

DATED

8th April

2021

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TORRIDGE DISTRICT COUNCIL (1)

and

DEVON COUNTY COUNCIL (2)

and

TRACY MARY HOUSE (3)

AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO LAND AT HALWILL JUNCTION, DEVON

ashfords

Schedule 1 Affordable Housing

The following definitions shall apply in this Schedule 1:

1. Definitions

- “Adjoining Parishes”** means the adjoining parishes of Black Torrington, Ashwater and Broadwoodwidge.
- “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.
- “Affordable Dwellings”** means 30% 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):
- (a) Arrangements for the provision of the Affordable Dwellings;
 - (b) Location of the Affordable Dwellings;
 - (c) Details of the unit size of the Affordable Dwellings;
 - (d) Arrangements for the transfer of the Affordable Dwellings to a Registered Provider
- and such other details as reasonably required by the Council.
- “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 connection with the Parish, the Adjoining Parishes, the District or the County (as appropriate) and as demonstrated to the reasonable satisfaction of the Council as follows: <ul style="list-style-type: none"> a) at least 1 (one) adult in the household was resident continuously in the Qualifying Area for a minimum of 5 (five) years immediately prior to first Occupation; or b) at least 1 (one) adult of the household was resident in the Qualifying Area for 5 (five) years within the previous 10 (ten) years immediately prior to first Occupation; or c) at least 1 (one) parent, guardian, child or sibling of at least 1 (one) adult in the household has been resident in the Qualifying Area for a minimum of 5 (five) years immediately prior to first Occupation; or d) at least 1 (one) adult in the household has been in continuous employment for at least 16 (sixteen) hours a week in the

Qualifying Area for at least 5 (five) years immediately prior to first Occupation.

- “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.
- “Parish”** means the Parish of Halwill.
- “Qualifying Area”** means the Parish, the Adjoining Parishes, the District, 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 2.16 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.
- “Shared Ownership Housing”** means Affordable Housing where a person can buy a share in the property up to a maximum of 80% (unless otherwise agreed with the Council) 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.
- “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 30% of the total number of Dwellings to be constructed on the Site as Affordable Dwellings, the tenure of which shall be in accordance with the following:

- 2.2.1. At least 75% (rounded up to give a whole number of dwellings) of the Affordable Dwellings shall be Social Rented Dwellings; and
- 2.2.2. At least 25% (rounded up to give a whole number of dwellings) shall be Intermediate Housing
- 2.2.3. To accord with the following size requirements:

Number of Bedrooms	Percentage of overall Affordable Housing provision	Size
1 bedroom 2 person	30-35%	46 sqm
2 bedroom 4 person	35-40%	76 sqm
3 bedroom 5 person	20-25%	86 sqm
4 bedroom 6 person	5-10%	106 sqm

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 and not to cause or permit the Commencement of Development unless and until the Affordable Housing Scheme has been submitted to and has been approved in writing by the Council.

- 2.4. The Affordable Dwellings shall not be used for any purpose other than for the provision of the Affordable Housing and as set out in the Affordable Housing Scheme.

Construction of the Affordable Dwellings.

- 2.5. Not to cause or permit first Occupation of more than 50% of the Open Market Dwellings until such time as the construction of 100% of the Affordable Dwellings 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 Dwelling.
- 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:
- 2.8.1.1. is a person in Housing Need who has a Local Connection at the time of his first Occupation of the Affordable Dwelling; or
- 2.8.1.2. 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
- 2.8.1.3. (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;

- 2.11.3. the maximum amount of equity in a Shared Ownership Dwelling that may be purchased shall be restricted to 80%
- 2.11.4. 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:
 - 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.

2.13. Staircasing Payments – Registered Provider

- 2.14. In respect of any Shared Ownership Dwellings in the Development:
 - 2.14.1. 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

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

Discounted Open Market Housing

- 2.16. 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%
4	51%

- 2.17. In accordance with the provisions in this paragraph 2.17 and the provisions of Schedule 1 the Owner shall:

- 2.17.1. in the case of initial sales:
 - 2.17.1.1. 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
 - 2.17.1.2. 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
 - 2.17.1.3. upon submission of a Sale Notice carry out the Advertising of the Discounted Market Sales Housing Unit(s) in accordance with the agreed scheme
- 2.17.2. in the case of subsequent sales:
 - 2.17.2.1. serve a Sale Notice on the Council each time the Owner intends to sell a Discounted Market Sales Housing Unit; and
 - 2.17.2.2. 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
 - 2.17.2.3. 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
- 2.17.3. in the case of initial sale 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.
- 2.17.4. The Council shall either approve the assessment submitted to it in accordance with sub-paragraph 2.17.3 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.
- 2.17.5. If agreement between the Council and the Owner is not reached under sub-paragraph 2.17.4 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 13 of this Deed.
- 2.17.6. Having obtained the Council's agreement of the Open Market Value (the Agreed Valuation) pursuant to sub-paragraph 2.17.4 above or having received the binding decision of the Expert in accordance with sub-paragraph 2.17.5 above in order to establish the Open Market Value, the Owner shall give the Council written notice of:
 - 2.17.6.1. the date upon which he has arranged for the Discounted Market Sales Housing Unit to be advertised for sale; and

2.17.6.2. 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.

2.17.6.3. 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 (c) to (e) 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 13 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.

2.18. To manage the Affordable Dwellings to be constructed as part of the Development in accordance with the terms of this paragraph 2.18:

2.18.1. 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 2.18.2 and 2.18.3 below;

2.18.2. 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;

2.18.3. 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

2.18.4. 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

2.19. If within a period of 6 (six) weeks for initial lettings and 2 (two) weeks for subsequent lettings from the date that the Affordable Dwelling becomes available for Occupation no prospective

occupier in Housing Need and with a Local Connection to the Parish wishes to Occupy the Affordable Dwelling then Occupation is permitted by a person in Housing Need and with a Local Connection as applied to the Adjoining Parishes.

- 2.20. If at the end of the period referred to in 2.19 no prospective purchaser with a Local Connection to the Parish or the Adjoining Parishes (as applicable) has come forward then a prospective occupier in Housing Need with a Local Connection to the District or 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 Parish.

Marketing - Intermediate Housing for sale

- 2.21. 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 Parish 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 Parishes.
- 2.22. If after a period of 4 (four) weeks from the end of the period referred to in 2.21 no prospective purchaser with a Local Connection to the Parish or the Adjoining Parishes (as applicable) has come forward then a prospective purchaser in Housing Need with a Local Connection to the District or 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 Parish.

- 2.23. Not to Occupy or permit the Occupation of the Affordable Dwelling before written material has been delivered to the Council's Strategic Enabling Officer evidencing the compliance of such Occupation of the Affordable Dwelling with such of the eligibility requirements as set out in this Schedule 1 as may be applicable.
- 2.24. Where the owner of the Affordable Dwelling is a Registered Provider the Affordable Dwelling may also be Occupied in accordance with any nomination and management scheme in effect between the Council and that Registered Provider.
- 2.25. Any transfer for the sale or lease of the Affordable Dwellings should include such covenants and restrictions so as to ensure the future compliance with the planning obligations in this Schedule 1 subject to the exclusions contained in this Schedule and subject also to any subsequent amendment or variation to this Agreement as agreed with the Council to ensure that the Affordable Housing remains as such in perpetuity.

3. Mortgagee Exclusion

- 3.1. Notwithstanding the other provisions of this Deed, the covenants, restrictions and obligations contained in this Schedule 1 shall not be binding on a Mortgagee or any purchaser from or successor in title to such Mortgagee or any other Mortgagee of any Affordable Dwelling(s) or part thereof or any purchaser from or successor in title to such Mortgagee PROVIDED THAT:
- 3.1.1. the Mortgagee shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under terms of its mortgage or charge first give written notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable

endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 3.1.2. if such disposal has not completed with the 3 (three) month period, the Mortgagee shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely.