

Dated

1st July

2022

Given By:

(1) DIANA MARY GILBERT

(2) ATLANTIC PARK (BIDEFORD) LIMITED

To:

(4) TORRIDGE DISTRICT COUNCIL

(5) DEVON COUNTY COUNCIL

UNILATERAL UNDERTAKING

Section 106 of The Town and Country Planning Act 1990

Relating to Phase 3, Atlantic Park
Land at Clovelly Road,
Bideford,
Devon
1/0947/2020/OUTM

Schedule 1 - Obligations to the District Council - Affordable Housing

The following definitions shall apply in this Schedule 1:

1. Definitions

“Advertising”	means the advertising for sale or letting of any interest in the relevant Discounted Market Sales Housing Unit in accordance with a scheme to be approved by the Council which scheme shall include (unless otherwise agreed with the Council) an advertisement on the website of Help to Buy South or any other similar organisation promoting Intermediate Housing and such other advertising such as through local estate agents and social media channels as shall be agreed in writing by the Council.
“Adjacent Districts”	means the district council areas of North Devon and West Devon.
“Affordable Dwellings”	means being not less than 19% (rounded up or down to give a whole number of Dwellings) of the Dwellings to be provided as Affordable Housing and reference to “Affordable Dwelling” shall mean any one of them.
“Affordable Housing”	means Social Rented Housing or Intermediate Housing provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future eligible households and as defined in Annex 2 of the NPPF.
“Affordable Housing Scheme”	means a scheme for the provision of the Affordable Housing forming part of the Development to be submitted by the Owner to the Council which shall include (unless otherwise agreed with the Council): - Arrangements for the provision of the Affordable Dwellings; - Location of the Affordable Dwellings to be shown on a plan with reference to the appropriate plot numbers; - Details of the unit size of the Affordable Dwellings; and - Arrangements for the transfer of the Affordable Dwellings to a Registered Provider and such other details as reasonably required by the Council with the First Reserved Matters Approval .
“Affordable Rent”	means rent controls that require a rent of no more than 80% of local open market rent (including service charges where applicable) at the time of letting which may be increased by no more than the Consumer Price Index plus 1% annually or other such amount as prescribed by HE.
“Affordable Private Rent”	means rent at least 20% below local market rents as defined in paragraph a) to the definition of “Affordable housing” in Annex 2 to the NPPF but for the avoidance of doubt excluding Social Rent and

Affordable Rent.

"Affordable Private Rented Housing"	means the Affordable Dwelling(s) to be let at an Affordable Private Rent.
"County"	means the County of Devon.
"Devon Home Choice"	means the method or body agreed by the Council in accordance with Department for Communities and Local Government guidance: - "Allocation of Accommodation: Choice Based Letting" (August 2008) for the allocation of Affordable Housing in the District.
"Discounted Market Sales Housing"	means Affordable Housing for sale as described in paragraph c) to the definition of "Affordable housing" in Annex 2 to the NPPF.
"Discounted Market Sales Housing Units"	means the Dwellings to be provided for Discounted Market Sales Housing and "Discounted Market Sales Housing Unit" shall be construed accordingly.
"District"	means the administrative area of Torridge District Council.
"Help to Buy South"	means the method or body agreed by the Council for the nomination of Discounted Market Sales Housing and Shared Ownership Housing available to buy in the District or such successor body or organisation responsible for the nomination of Discounted Market Sales Housing and Shared Ownership Housing available to buy in the District.
"Homes England (HE)"	means the agency so named and established under the Housing and Regeneration Act 2008 for the purpose of procuring and regulating the provision of Affordable Housing and any body that replaces it for the purpose of those functions.
"Housing Need"	means a person who does not have available to him and could not afford (personally or jointly with other members of his household) to acquire or rent a home suitable for his needs and the needs of their household at the normal market values prevailing in the District.
"Intermediate Housing"	means Affordable Housing made available for sale or rent as Shared Ownership Housing, Discounted Market Sales Housing or housing let at an Affordable Private Rent.
"Intermediate Housing Units"	means the Dwellings to be provided as Intermediate Housing and "Intermediate Housing Units" shall be construed accordingly
"Local Connection"	means a local connection calculated from the Start Date (defined in Part VII of the Housing Act 1996) with the District (or the Qualifying Area as appropriate) as follows: • being permanently resident therein for six of the last twelve months, or three out of the last five years; or • in permanent full-time or part-time (minimum 16 hour contract per week) work therein for 6 months. This may include the need to move to the District in connection with permanent employment (minimum 16 hour contract per week) where commuting from the person's existing home is accepted by the Council as unreasonable. In all cases there should be no break

in the period of employment for more than 3 months over the relevant period; or

- have family connections in the District. Reflecting the Local Government Association guidelines this is normally defined as the applicant, or a member of their household has parents, adult children or brothers or sisters who have been resident in the District for at least the last 5 years; or
- having immediate relatives (i.e. parents, non-dependent children, brother or sister) who have lived therein for at least 5 years and with whom there has been shown to have been frequent contact, commitment or dependency; or
- other categories or relationships may be considered by the Council including foster relationships where clear evidence of frequent contact, commitment dependency is shown
- other special circumstances which create a link to the District (not including residence in a hospital armed forces accommodation holiday let or person or rehabilitation facility) and having been first verified in writing by the Council as having such special circumstances and this may include the need to reside medical support or (with the approval of the Council) some other form of special support.

“Mortgagee”

means a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator).

“NPPF” (National Planning Policy Framework)

means the National Planning Policy Framework published by the Department for Communities and Local Government in February 2019 (as updated in June 2019) (or any future guidance or initiative that replaces or supplements it or any successor policy or legislation in respect of affordable housing);

“Open Market Value”

means the price which 100% of the freehold interest in a Dwelling would fetch if sold on the open market by a willing vendor to a willing purchaser and disregarding the obligations contained in this Deed which price is to be determined in the event of disagreement by a member or fellow of the Royal Institution of Chartered Surveyors at the cost of the Owner.

“Qualifying Area”

means the District, the Adjacent Districts or the County as appropriate.

“Registered Provider (RP)”

means a body which is registered with HE as a provider of social housing under Part 2 of the Housing and Regeneration Act 2008 or such other class or body as may be constituted under any legislation replacing that provision.

“Restricted Price”

means a price calculated in accordance with paragraph 2.15 of this

Schedule 1 in respect of Discounted Market Sales Housing.

“Sale Notice”	means a notice which contains details of the Affordable Dwellings to be sold in the form set out and completed in accordance with Annex A to this Deed and which is delivered to the Council and clearly marked for the urgent attention of the Council’s Strategic Enabling Officer.
“Shared Ownership Dwelling”	means an Affordable Dwelling sold on the basis of a Shared Ownership Lease and the rent under such lease may be increased by no more than the Retail Prices Index (All Items) plus 0.5% or other such amount as prescribed by Homes England.
“Shared Ownership Housing”	means Affordable Housing where a person can buy a share in the property and the remaining share is held by a provider of Affordable Housing under a lease based on the appropriate form of shared ownership as published by HE.
“Shared Ownership Lease”	means a Shared Ownership lease in the form as published by Homes England as amended to comply with this Deed or as approved by the Proper Officer (District Council)
“Social Rent”	means a rent which does not exceed HE target rents for the area in which the Site is located as specified by the HE or other successor or replacement body which sets rent levels for Affordable Housing.
“Social Rented Dwelling”	means an Affordable Dwelling(s) let at a Social Rent.
“Staircased Dwelling”	means an Affordable Dwelling which is a Shared Ownership Dwelling for which the tenant has purchased one hundred per cent (100%) of the leasehold or freehold equity as the context requires under the terms of the tenant’s Shared Ownership Lease.
“Staircasing and Staircase”	means the exercise by a tenant of a Shared Ownership Dwelling of the right to increase his or her share of the equity in the Affordable Dwelling
“Staircasing Payment”	means a payment made by the tenant under a Shared Ownership Lease to the Landlord for the purchase of an additional share of the equity in the Shared Ownership Dwelling less the amount of any outstanding loan amount secured on the relevant unit and the reasonable costs of administration or legal or other expenses (and any part of such monies).
“Start Date”	means the date immediately preceding the date on which the Affordable Housing Dwelling is Occupied by a person in Housing Need;
“Subsidy”	means social housing grant or similar provided by the Council and/or HE or such other body as may succeed it.
“Valuer”	a professionally qualified valuer who is a member of the Royal Institution of Chartered Surveyors or equivalent.

2. AFFORDABLE HOUSING

2.1. The Owner covenants with the Council as follows:

Affordable Housing Scheme

- 2.2. To provide 19% of the total number of Dwellings to be constructed as Affordable Dwellings, the tenure of those 19% Affordable Dwellings shall be provided as 75% for Social Rent and 25% as Intermediate Housing (unless otherwise agreed in writing by the Council):

1	Number of Bedrooms	2	Percentage of overall Affordable Housing provision	3	Minimum size
	1 bedroom 2 person		30-35%		47 sqm
	2 bedroom 4 person		35-40%		77 sqm
	3 bedroom 5 person		20-25%		86 sqm
	4 bedroom 6 person		5-10%		106sqm

and to be constructed in accordance with the Affordable Housing Scheme to be submitted and approved by the Council pursuant to paragraph 2.3.

- 2.3. Prior to the Commencement of Development to submit the Affordable Housing Scheme to the Council.
- 2.4. Subject to the provisions of this Deed the Affordable Dwellings shall not be used for any purpose other than for the provision of the Affordable Housing as set out in this Deed and the Affordable Housing Scheme.

Construction of the Affordable Dwellings.

- 2.5. Not to cause or permit first Occupation of more than 65% of the Open Market Dwellings in any Phase until such time as the construction of 100% of the Affordable Dwellings in each Phase has been completed and the Affordable Dwellings are ready for Occupation and have been transferred in accordance with the approved Affordable Housing Scheme.
- 2.6. The Affordable Dwellings shall be constructed in accordance with the agreed Affordable Housing Scheme and using the same materials as the Open Market Dwellings, so as to be indistinguishable from the Open Market Dwellings.
- 2.7. If the Affordable Housing Scheme identifies that the Affordable Dwellings will be transferred to a Registered Provider the transfer of the Affordable Dwellings shall be on the following terms:-
- 2.7.1. the transfer shall be of the unencumbered freehold of the Affordable Dwellings and their curtilages (save for any encumbrances (not being financial charges existing prior to the date of this Deed) with full title guarantee and vacant possession;
- 2.7.2. the transfer shall grant all rights and easements (if any) as are required to give pedestrian and vehicular access between the Affordable Dwellings and the public highway and as are required to connect all sewers, drains pipes cables and all other conducting media serving the Affordable Dwellings to the relevant networks.

Marketing, Allocation and Occupation of Affordable Dwellings

- 2.8. Not to permit allow or cause the Affordable Dwellings to be Occupied by a person unless that person:

- 2.8.1. is a person in Housing Need who has a Local Connection at the time of his first Occupation of the Affordable Dwelling; or
- 2.8.2. is a member of the household of and living with a person in Housing Need at the time of his first Occupation of the Affordable Dwelling; and
- 2.8.3. (in either case) occupies the Affordable Dwelling as his or her sole or main residence.
- 2.9. No person shall let any housing for Affordable Private Rented Housing for a rent which exceeds the Affordable Private Rent.
- 2.10. No person shall let any housing for Social Rented Dwellings for a rent which exceeds the Social Rent.

Shared Ownership Housing

- 2.11. Where an Affordable Dwelling is shown within the approved Affordable Housing Scheme as intended to be disposed of as a Shared Ownership Dwelling:
 - 2.11.1. the Shared Ownership Dwelling shall only be disposed of by way of a Shared Ownership Lease;
 - 2.11.2. the minimum initial share of the equity in the Shared Ownership Dwelling that a purchaser may purchase shall be restricted to 25-75% of the equity as per the Shared Ownership Lease or such lower initial share as may be permitted under guidance issued by HE;
 - 2.11.3. the rent payable shall not exceed two decimal point seven five per cent (2.75%) of the Open market value of the equity retained by the landlord.

Staircasing Payments (Non-RP)

- 2.12. In respect of any Shared Ownership Dwellings in the Development not owned by a Registered Provider:
 - 2.12.1. The Owner will provide written notice of Staircasing taking place within five (5) working days of the same.
 - 2.12.2. The Owner will pay to the District Council the whole of any Staircasing payments received within twenty-eight (28) days of receipt of the same by the Owner.
 - 2.12.3. The District Council will apply any Staircasing Payments received by it under 2.12.2 above towards the provision of additional Affordable Housing within the administrative area of the District Council.
 - 2.12.4. Any part of any Staircasing Payments paid to the District Council that remains unspent after a period of ten (10) years following receipt of the same by the District Council will be repaid to the Owner.

Staircasing Payments – Registered Provider

- 2.13. In respect of any Shared Ownership Dwellings in the Development owned by a Registered Provider:
 - 2.13.1. Any Staircasing Payment received by the Owners shall be applied by the Owners to the provision of additional Affordable Housing within the administrative area of the District Council.

Staircased Dwellings

- 2.14. A Staircased Dwelling shall cease to be subject to any restrictions imposed by this Deed.

Discounted Market Sales Housing

- 2.15. On the sale of a Discounted Market Sales Housing to any person prior to its first Occupation and any subsequent sale in accordance with this Deed, the Restricted Price payable shall be determined in accordance with the following:

Number of bedrooms	Percentage of Open Market Value
1	65%
2	55%
3	43%

- 2.16. The Owner shall:

- 2.16.1. in the case of initial sales of Discounted Market Sales Housing Units:

- 2.16.1.1. prior to service of a Sale Notice submit a scheme for the Advertising of the Discounted Market Sales Housing for approval by the Council; and
- 2.16.1.2. on receipt of a written approval of the Council for a scheme of Advertising serve a Sale Notice upon the Council each time one or more of the Discounted Market Sales Housing Unit(s) are released for sale but in any event not less than 2 (two) months before the expected completion date of the relevant Discounted Market Sales Housing Unit(s); and
- 2.16.1.3. upon submission of a Sale Notice carry out the Advertising of the Discounted Market Sales Housing Unit(s) in accordance with the agreed scheme

- 2.16.2. in the case of subsequent sales of Discounted Market Sales Housing Units:

- 2.16.2.1. serve a Sale Notice on the Council each time the Owner intends to sell a Discounted Market Sales Housing Unit; and
- 2.16.2.2. submit a scheme for the Advertising of the Discounted Market Sales Housing Unit(s) for approval by the Council prior to service of the Sale Notice; and
- 2.16.2.3. on receipt of a written approval of the Council for a scheme of Advertising carry out the Advertising of the Discounted Market Sales Housing Unit(s) in accordance with the agreed scheme immediately following the submission of the Sale Notice

- 2.16.3. in the case of initial sales and subsequent sales of any Discounted Market Sales Housing Units serve upon the Council clearly addressed and marked for the urgent attention of the Planning and Economy Manager EITHER a certificate from a Valuer OR 3 (three) valuations from local estate agents dated no earlier than 3 (three) months before the commencement of marketing for the sale of the relevant

Discounted Market Sales Housing Unit(s) setting out the Open Market Value of the dwelling such certificate to be served on the Council before or together with the Sale Notice.

- 2.16.4. The Council shall either approve the assessment submitted to it in accordance with sub-paragraph 2.16.3 above (such approval not to be unreasonably withheld or delayed) or provide an alternative assessment of the Open Market Value to be agreed between the parties.
- 2.16.5. If agreement between the Council and the Owner is not reached under sub-paragraph 2.16.4 above within 4 (four) weeks of the Council's receipt of the assessment then the matter shall be referred to an appropriate Expert in accordance with the provisions of clause 9 of this Deed.
- 2.16.6. Having obtained the Council's agreement of the Open Market Value (the Agreed Valuation) pursuant to sub-paragraph 2.16.4 above or having received the binding decision of the Expert in accordance with sub-paragraph 2.16.5 above in order to establish the Open Market Value, the Owner shall give the Council written notice of:
 - 2.16.6.1. the date upon which he has arranged for the Discounted Market Sales Housing Unit to be advertised for sale; and
 - 2.16.6.2. the name and address of the agent who will market the premises and shall invite the Council to nominate persons to purchase the Discounted Market Sales Housing Unit in accordance with the provisions of this Schedule 1.
 - 2.16.6.3. If exchange of contracts for the sale of the Discounted Market Sales Housing Unit has not occurred within 6 (six) months of the date of the Agreed Valuation, then the Owner shall submit a new valuation, repeating the steps set out in sub-paragraphs 2.16.2 to 2.16.5 above and any future sale shall only proceed in accordance with the new Agreed Valuation, which in turn shall only be valid for a period of 6 (six) months from the date it is agreed or determined in accordance with clause 9 of this Deed

PROVIDED THAT the Owner shall not exchange contracts for the sale of the relevant Discounted Market Sales Housing Unit until the Council has given its approval that the prospective purchaser satisfies the obligations contained in this Schedule 1 and if no response is given by the Council within 21 (twenty one) days of receipt of written verification from the Owner that the prospective purchaser satisfies the obligations contained in this Schedule 1 (such written verification to be served upon the Council clearly addressed and marked for the urgent attention of the Strategic Enabling Officer) then approval will be deemed to have been given and PROVIDED FURTHER THAT the Owner shall if so required by the Council provide to the Council (together with the written verification detailed above) all necessary documentation as stipulated in Annex B as evidence that the prospective purchaser satisfies the obligations contained in this Schedule 1.

- 2.17. Unless otherwise agreed in writing by the Council to manage the Affordable Dwellings to be constructed as part of the Development in accordance with the terms of this paragraph:

- 2.17.1. where the owner of an Affordable Dwelling is a Registered Provider the Affordable Dwelling shall be Occupied in accordance with any nomination and management agreement in effect between the Council and that Registered Provider (unless otherwise agreed with the Council) and where no such agreement is in place the Affordable Dwellings shall be Occupied in accordance with sub-paragraphs 2.17.2 and 2.17.3 below;
- 2.17.2. the owners of Discounted Open Market Housing (or in the case of Shared Ownership Housing the owners of any share in a Shared Ownership Dwelling) shall be nominated in accordance with Help to Buy South and any subsequent replacement scheme that may be introduced and agreed to by the Council;
- 2.17.3. the Occupiers of Affordable Housing available to rent shall be nominated in accordance with Devon Home Choice for the duration of the existence of Devon Home Choice and any subsequent replacement scheme that may be introduced and agreed to by the Council; and
- 2.17.4. in the event all subsequent replacement schemes cease to operate the Council shall have 100% nomination rights and shall be responsible for nominating the owners of the Discounted Market Sales Housing (or in the case of Shared Ownership Housing the owners of any share in a Shared Ownership Dwelling).

Marketing - Rented Housing

- 2.18. If within a period of 2 (two) weeks for initial lettings and 1 (one) week for subsequent lettings from the date that the relevant Affordable Private Rented Housing Unit or Social Rented Dwelling becomes available for Occupation no prospective occupier in Housing Need and with a Local Connection to the District wishes to Occupy the relevant Affordable Dwelling then Occupation is permitted by a person in Housing Need and with a Local Connection as applied to the County.

PROVIDED THAT throughout the periods specified in this paragraph the Affordable Dwelling shall have been continuously marketed within the District.

Marketing - Intermediate Housing for sale

- 2.19. If within a period of 12 (twelve) weeks for initial sales and 12 (twelve) weeks for subsequent sales from the date that the Affordable Dwelling becomes available for Occupation no prospective occupier in Housing Need and with a Local Connection to the District wishes to Occupy or purchase the Affordable Dwelling then Occupation or purchase is permitted by a person in Housing Need and with a Local Connection as applied to the Adjoining Districts.
- 2.20. If after a period of 4 (four) weeks from the end of the period referred to in 2.19 no prospective purchaser with a Local Connection to the Adjoining Districts (as applicable) has come forward then a prospective purchaser in Housing Need with a Local Connection to the County may be considered **PROVIDED THAT** priority will be given to those in Housing Need with a Local Connection to the District.

PROVIDED THAT throughout the periods specified in this paragraph the Affordable Dwelling shall have been continuously marketed within the District

Occupation of the Affordable Dwellings