

Nomination agreement

Dated 14 December 2020

Parties

- (1) **Torbay Council** of Town Hall, Castle Circus, Torquay, Devon, TQ1 3DR (the **Council**); and
- (2) **Aster Communities** (Community Benefit Society No 31530R) whose registered office is at Sarsen Court, Horton Avenue, Cannings Hill, Devizes, Wiltshire, SN10 2AZ (the **Provider**).

Agreed terms

1 Definitions and interpretation

- 1.1 In this Agreement the following words and expressions shall (unless the context otherwise requires) have the following meanings:

Adapted Dwellings means those Social Rented Dwellings identified under the Affordable Housing Tenure Plan to be constructed for occupation either by households which include a person who has a physical disability and / or a need for wheelchair access;

Affordable Dwellings means those Dwellings within a Phase approved by the Council under the Affordable Housing Tenure Plan for use as Social Rented Dwellings, Shared Ownership Dwellings or Affordable Rent Dwellings;

Affordable Housing Manager means the Council's Affordable Housing Manager or similar post holder carrying out the Council's housing function employed by the Council from time to time;

Affordable Housing Tenure Plan means the plans and details for each Phase showing the physical location, the layout, the specification (including that of any common parts serving the Affordable Dwellings), the type and tenure of individual dwellings submitted by the Provider pursuant to the terms of the Section 106 Agreement for approval by the Housing Manager;

Affordable Rent means a rent of up to 80% of open market rent (determined in accordance with the Royal Institute of Chartered Surveyors (RICS) recognised method – as referred to in the Rent Standard) for the relevant Affordable Rented Dwelling (including service charge);

Affordable Rent Tenancy means a tenancy regulated by the HCA at an Affordable Rent;

Affordable Rented Dwellings means those Dwellings approved under the Affordable Housing Tenure Plan to be let under an Affordable Rent Tenancy;

Developer means White Rock Land LLP OC387465 whose registered office is Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL;

Development means the development to be carried out on the Site pursuant to the Planning Permission;

Dwelling means a dwelling (including a house or flat or maisonette) designated for residential occupation by a single household and to be constructed pursuant to the Planning Permission;

Fit Out Works means those works in addition to the items required in the Specification on initial occupation of an Adapted Dwelling recommended by an occupational therapist and required by the Council to be undertaken to an Adapted Dwelling to suit a Nominee's specific requirements and for which the Council has previously agreed in writing (with the Provider) to pay;

HCA means the Homes and Communities Agency of 2 Marsham Street, Westminster, London, SW1P 4DF or any successor body carrying on substantially the same funding and investment function;

Local Connection means a person satisfying the requirements set out in Annex 2

Nominee means a person nominated by the Council as a prospective tenant of a Social Rented Dwelling or an Affordable Rent Dwelling or the prospective lessee or assignee of a Shared Ownership Dwelling (being in each case a person who is a Designated Person);

Nomination Period means the period of one hundred and twenty five years from the date of this Agreement

Nomination Right the right for the Council to nominate Designated Persons to occupy all of the Affordable Dwellings (upon both initial and subsequent lettings) during the Nomination Period in accordance with clause 3 below;

Phase means a distinct part of the Development comprising those Affordable Dwellings which are notified to the Council by the Provider as the Development progresses;

Planning Permission means planning consent issued pursuant to application number P/2011/0197;

Registered Provider means a non-profit registered provider of social housing pursuant to the Housing and Regeneration Act 2008;

Regulator means the HCA acting through the Regulation Committee established by it pursuant to Chapter 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Rent shall mean:

Schedule 1

Allocation Principles

- 1 The initial and subsequent lettings of the Affordable Dwellings (other than the Adapted Dwellings) shall be carried out in accordance with any Service Level Agreement current at the time of such lettings.
- 2
- 2.1 The Provider will give the Council not less than six months' notice in writing of practical completion of the **Adapted Dwellings** within a Phase :
 - 2.1.1 the Council will within eight weeks of receipt of notice under paragraph 2 nominate to the Provider Nominees to occupy the Adapted Dwellings in respect of which notice has been served under paragraph 2.1
 - 2.1.2 the Provider will within 10 Working Days have the right on reasonable grounds to reject a Nominee nominated by the Council under paragraph 2.1.1 subject to which the Provider shall within that period offer to grant an Approved Tenancy to the selected Nominee
- 2.2 If in relation to an individual vacancy:
 - 2.2.1 ~~the~~ the Provider rejects the Nominee in accordance with paragraph 2.1.2 or
 - 2.2.2 the Nominee fails to accept or refuses an offer of tenancy made by the Provider

the Provider shall as soon as practicable inform the Council and notify the same of the Provider's reasons for rejection (where applicable) and invite further nominations from the Council who shall within 10 Working Days of such invitation nominate further a Nominee whereupon paragraphs 2.1.1 and 2.1.2 shall apply
- 3 If in relation to any attempt to allocate an Affordable Dwelling, the provision of the Service Level Agreement is triggered whereby the Affordable Dwelling may be occupied free from the provisions of that Agreement, the Affordable Dwelling may be allocated free from the Nomination Right, but the Affordable Dwelling must nevertheless be allocated to a Designated Person. If, despite using its reasonable endeavours, the Provider is unable to identify a Designated Person within 25 Working Days of the Provider's right to nominate arising, then the Affordable Dwelling may be allocated to any person. Upon the same Affordable Dwelling subsequently becoming available for re-allocation, all the provisions of this Agreement shall reapply.
- 4 The Provider will during the currency of any Service Level Agreement in exercising the right to accept or reject a nominee proposed by the Council do so only in accordance with the criteria set out in the Service Level Agreement

ANNEX 2

Local Connection Criteria

- A 5 year residency test will be applied as part of the qualification criteria, requiring the applicant (or member of the applicant's household) to have lived within Torbay for 5 years.
- To ensure we maintain the protection provided by the statutory reasonable preference criteria and the statutory guidance, exceptions to the 5 year residency test will be:-
 - Any tenant or lessee of a Devon Home Choice partner landlord is seen as having a connection to Devon and therefore will not be excluded from the Torbay Register.
 - Have family connections in Devon. The Local Government Association guidelines define this as immediate family members (parents, siblings and nondependent children) who have themselves lived in the area for five years.
 - Existing tenants or lessees of Affordable Dwellings in Devon who wish to downsize.
 - Members of the Armed Forces and former Service personnel, where the application is made within five years of discharge
 - Bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner
 - Serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service
 - People who are assessed as being within the reasonable preference categories – Bands A , B , Emergency and High Housing Need, as per the Devon Home Choice Policy. (This includes those fleeing violence and Statutorily Homeless Household)
 - Applicants requiring Sheltered Housing.
 - Applicants who need to move to work in Devon, where they would otherwise need to travel more than 30 miles (each way) from home to their place of work. Work will be defined as having permanent employment with a minimum of a 16-hour contract per week. Proof of employment will be required.
- Existing tenants or lessees of Affordable Dwellings in England who need to move to take up an offer of work. (Additional criteria may apply).

Approved Lease means a lease (of not less than 99 years) by way of shared ownership substantially in the form of the HCA's model form shared equity lease published from time to time whereby :-

- (a) the leaseholder acquires an initial equity in the Shared Ownership Dwelling which is not more than 50% of open market value except in cases where the HCA (in cases where financial assistance has been given to a Registered Provider) has agreed the Approved Lease shall be granted on the basis of a higher percentage of value being transferred to purchasers; and.
- (b) the purchase pays to the Registered Provider an annual rent in respect of remaining equity of up to 2.75% of unsold equity.

Approved Tenancy means

- (a) a weekly or monthly periodic assured tenancy, or
- (b) an assured shorthold tenancy used solely to serve the purpose of a probationary or introductory tenancy in accordance with clause 3.3.1 below;

in either case the rent for which does not exceed a Social Rent;

Choice Based Lettings means Devon Home Choice or such other housing register schemes operated by the Council from time to time;

Designated Person shall be any person or persons who at all material times immediately prior to the occupation of an Affordable Dwelling is:

- (a) registered and eligible to be registered with Devon Home Choice or South West Homes or Help to Buy South (or such other housing register schemes as shall be implemented by the Council) or is eligible for an allocation of housing accommodation in Torbay pursuant to Sections 15 and 16 of the Homelessness Act 2002; and
- (b) is identified by the Council as being on a low income and/or on housing and/or other welfare benefits or in low-paid employment and having low capital and not being entitled to housing or other welfare benefits and would be given reasonable preference for an offer of accommodation under the Council's allocation scheme under Section 167 of the Housing Act 1996, provided that if, in relation to any proposed person, the Council fails to indicate whether or not that person would be given preference under the said allocation scheme within 20 Working Days of receiving a request for such information (or if the said allocation scheme shall be discontinued without replacement), that element of the test as to whether the person is a Designated Person shall be deemed to have been satisfied and;
- (c) has a Local Connection.

- (a) in the case of a Social Rented Dwelling, Social Rent;
- (b) in the case of a Shared Ownership Dwelling, the gross rent payable under the Approved Lease (a proportion of which is payable, equivalent to the proportion of the equity retained by the Provider, as defined in the Approved Lease of that Affordable Dwelling);
- (c) in the case of an Affordable Rent Dwelling, Affordable Rent;

Rent Standard means the standard described in decision Instrument 8 : Revisions to the Regulatory Framework for Social Housing in England published by the Regulator in April 2015 and which may be amended and updated from time to time;

Rented Dwelling means a Social Rented Dwelling or an Affordable Rent Dwelling as the context so requires;

Section 106 Agreement means an agreement between the Council (in its capacity as local planning authority) and Abacus Projects Limited dated 26 April 2013;

Service Level Agreement means an agreement with Devon Home Choice and/or Help to Buy South and/or South West Homes or such other agreement as may be entered into by the Provider governing the allocation of the Affordable Dwellings;

Shared Ownership Dwellings means the Dwellings approved under the Affordable Housing Tenure Plan to be disposed of by way of Approved Lease;

Site means the land west of Brixham Road off Long Road, Paignton shown edged green on the drawing attached to this Agreement;

Social Rent means the total weekly sum payable in rent which sum shall be limited to the Regulator's "formula rents" for social rented accommodation calculated in accordance with the Regulatory framework for social housing in England from April 2015 and any other guidance subsequently issued by the Regulator in relation to that document and any other rent control regime for social housing that replaces it;

Social Rented Dwellings means those Dwellings approved under the Affordable Housing Tenure Plan to be let under an Approved Tenancy;

Help to Buy South means the register of households requiring low cost home ownership properties maintained by the Council or the Council's agent (or such other waiting list scheme or schemes for properties to rent or own as shall be implemented by the Council);

Specification means the standard to which the Affordable Dwellings are to be constructed as approved by the Council pursuant to the Affordable Housing Tenure Plan;

TDA means Torbay Development Agency;

Working Days means any day from Monday to Friday inclusive which is not Christmas Day Good Friday or a statutory bank holiday and "Working Day" shall be construed accordingly.

- 5 In the absence of a Service Level Agreement in relation to any Affordable Dwelling whether on initial or subsequent lettings the allocation of all such Affordable Dwellings to applicants shall be carried out in accordance with any allocation scheme the Council is required to adhere to by Government to discharge the Council's statutory duties under Housing legislation
- 6 If paragraph 2.2 is triggered for a second time the process in paragraph 2.1.1 and 2.1.2 shall not be repeated and the relevant Adapted Dwelling shall be allocated by the Provider to a Designated Person in accordance with the Service Level Agreement current at the time of such letting or in the absence of a Service Level Agreement as aforesaid then pursuant to the provisions of paragraph 5 above of this Schedule 1

- Properties with section 106 planning conditions will continue to be let in-line with section 106 requirements and the Devon Home Choice policy (the latter applying to Affordable Rented Dwellings and Social Rented Dwellings).

- 1.2 References herein to any statute or Act of Parliament shall be deemed to include references to any statute, Act of Parliament or statutory instrument for the time being replacing, re-enacting or modifying the same, whether or not enacted prior to the execution of this Agreement.
- 1.3 The expression "the Council" shall in the event of local government reorganisation include the successor to its statutory functions under the Housing Acts.
- 1.4 Unless the context otherwise requires neuter words shall include the masculine and the feminine and vice versa, and singular words shall include the plural and vice versa.
- 1.5 Any notice or communication pursuant to this Agreement shall be given by telephone followed by written confirmation.
- 1.6 If at any time any of the provisions of this Agreement shall become illegal, invalid or unenforceable in any respect under any law, regulation or jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result.
- 1.7 Unless the contrary intention appears, references to numbered Clauses, Annexures and Schedules are references to the relevant Clause in, Annexure to, or Schedule to this Agreement.

2 Provision of Affordable Housing

- 2.1 In furtherance of the better performance of the Council's obligations under Part II of the Housing Act 1985 and Parts VI and VII of the Housing Act 1996 the Council and the Provider agree to enter into a programme for the nomination of Designated Persons to occupy the Affordable Dwellings as hereinafter appearing.
- 2.2 The Provider has agreed for the duration of the Nomination Period to make the Affordable Dwellings available for occupation by Nominees or by Designated Persons.
- 2.3
- 2.3.1 The Council through its Affordable Housing Manager and the Provider may agree at any time to vary the form of tenure of an individual Dwelling from that agreed under the Affordable Housing Tenure Plan and record that agreement in a memorandum signed on behalf of each party.
- 2.3.2 With effect from the date of such memorandum (or from a date specified in that memorandum) this Agreement shall have effect as if the Affordable Housing Tenure Plan was so amended.

3 Programme for nominations

- 3.1 Subject as hereinafter stated the Provider grants to the Council for the Nomination Period, the Nomination Right in respect of all of the Affordable Dwellings whether vacant by reason of first availability for occupation on completion of construction or arising upon any subsequent letting to fill a vacancy at any time during the Nomination Period.
- 3.2

- 3.2.1 The letting of the Affordable Dwellings shall be carried out in accordance with Schedule 1
 - 3.2.2 The Council through its Affordable Housing Manager and the Provider may agree at any time to vary the provisions of Schedule 1 and record that agreement in a memorandum signed on behalf of each party
 - 3.2.3 With effect from the date of such memorandum (or from a date specified in that memorandum) Schedule 1 shall have effect as varied by that memorandum
- 3.3
- 3.3.1 The Social Rented Dwellings are to be let on Approved Tenancies. Initially, these will be:-
 - (a) an assured tenancy where the tenant currently holds an assured (but not a shorthold) or secure (not being an introductory tenancy) tenancy from a Registered Provider
 - (b) an assured shorthold tenancy where the tenant does not fall into 3.3.1(a) above granted for a period of twelve months to serve as a probationary tenancy, unless otherwise agreed in writing by the Council. At the expiry of the twelve month period, an assured tenancy shall be granted to the tenant unless he or a member of his household has breached the terms of the assured shorthold tenancy, or unless otherwise agreed between the Provider and the Council. This shall apply both on initial lettings of the Rented Dwellings and on subsequent re-lets;
 - 3.3.2 The Shared Ownership Dwellings are to be occupied under Approved Leases;
 - 3.3.3 The Affordable Rent Dwellings are to be let on Affordable Rent Tenancies which may be tenancies which operate in the manner outlined in clause 3.3.1(a) and 3.3.1(b) above
- 3.4 Prior to each letting and re-letting the Provider will on request from the Council allow the Council to inspect any Affordable Dwelling being made available to its Nominee.
- 3.5 On each letting and re-letting of a Rented Dwelling under the provisions of this Agreement the Provider shall certify to the Council that the relevant Rented Dwelling is fit for occupation and complies in all respects with the requirements set out in Schedule 2.
- 3.6 Throughout the Nomination Period the Provider will submit to the Council on an annual basis statistical evidence of the occupiers of the Affordable Dwellings (including voids, lets, re-lets and assignments), the evidence to be provided in such format and to contain such detail as the Council may reasonably require and the Provider is reasonably capable of providing.