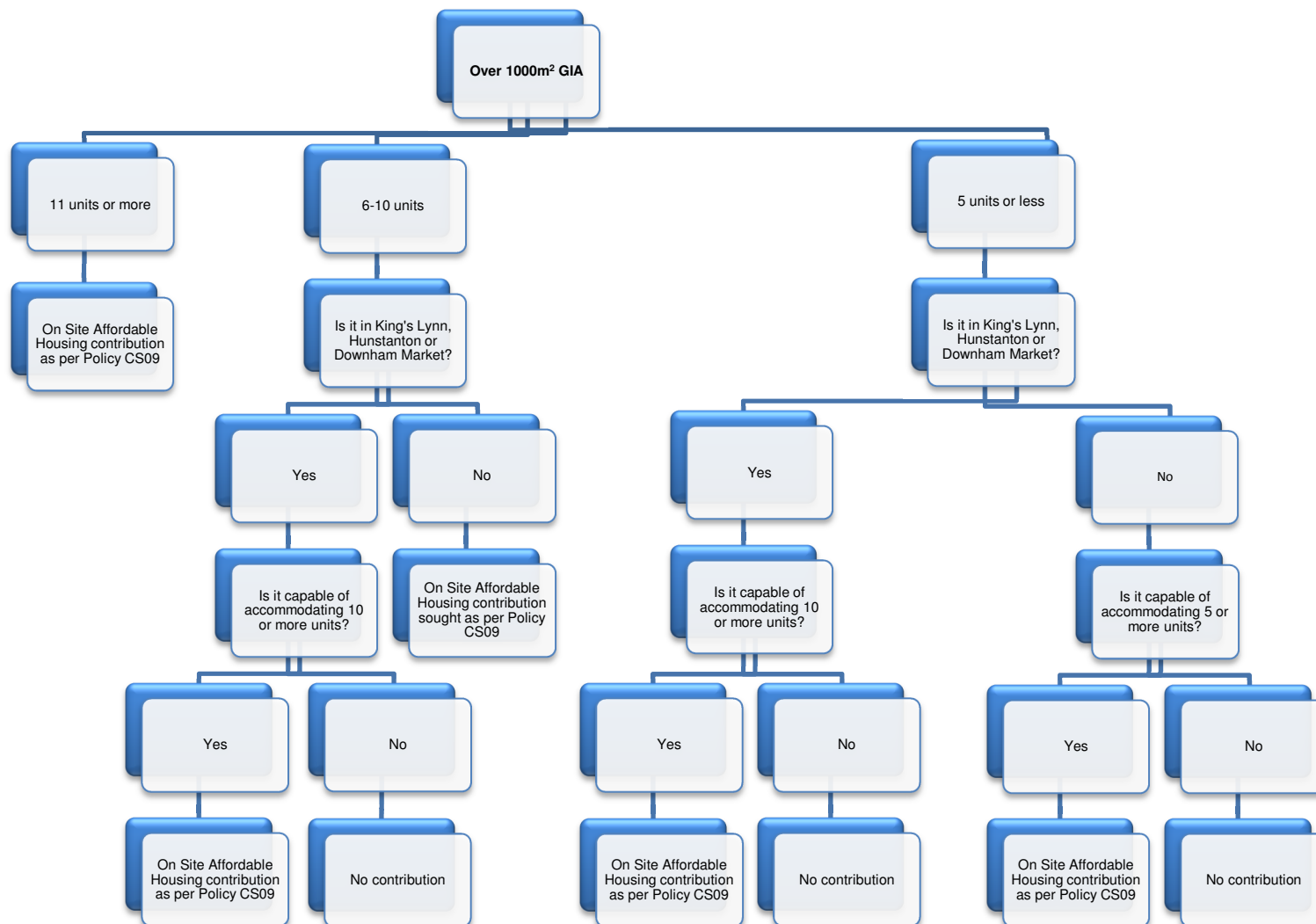
The national threshold of 10 only applies where the maximum combined gross floor space does not exceed 1000m<sup>2</sup>. If a scheme of less than 10 dwellings has a combined GIA of more than 1000m<sup>2</sup> then the national threshold **does not** apply and the Councils relevant affordable housing policy ie CS09 applies.

For example a scheme of 8 dwellings in a rural area with a GIA of 1100m<sup>2</sup> would provide an on site affordable housing contribution as per policy CS09 of the adopted Core Strategy (threshold of 5). It is however, important to note that in this instance the policy reverts to the thresholds and areas as per policy CS09. The below flow chart demonstrate the different scenarios that may apply.

## Applying the locally permitted option



## CS09 Policy thresholds apply



## Vacant building credit

In addition to the above threshold and floorspace changes a vacant building credit has also been introduced. This applies to all scales of development and not just sites of less than 10 dwellings. As set out in the NPPG ;

A financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This will not however apply to vacant buildings which have been abandoned.

## Calculating the ‘vacant building credit’

Where the vacant building credit is applicable it will be calculated in the following way;

- The affordable housing requirement will be as per policy CS09 and if applicable as per the amended national policy.
- The existing vacant gross internal area (GIA) of any buildings proposed to be brought back into lawful use or demolished and redeveloped, will be deducted from the proposed residential GIA leaving the total increase in floorspace.  
*(Note: for wholly residential schemes this will be the total GIA of all dwellings, for mixed use schemes the GIA of the proposed residential elements only will be used. Where flatted development is proposed the GIA will include all communal and circulation areas).*
- The average floorspace of the residential scheme will be calculated by dividing the total residential GIA by the total number of units proposed.
- The increase in total floorspace will then be divided by the average residential floorspace to calculate how many dwellings could be provided on the increase in floorspace.
- The required percentage of affordable housing will then be applied to the dwellings which are to be provided *only* on the increase in floorspace.

## **Worked examples of calculating the vacant building credit**

### **Example D**

- On a scheme of 20 dwellings a 20% affordable provision is required as per policy CS09 of the adopted Core Strategy 2011.
- In this example the existing GIA of the vacant floorspace is 500m<sup>2</sup> and the combined GIA of the 20 dwellings is 2000m<sup>2</sup> this results in a net increase in floorspace of 1500m<sup>2</sup>
- The average floor space GIA of the proposed residential scheme is 100m<sup>2</sup>. Therefore 15 dwellings can be provided on the net increase floorspace.
- Therefore 3 affordable dwellings are to be provided ie 20% of 15 is equal to 3.

### **Example E**

- A scheme of 6 dwellings in a designated rural area with a combined maximum floor area of 600m<sup>2</sup> (ie less 1000m<sup>2</sup>) a 20% affordable housing provision applies as per policy CS09. However with the national policy amendment a financial contribution of £72,000 is required.
- In this example the existing GIA of the vacant floorspace is 200m<sup>2</sup> and the combined GIA of the 6 dwellings proposed is 600m<sup>2</sup>. This results in a net increase 400m<sup>2</sup>.
- The average floorspace space GIA of the proposed residential scheme is 100m<sup>2</sup>. Therefore 4 units can be provided on the net increase floorspace.
- Therefore 20% of 4 units equals 0.8 which equals a financial contribution of £48,000(0.8 of £60,000)



## **Implications for adopted Core Strategy 2011 Policy CS09**

As a result of this National Planning Policy Change the thresholds and on-site affordable housing contributions set out in Policy CS09 of the Councils adopted Core Strategy 2011 do not provide a complete picture of the current situation.

Use of the flow charts above, will give a clear indication of the parts of CS09 which are affected by the National policy change . All other parts of the adopted Core Strategy policy CS09 will be applied in full.

It is not possible to vary the words in the Core Strategy policy (CS09) without going through the Plan amendment route. The Council has committed to an early review of the Local Plan once adopted and these technical changes can be fully incorporated at this time. In the meantime it is normal practice when Government policy changes to quote the original policy; a Cabinet resolution; and draft wording to guide developers as part of the 'other material considerations' category in considering planning applications.

Please note that DM8 of the emerging Site Allocations and Development Management Policies Submission Document is still a material consideration. This means that if an application site is considered to be part of a larger site, the affordable housing contribution may be calculated based on the whole site.

## **Planning applications**

When submitting applications where 10 dwellings or less are proposed, full details of the Gross Internal Area (GIA) will need to be provided. In the case of outline applications this information will still be required. For indicative applications where this information is not yet known this is likely to be dealt with by way of a condition to restrict the floorspace to no more than 1000 square metres should the application be approved. In some instances the LPA could formally request this information at an early stage in the process if deemed necessary to determine the application.

It is important to note that in the case of applications where the vacant building credit is to be applied the combined GIA of the proposed new dwellings along with the GIA of the existing vacant dwelling/s on site will need to be provided.

The below table sets out what needs to be included when measuring the GIA.

**Gross Internal Area (GIA)**

Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at each floor level.

**Including**

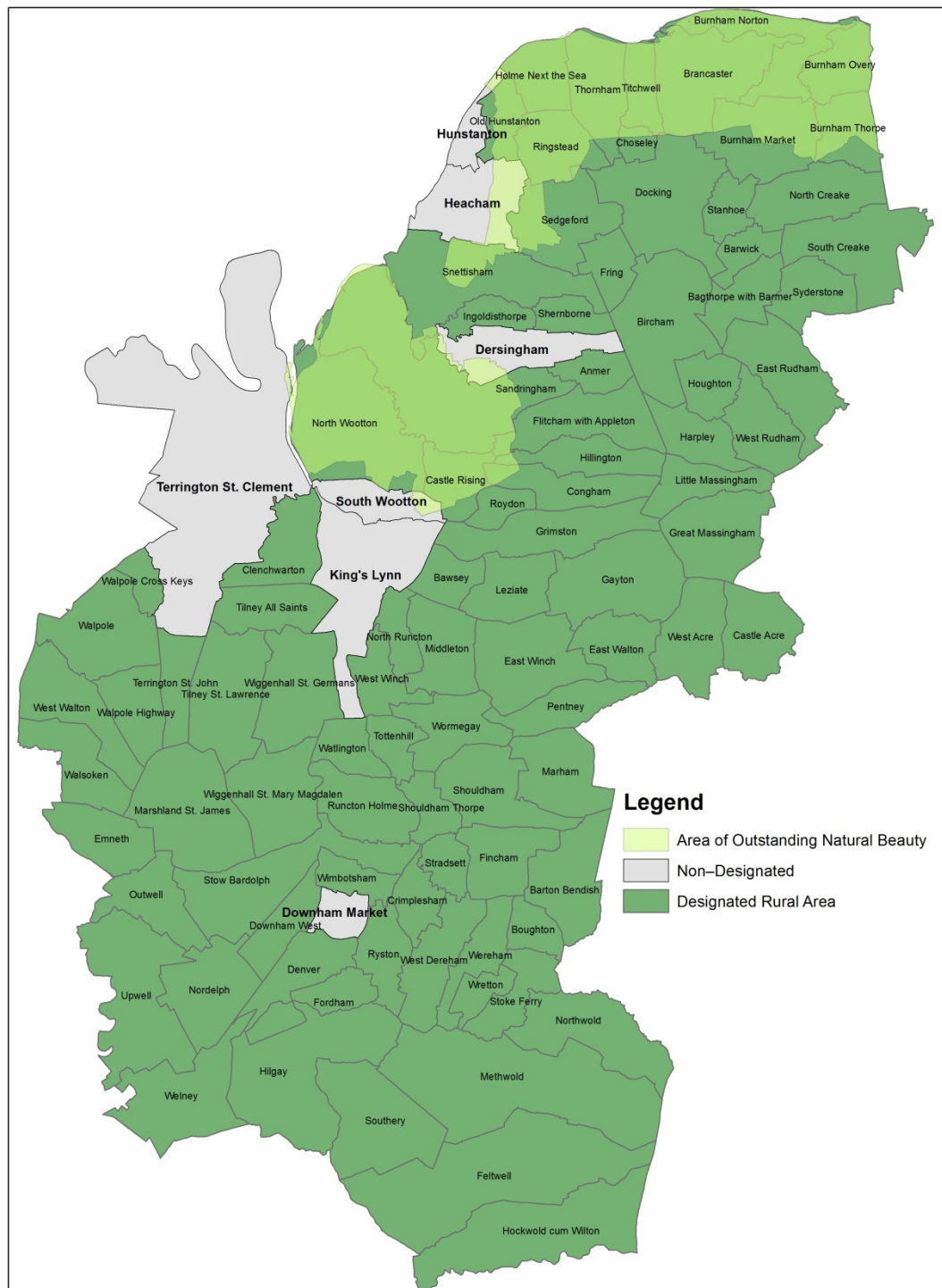
- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal balconies
- Structural, raked or stepped floors are to be treated as a level floor measured horizontally
- Horizontal floors, whether accessible or not, below structural, raked or stepped floors
- Mezzanine areas intended for use with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Outbuildings which share at least one wall with the main building
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories



**Excluding**

- Perimeter wall thickness and external projections
- External open-sided balconies, covered ways and fire escapes
- Canopies
- Open vehicle parking areas, roof terraces, and the like
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential property

If you have any queries relating to content of this document please contact the Strategic Housing team at [strategic.housing@west-norfolk.gov.uk](mailto:strategic.housing@west-norfolk.gov.uk) or 01553 616200

## Appendix A



 <p>Borough Council of King's Lynn &amp; West Norfolk</p> <p>Tel. 01553 616200 - Fax. 01553 691663</p>	<p>Title</p> <p><b>Designated Areas</b></p> <p>Project / Details</p> <p><b>AH Feb 15</b></p>		<p>Scale</p> <p><b>1:175,000</b></p>	<p>© Crown copyright and database rights 2013 Ordnance Survey 100024314</p>
			<p>Date</p> <p><b>20/02/15</b></p>	
			<p>Drawn by / Department</p> <p><b>AF/LDF</b></p>	
			<p>Drawing / Reference Number</p> <p><b>001</b></p>	