

## Schedule 1 Affordable Housing

1. The following definitions shall apply in this Schedule 1:

**Advertising:** 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 ~~West~~ <sup>1049005</sup> 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:** 30% of the Dwellings to be provided as Affordable Housing and reference to **Affordable Dwelling** shall mean any one of them.

**Affordable Housing:** 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 to the NPPF.

**Average Annual Household Income:** the average annual household income for households within the District provided by CACI or such successor organisation appointed by the Council to provide such information.

**Affordable Housing Scheme:** 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) Phasing of the Open Market Dwellings and the Affordable Dwellings;
- (c) Location of the Affordable Dwellings;
- (d) Details of the unit size of the Affordable Dwellings;
- (e) Arrangements for the transfer of the Affordable Dwellings (if required) to a Registered Provider

and to be submitted to the Council in the form attached at Appendix 2.

**Affordable Rent:** 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:** 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.

**CACI:** the Council's external consultant data and statistics provider.

**County:** means the County of Devon.

**Devon Home Choice:** the method or body agreed by the Council in accordance with Department for Communities and Local Government guidance: "Allocation of Accommodation: Choice Based Lettings" (August 2008) for the allocation of Affordable Housing for rent in the District.

**Discounted Market Sales Housing:** 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:** the Dwellings to be provided for Discounted Market Sales Housing and **Discounted Market Sales Housing Unit** shall be construed accordingly.

**District:** the administrative area of Torridge District Council.

*Apacts*

**Help to Buy South West:** 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.

**Homes England (HE):** 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:** 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:** Affordable Housing made available for sale or rent as (at the sole discretion of the Owner) Shared Ownership Housing, Discounted Market Sales Housing or housing let at an Affordable Private Rent.

**Intermediate Housing Units:** the Dwellings to be provided for Intermediate Housing and **Intermediate Housing Units** shall be construed accordingly.

**Local Connection:** a connection with the District or the County (as appropriate) and as demonstrated to the reasonable satisfaction of the Council as follows:

- (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:** 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:** the National Planning Policy Framework document published in February 2019.

**Open Market Value:** 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.

**Protected Tenant:** any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of the Affordable Dwelling;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of the Affordable Dwelling; or
- (c) has been granted a shared ownership lease by a provider of Affordable Housing (or similar arrangement where a share of the affordable housing unit is owned by the tenant and a share is owned by the provider of the Affordable Housing) in respect of the Affordable Dwelling and the tenant has subsequently purchased from the provider of the Affordable Housing all the remaining shares so that the tenant owns the entire Affordable Dwelling.

**Qualifying Area:** means the District or the County as appropriate.

**Registered Provider:** 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:** a price calculated in accordance with paragraph 2.5 of this Schedule 1 in respect of Shared Ownership Housing and paragraph 2.6 of this Schedule 1 in respect of Discounted Market Sales Housing.

**Sale Notice:** 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 Housing:** Affordable Housing where a person can buy a share in the property up to a maximum of 100% 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.

**Social Rent:** 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 the Affordable Dwellings to be let at a Social Rent.

**Social Rented Housing:** means Affordable Housing for rent as described in paragraph a) to the definition of "Affordable Housing" in Annex 2 : Glossary to the NPPF where the rent is set in accordance with the Government's rent policy for social rent.

**Subsidy:** 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. The Owner covenants with the Council as follows:

2.1. To provide 30% of the total number of Dwellings to be constructed on the Site as Affordable Housing to be pepper potted across the Site (provided that clusters of up to 10 (ten) Affordable Dwellings shall be acceptable) with a mix of tenures being not less than 75% Social Rented Housing and 25% Intermediate Housing and in accordance with the following requirements and the Affordable Housing Scheme to be submitted to the Council for approval (unless otherwise agreed in writing by the Council as part of a Reserved Matters Application or otherwise):

Number of Bedrooms	Percentage of Overall Affordable Housing provision	Size
1 Bed (2 person)	25%	46 sqm
2 Bed (4 person)	45%	76 sqm
3 Bed (5 person)	25%	86 sqm
4/5 Bed (5 person)	5%	96 sqm
4 Bed (6 person)		106 sqm
4 Bed (7 person)		115 sqm
4 Bed (8 person)		124 sqm

- 2.2. To submit the Affordable Housing Scheme to the Council prior to or as part of the first Reserved Matters Application and not to Commence Development until the Affordable Housing Scheme has been submitted to and has been approved in writing by the Council.
- 2.3. Not to cause or permit first Occupation of:
- (a) more than 50% of the Open Market Dwellings in a Phase until such time as the construction of 50% of the Affordable Dwellings in that Phase has been completed and the Affordable Dwellings are ready for Occupation and have been transferred in accordance with the approved Affordable Housing Scheme; and
  - (b) more than 75% of the Open Market Dwellings in a Phase until such time as the construction of 100% of the Affordable Dwellings in that Phase has been completed and the Affordable Dwellings are ready for Occupation and have been transferred in accordance with the approved Affordable Housing Scheme.
- 2.4. 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.
- 2.5. On the grant of a lease for Shared Ownership Housing to any person prior to its first Occupation in accordance with this Deed, the Restricted Price payable in respect of the initial share of the equity purchased by the lessee shall be the price which does not exceed at that time that which can be afforded with a 95% mortgage equivalent to 3 (three) times the Average Annual Household Income within the District, plus 5% deposit.
- 2.6. On the sale of the 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 the price which does not exceed 63% of the Open Market Value (or such other percentage as may be agreed by the Council in writing).



- 2.7. The Owner shall not permit or otherwise allow any of the Discounted Market Sales Housing on any transfer following completion of construction of the Discounted Market Sales Housing to be sold:
- (a) other than to a person who is in Housing Need; and
  - (b) at a sum exceeding the Restricted Sale Price.
- 2.8. In accordance with the provisions in this paragraph 2.8 and the provisions of Schedule 1 the Owner shall:
- (a) in the case of initial sales:
    - (i) 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
    - (ii) 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
    - (iii) upon submission of a Sale Notice carry out the Advertising of the Discounted Market Sales Housing Unit(s) in accordance with the agreed scheme
  - (b) in the case of subsequent sales:
    - (i) serve a Sale Notice on the Council each time the Owner intends to sell a Discounted Market Sales Housing Unit; and
    - (ii) 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
    - (iii) 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
  - (c) in the case of 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

- (d) The Council shall either approve the assessment submitted to it in accordance with sub-paragraph (c) 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
- (e) If agreement between the Council and the Owner is not reached under sub-paragraph (d) 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 12 of this Deed
- (f) Having obtained the Council's agreement of the Open Market Value (the **Agreed Valuation**) pursuant to sub-paragraph (d) above or having received the binding decision of the Expert in accordance with sub-paragraph (e) above in order to establish the Open Market Value, the Owner shall give the Council written notice of:
  - (i) the date upon which he has arranged for the Discounted Market Sales Housing Unit to be advertised for sale; and
  - (ii) the name and address of the agent who will market the premises and will invite the Council to nominate persons to purchase the Discounted Market Sales Housing Unit in accordance with the provisions of this Schedule 1
- (g) 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 12 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.

2.9. No person shall:

- (a) let the Social Rented Housing for a rent which exceeds the Social Rent;
- or
- (b) let the housing for Affordable Private Rented Housing for a rent which exceeds the Affordable Private Rent.

2.10. Not to sell an Affordable Dwelling prior to its first Occupation and any subsequent sale except to a person who:

- (a) is in Housing Need; and
- (b) at a price which does not exceed the Restricted Price.

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

- (a) is a person in Housing Need who has a Local Connection at the time of his first Occupation of the Affordable Dwelling; or
- (b) 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
- (c) (in either case) occupies the Affordable Dwelling as his or her sole or main residence

but nothing in this paragraph shall require any person who satisfied such a requirement when they first Occupied the Affordable Dwelling to vacate a dwelling if they cease to qualify under this paragraph by virtue of the death, hospitalisation or breakdown of a relationship with the person who qualified under this paragraph.

2.12. If within a period of 8 (eight) weeks for Social Rented Dwellings and 12 (twelve) weeks for Intermediate Housing Units 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 County PROVIDED THAT throughout the period specified in this paragraph 2.12 the Affordable Dwelling shall have been continuously marketed within the District which marketing may include making the Affordable Dwelling available to prospective occupiers from within the District by Devon Home Choice or Help to Buy South ~~West~~ (as appropriate) at a price not exceeding the Restricted Price or Affordable Private Rent or Social Rent as the case may be.

2.13. To manage the Affordable Dwellings to be constructed as part of the Development in accordance with the terms of this paragraph 2.13:

- (a) 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 (b) and (c) below;
- (b) 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 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 ~~West~~ and any subsequent replacement scheme that may be introduced and agreed to by the Council;
- (c) in the event all subsequent replacement schemes cease to operate the Council shall have 100% nomination rights and shall be responsible for nominating the Occupiers of the Affordable Housing available to rent and 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).

- 2.14. 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.
- 2.15. 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.
- 2.16. Notwithstanding the other provisions of this Deed, the covenants, restrictions and obligations contained in this Schedule 1 shall not be binding upon:
- (a) any Protected Tenant or a Mortgagee of a Protected Tenant or a successor in title thereto and their respective Mortgagees; or
  - (b) any Mortgagee or of an individual Intermediate Housing Unit or an individual Discounted Market Sales Housing Unit to the intent that any such Mortgagee may deal with or dispose of the Intermediate Housing Unit or the Discounted Market Sales Housing Unit free from the covenants, restrictions and obligations contained in this Schedule 1 which provisions shall determine absolutely.
- 2.17. Notwithstanding the other provisions of this Deed, the covenants, restrictions and obligations contained in this Schedule 1 shall not be binding on a Mortgagee of a Registered Provider 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:
- (a) 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

- (b) 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.

2.18. 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.