



Delivering Affordable Housing



Delivering Affordable Housing

November 2006

Communities and Local Government: London

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government

Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

© *Crown Copyright, 2006*

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ.
Fax: 01603 723000 or email: HMSOlicensing@cabinet-office.x.gsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 08701 226 236
Fax: 08701 226 237
Textphone: 08701 207 405
Email: communities@twoten.com
or online via the Communities and Local Government website: www.communities.gov.uk

Printed in the UK on material containing no less than 75% post-consumer waste.

November 2006

Product Code: 06HC04260

Contents

Affordable housing: policy objectives	1
Annexes	
A. The roles of local and national government	5
B. Definition and types of affordable housing	9
C. Affordable housing providers	12
D. The HomeBuy scheme	14
E. Provision of grant and developer contributions	20

Affordable housing: policy objectives

1. The aim of this document is to support local authorities and other key players in delivering more high quality affordable housing within mixed sustainable communities by using all tools available to them. It outlines the affordable housing challenge that needs to be met, and provides information on how existing delivery mechanisms operate to help in delivery.
2. While the details of the delivery mechanisms reflect the position in November 2006, and will be subject to change, most of this document will be robust to changes in future policy. Some parts are likely to evolve, and the Government would expect to update it periodically, especially if there are major policy developments. This document should be read in conjunction with *Planning Policy Statement 3 (PPS3) Housing*.¹

Government aims for affordable housing

3. The Government believes everyone should have the opportunity of a decent home, which they can afford, within a sustainable mixed community. This means providing a wide choice of housing to meet the needs of the whole community in terms of tenures and price ranges. This should include affordable housing, both social rented and intermediate. Affordable housing policy is based around three themes:
 - providing high quality homes in mixed sustainable communities for those in need;
 - widening the opportunities for home ownership;
 - offering greater quality, flexibility and choice to those who rent.

The Barker Review and Government's response

4. Kate Barker's *Review of Housing Supply*² analysed the problems with the supply of housing in England. In many parts of the country, house prices have increased rapidly, because the supply of housing has not kept up with demand. This is mainly due to increased numbers of households, caused by growth in the population and particularly the number of one person households (it is projected there will be 209,000 more households overall per annum to 2026). The review made a number of recommendations to improve the responsiveness of the housebuilding sector and the planning system and these are now being taken forward.
5. The Barker review also recommended that there should be an increase in the provision of social rented housing to deal primarily with two factors: the growth in need for social housing and the consequence of the loss of stock through the Right to Buy. The Government has made a start in increasing provision on social housing in the 2004 Spending Review and has said that social housing will be a priority in the 2007 Comprehensive Spending Review.

¹ *Planning Policy Statement 3 : Housing*, ISBN 978 0 11 753976 1, available from TSO, www.tsoshop.co.uk

² *Review of Housing Supply*, Kate Barker available from www.barkerreview.org.uk

The consequences for affordable housing delivery

6. The increase in house prices relative to incomes in recent years has been marked. At the start of this decade there were areas where house prices were very high, but this was largely confined to London, the South East and a few regional hot spots. By 2005, the position had changed significantly: there are now many areas in all regions where house prices are very high and where as a consequence first time buyers are finding it very difficult to buy a home in the market. This position is particularly marked in rural districts and smaller settlements.
7. This has several consequences:
 - There are now far more areas where local authorities need, through the planning system, to be thinking about provision of intermediate market housing;
 - High house prices mean that there will be need for more social rented housing, particularly family sized housing; but
 - This also brings opportunities. Where housing commands much higher prices there is greater scope for securing affordable housing through developer contributions or “planning obligations”. In traditional high value areas, local planning authorities already have strong experience of negotiating planning obligations to deliver both social rented and intermediate market housing. But there is now a need for local authorities in other areas to raise their game and to recognise that such obligations will increasingly be viable on new housing developments.
 - More widely, there is increasing acceptance of the need for more housing of all tenures to be provided in many areas.
8. The Government has backed this up with increases in financial provision and has developed a number of grant funded products (including HomeBuy – see Annex D) that aim to meet need in the intermediate market alongside traditional social rented housing, but it cannot subsidise every household currently priced out of the market.
9. Increasingly the market will be able to deliver housing aimed at first time buyers: the Shared Equity Task Force will report shortly on the scope for this, now and in the medium term future. There has been much innovation from both the financial community and developers. But there is also scope for achieving development without grant, by effective use of developer contributions through planning obligations (sometimes known as section 106 agreements).³ Many local authorities are meeting this challenge well. But research suggests that performance is very varied. Others may be missing opportunities to deliver more by not exploring the options available to them. The Government strongly encourages the **best possible use of planning obligations and other tools** to improve delivery, and would like to see all local authorities meet the standards of the best performers.

³ Planning obligations are currently negotiated under section 106 of the *Town and Country Planning Act 1990*, as substituted by section 12 of the *Planning and Compensation Act 1991*.

10. Effective use of planning obligations to deliver affordable housing requires good negotiation skills, ambitious but realistic affordable housing targets and thresholds given site viability, funding ‘cascade’ agreements in case grant is not provided, and use of an agreement that secures standards.
11. Local authorities can also improve delivery through creative use of their own resources, or by working effectively with other providers. They may provide homes directly if resources are available, or through Housing PFI. They may also give planning permission or other support including land or money to new providers to help them deliver innovative grant-free models.
12. Finally, there needs to be a good mix of tenures on new developments. For too long we have lived with the consequences of rigid monotenure development; and today no one would promote significant scale development that included nothing but social rented housing. But the scope of planning obligations gives local authorities the ability to require developers to build mixed tenure new developments, thereby helping them secure improvements in mix over the whole of the stock.
13. The rest of this document sets out much of the detail around the current delivery arrangements. This should be familiar to many local authorities, but for some others, especially where the housing market has moved rapidly in recent years, this will be less well known. The Government hopes that local authorities will use the tools set out here to help secure the best sustainable outcome for their communities.

Annex A: The roles of local and national government

14. The housing delivery chain operates at local, sub-regional, regional and national levels. Delivering affordable housing targets requires effective joined-up strategic housing and planning approaches, focused and flexible use of resources, and co-ordinated delivery vehicles.

Local authorities

15. Local authorities have a vital role in strategic planning and decision making, by developing a strategic approach to housing, and direct provision of services or their delivery through other providers. Existing housing provision needs to be balanced carefully with future housing demand, and needs to be expressed clearly in the evidence base for housing strategies. Local authorities take the lead in ensuring the right housing is in place to support that vision, in particular by working with partners, including affordable housing providers, to deliver for their areas.
16. The strategic housing role includes working with Regional Assemblies and other local authorities to assess current and future need and demand for both market and affordable housing through a Strategic Housing Market Assessment (SHMA).⁴ This evidence will form the basis of local housing strategies and is an important aspect of developing affordable housing policies including targets and thresholds. Targets should reflect long term as well as short term need. It is important that affordable housing provision should not be seen as the only possible solution for those who cannot afford to buy a home in the market.
17. The new *Planning Policy Statement 3: Housing* outlines the key role that the planning system has in the delivery of affordable housing (PPS3, paragraphs 27-30). Local planning authorities have a leadership role in turning the spatial vision for their area into a Local Development Framework (LDF), to guide and shape development over the next 15-20 years. The LDF and its constituent Local Development Documents play a key role in providing affordable housing.
18. Local authorities should ensure their housing and planning functions effectively deliver a shared vision by working to agreed objectives. This will require working closely with regional bodies to develop and reflect regional strategies, and with delivery partners (including Registered Social Landlords and private developers) to ensure quality, value for money and efficient delivery through Local Housing Partnerships.

⁴ See forthcoming *Strategic Housing Market Assessment Guidance Manual* (Communities and Local Government).

Issues for local authorities to consider

19. Local authorities should also consider the following issues when working on the delivery of affordable housing:
 - Developing an early dialogue with the Housing Corporation on availability of grant in relation to the setting of affordable housing targets and considering applications for individual developments. (For further details on grant see Annex E).
 - The availability of both public and private investment in the delivery of affordable housing, and its impact on the viability of sites and the level of affordable housing targets (overall and site specific) and thresholds. The targets should reflect the new definition of affordable housing and an assessment of the likely economic viability (PPS3, paragraph 29).
 - Adopting flexible practices when considering choice of provider. The Government supports a ‘mixed economy’ of providers, including the private sector and community trusts, as long as homes meet the standards expected of affordable housing and are value for money (see Annex C below).
 - Understand clearly the mechanisms for ensuring affordable housing is retained in the affordable housing market, including through buy back, and for requiring the recycling of public subsidy to ensure the most efficient and proper use of public resources and help meet future affordable housing need. (Annex D outlines issues of leasehold enfranchisement and lender concerns for HomeBuy).
 - Entering into service level agreements with HomeBuy Agents to protect nomination rights and alignment of sales policies for homes, including those without grant funding.
 - The level of management and other charges occupiers will have to pay on a development, and ensuring practical payment arrangements are in place when seeking developer contributions.
 - Challenging developers to produce high quality housing designs that help integrate affordable and market units in a mixed community.

Regional assemblies

20. In September 2006, in addition to their role as regional planning bodies, Regional Assemblies assumed responsibility for regional housing strategies from the former Regional Housing Boards. Regional Assemblies include local authority representatives, and work closely with Government Offices, the Housing Corporation and English Partnerships. In London, proposals are still being developed.

21. Regional Assemblies aim to ensure through their housing and planning functions that housing contributes as much as possible to the creation and maintenance of sustainable communities. To achieve this, they:
 - prepare a Regional Housing Strategy (RHS) which includes advice to the Secretary of State on allocation for housing capital works of the Regional Housing Pot (RHP);
 - enable housing, economic development, transport and land use plans to be joined up at the regional level;
 - encourage the development of sub-regional housing strategies.
22. The RHS identifies key regional priorities and sub-regional themes, ensures a link with regional economic and spatial strategies, and provides a basis on which decisions on housing capital investment can be made. The first RHSs were produced in 2003, and all but one updated in 2005.
23. The RHP is divided regionally on the basis of a formula which includes different housing need measures (eg homeless households in temporary accommodation, overcrowding, housing affordability) and takes account of the variations in costs across regions.
24. Regional Assemblies advise the Government on the split of investment within their region (both spend and outputs), by sub-region and by type of product (eg tenure type, size). They will do this on the basis of regional knowledge informed by a proper analysis of housing markets in the region (Strategic Housing Market Assessments), rather than through formulaic allocations. They would not normally advise on specific housing schemes. In turn the content of the RHS is a major factor in decisions on allocation of grant within the Housing Corporation's investment programme.
25. Regional Assemblies are expected to work with their constituent local authorities to ensure that regional strategies support locally responsive delivery.
26. Regional Assemblies are also responsible for the preparation of Regional Spatial Strategies (RSS). These determine the overall levels and distribution of housing provision across the region and the regional approach to meeting affordable housing need (PPS3, paragraph 28).

The Housing Corporation

27. The Housing Corporation is an executive Non-Departmental Public Body responsible to the Secretary of State for Communities and Local Government. It has a range of functions designed principally to fund the development of affordable housing in England through a variety of providers, and to regulate and facilitate the proper performance of the Registered Social Landlord (RSL) sector.

28. The Housing Corporation manages the National Affordable Housing Programme (NAHP). The NAHP is a national investment programme in affordable housing which delivers agreed national and regional priorities and targets, and is distributed through grant payments to RSLs and unregistered providers. Details of how the grant funding process works are at Annex E.
29. The Housing Corporation works closely with Regional Assemblies to develop their RHS, including advising on the full range of housing needs, the practical delivery of housing investment, and the extent of financial commitments and outputs arising for previous allocation rounds. It will consult with the Regional Assembly on its proposed programme, and keep it informed on delivery. The Housing Corporation also wishes to work with local authorities in terms of their strategic priorities.

Annex B: Definition and types of affordable housing

Definitions

30. **Affordable housing** includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. Affordable housing should:
 - meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices; and
 - include provisions for:
 - (i) the home to be retained for future eligible households; *or*
 - (ii) if these restrictions are lifted, for any subsidy to be recycled for alternative affordable housing provision.
31. **Social rented** housing is rented housing owned and managed by local authorities and RSLs, for which guideline target rents are determined through the national rent regime. The proposals set out in the Three Year Review of Rent Restructuring (July 2004) were implemented as policy in April 2006. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant.
32. **Intermediate affordable** housing is housing at prices and rents above those of social rent but below market price or rents, and which meet the criteria set out above. These can include shared equity (eg HomeBuy) and other low cost homes for sale, and intermediate rent.

Context of the definitions

33. The definitions above replace the guidance given in *PPG 3 Housing* (2000) and Circular 6/98 *Planning and Affordable Housing*. They are set out in Annex B of *Planning Policy Statement 3 (PPS3): Housing*.
34. The Government has adopted this definition of affordable housing because it wishes to ensure that developer contributions are used to help provide genuinely affordable housing for households in need over the long term. The definition includes homes owned or managed by private sector bodies and provided without Government grant, and new models of affordable housing. It is not essential that all affordable homes are offered under identical conditions.

Social rented housing

35. Normally, only households on local authority and RSL registers are eligible for social rented housing. Target rents are set under a national rent regime; are well below market levels; and, are normally based on relative property values, local earning levels and property size. When a household ceases to occupy a social rented home, it is normally made available to other households eligible for social rented housing. Social rented homes are normally owned and/or managed by a RSL (or other body agreed by the Housing Corporation), and will be required by regulation or contract to meet the criteria.
36. Some tenants have the legal right to purchase at a discount the social rented home in which they live, eg RSL tenants with a Right to Acquire and local authority tenants with Right to Buy. Where these rights are exercised the home itself ceases to be affordable, but procedures are in place to reuse receipts. Receipts from Right to Acquire sales are recycled to provide more social rented housing to help other eligible households. Receipts from Right to Buy are partly (25 per cent) retained by the local authority for use however the authority chooses; the remaining 75 per cent is kept by Government to be reinvested in new supply.
37. Local authority homes which are let in connection with the tenant's employment, or are particularly suitable for occupation by disabled or elderly persons are exempted from Right to Buy. Publicly funded housing in small rural settlements⁵ is exempt from Right to Acquire, as replacing them with other affordable homes would be extremely difficult. (It is not exempt from the Right to Buy, but the landlord may require that properties sold under that scheme can only be resold to people who live or work locally). Landlords will also usually have a right of first refusal to buy back any homes sold under the Right to Acquire and Right to Buy, if they are resold within ten years.

Intermediate affordable housing

38. Types of housing between market and social rented housing include:
 - **Intermediate rented** homes are provided at rent levels above those of social rented but below private rented. The Government offers these to some key workers who do not wish to buy.
 - **Discounted sale** homes have a simple discount for the purchaser on its market price, so the purchaser buys the whole home at a reduced rate.
 - **Shared equity** is where more than one party has an interest in the value of the home eg an equity loan arrangement or a shared ownership lease. There may be a charge on the loan, and restrictions on price, access and resale.

⁵ Small rural settlements have been designated for enfranchisement and right to acquire purposes (under Section 17 of the *Housing Act 1996*) by SI 1997/620-25 inclusive and 1999/1307).

- **Shared ownership** is a form of shared equity under which the purchaser buys an initial share in a home from a housing provider, who retains the remainder and may charge a rent. The purchaser may buy additional shares ('staircasing'), and this payment should be 'recycled' for more affordable housing. In most cases, a purchaser may buy the final share ('staircase out') and own the whole home, though this may be restricted in some rural areas.
39. Homes of any of these types should only be considered intermediate **affordable** housing if they meet the criteria in the definition. If they do not, even if offered at less than market price, they should be considered 'low cost market housing', outside the definition of affordable housing.
 40. For example, a shared ownership home is likely to be affordable if access is restricted to households from a target group at a price they can afford. The purchaser may staircase out, but there should be secure arrangements for subsidy to be recycled to provide more affordable homes or buy back the home if needed.
 41. Low cost market housing is not part of the Government's definition of affordable housing although it can play an important role in meeting housing demand. Local authorities should consider the potential to provide low cost market housing as part of their approach to achieving a mix of housing (PPS3, paragraph 26).

Annex C: Affordable housing providers

RSLs and unregistered bodies

42. Registered Social Landlords (RSLs) are housing associations which are registered with and regulated by the Housing Corporation. Since the early 1990s, RSLs have been the main providers of new affordable housing. They can deliver more units for a given amount of public expenditure because they may access private finance. They also own and manage the affordable homes they provide, and others transferred to them by local authorities.
43. Until 2004, only RSLs could bid for social housing grant from the Housing Corporation. Now unregistered bodies, including private developers and Arms Length Management Organisations (ALMOs), are also eligible to bid. Standards and public money are protected through contracts with the developers.
44. Unregistered bodies may also own and manage affordable housing under contract to the Housing Corporation which duplicate the conditions followed by RSLs. These could include specialist private affordable housing managers, or special purpose vehicles set up by private sector developers to own and manage.

Local authorities and ALMOs

45. Local authorities can provide additional social rented homes through providing funding to RSLs, building new homes themselves or through their ALMOs. The current housing finance regime does not make it attractive for local authorities to add to new supply, although new build by ALMOs can overcome some of the constraints. The Government is working with local authorities to explore the benefits of operating outside the housing revenue account subsidy system and contribute to affordable housing supply at the margins.
46. Local authorities can retain 100 per cent of receipts generated from sales of certain assets held in their housing revenue account (other than homes sold to tenants under Right to Buy), provided these receipts are used for additional affordable homes. It is for local authorities to determine how homes owned by them or their ALMOs are managed. Should ALMOs become owners of homes in their own right without support from their local authority, regulation arrangements would need to be considered.
47. The Housing Corporation now pays grant to unregistered bodies for affordable housing provision, which may include ALMOs and local authorities. Providers will need to meet their conditions of grant.

Choice of affordable housing provider

48. The Government does not want local authorities to adopt restrictive practices which could preclude innovation and competition between potential affordable housing providers. The best use of resources is to engage with the most effective and best value provider, whether that is a RSL or unregistered body, as long as good management and ownership are ensured.
49. Local authorities should not prescribe affordable housing providers in planning conditions, obligations or local development documents. They should discuss with potential providers how affordable housing can be provided and long term management arrangements secured. They may include information on their standards (eg development, management, local presence, cost) in respect to providers. They should be able to robustly justify rejecting any particular provider on the basis of these standards.
50. Early dialogue (eg a round table discussion) between developers, the local authority and potential providers can help to ensure the provider is acceptable to all parties. It may be useful to involve the provider in negotiating any planning obligation. Where a provider has not been identified, expert views may still be sought, eg through an advisory panel of providers with expertise in planning obligations negotiations. In rural areas, the local authority may involve the Rural Housing Enabler, where appropriate.

Alternative and grant free providers

51. Some private companies and community-led groups are developing innovative schemes that offer intermediate affordable housing, often without grant. (Though they may require other forms of subsidy, such as land). Alternative forms of provision can be good value, and the Government believes that local authorities should not reject them without carefully considering the advantages.
52. As such alternative models are new and may be unproven, local authorities should take care to ensure that they meet the assessed need with affordable homes of a sufficiently high standard, and are deliverable in practice. Local authorities may wish to share best practice on procuring such homes.

Annex D: The HomeBuy scheme

HomeBuy

53. In April 2006, the Government launched the new HomeBuy scheme, three intermediate affordable home ownership products based on equity sharing. These can enable social tenants, key workers and other priority first time buyers to buy a share of a home and get a first step on the housing ladder. Further details are available from Communities and Local Government, or from HomeBuy agents.
54. The three products:
 - **Social HomeBuy** enables tenants of participating local authorities and RSLs to buy a share in their current home at a discount.
 - **New Build HomeBuy** enables people to buy a share of a newly built property paying a rent on the remainder (this includes the First Time Buyers Initiative, a form of HomeBuy which uses public sector land).
 - **Open Market HomeBuy** will enable people to buy a property on the open market with the help of an equity loan. From 2 October 2006 half of the equity loan is provided by one of the four participating lenders, who will also provide the conventional mortgage (the other half is provided by Government).

HomeBuy Agents

55. The Housing Corporation has appointed HomeBuy Agents, RSLs who will provide a “one-stop shop” and point of contact for all intermediate affordable housing funded by the Corporation within an area. HomeBuy Agents manage the waiting list for all applicants for Open Market and New Build HomeBuy schemes, process applications, assess initial eligibility, headline market schemes and liaise with local authorities and providers of new build properties to ensure effective targeting of schemes.
56. Subject to local negotiation the HomeBuy Agents’ role can be extended to include non-grant funded schemes. HomeBuy Agents may charge a fee for this additional service.
57. A list of the HomeBuy Agents and their contact details is available on the Communities and Local Government website at:
www.communities.gov.uk/pub/629/HomeBuyAgentsContactsList_id1164629.pdf

Eligibility restrictions

58. Eligibility for the HomeBuy schemes is wider than for social rented housing. It aims to help the following priority groups:
 - **Current and prospective social rented tenants:** tenants of councils and RSLs, and those who are on the housing register, waiting for a council or RSL home to rent.
 - **Key workers:** people employed by the public sector in a frontline role delivering an essential public service in health, education or community safety in areas where there are serious recruitment/retention problems (see paragraphs 60-61 below).
 - **First time buyers (or other groups):** households who can't afford to buy their own home, and who have been identified as eligible for assistance by the Regional Housing Boards.
59. It is Government policy to assist the first two groups into HomeBuy schemes, because there is a public service interest in doing so. Some social rented tenants or those waiting to access it may be able to afford to buy a share of a home with assistance. This would free up social rented homes for those in the most acute need and reduce waiting lists.
60. The Government wants to help front line public sector workers in areas where they are being priced out of their community. This puts extra pressure on our public services, making it harder to recruit and retain people who want to work in their community, and therefore to improve standards in hospitals and schools and win the fight against crime. Helping them buy or rent a home helps keep them in the jobs they have trained for and retain essential skills. The Government offers limited subsidy to assist these key workers into intermediate homes in London, the East and South East of England through the Key Worker Living (KWL) programme.
61. The Government defines a 'key worker' for the purposes of KWL as someone employed by the public sector in a frontline role delivering an essential public service in health, education and community safety in an area with serious recruitment and retention problems. Sponsor Government Departments and employers working with Communities and Local Government, have prioritised which groups of key workers can be helped based on recruitment and retention issues.
62. For other groups, eligibility and priority depends on the policy of the Regional Assembly and local authority. The Government believes it is in the public interest for first time buyers and others to own their own home, but the level of potential demand is too great to be met by social housing grant or developer contributions. The needs of some of this group could be met by low cost market (non-affordable) housing. Local authorities may need to decide the circumstances under which first time buyers should have access to scarce affordable housing in line with the RHS and SHMA.

63. Local authorities can, especially in rural areas, use Local Occupancy Conditions (LOCs) to restrict affordable housing (including New Build HomeBuy) to households who are either current residents or have an existing family or employment connection. The Government sees the use of LOCs as a matter for the local authority. The local authority may wish to ensure that its definition of eligible households is robust, that there is strong demand, and that their restrictions are not judged as discriminatory. Providers and lenders should be consulted about intermediate affordable homes with these restrictions, to ensure they can be delivered in practice and purchasers can obtain a mortgage.

Resale restrictions

64. The first and any subsequent purchasers of affordable housing should be nominated in line with national, regional and local priorities from a list of eligible households, normally held by the HomeBuy Agent. For New Build HomeBuy, provisions in the shared ownership lease offered by RSLs will allow the RSL to nominate future purchasers when the shared owner wishes to sell their share of a unit.
65. If the RSL is unable to nominate a purchaser from the HomeBuy Agent's list within a specified period, the property may be offered for sale on the open market. It can be offered as a shared ownership property, or alternatively for outright sale if the purchaser staircases out (ie buys 100 per cent of the home) before selling. The RSL will reinvest sale proceeds to help other households or may opt to buy back the property and resell on shared ownership terms.
66. Homes provided on a model other than New Build HomeBuy and provided by unregistered bodies should also require that purchasers (or tenants on rental units) be nominated from a list approved by Government or the local authority, eg one held by the HomeBuy Agent for the area.

Restrictions on full ownership and leasehold enfranchisement

67. Generally, the Government wants those accessing shared equity and shared ownership schemes to be able to increase the size of their equity share and move on to full ownership, where this is sustainable. This releases value which can be recycled to help meet other households' affordable housing needs.

68. It is a condition of grant funding provided by the Housing Corporation that New Build HomeBuy schemes allow purchasers to increase their share and own up to 100 per cent of the home. There may also be arrangements for an affordable housing provider to have a first chance to buy these units back for use as affordable housing. However, in exceptional cases (eg rural exception sites) and for products other than New Build HomeBuy, one option for retention of shared ownership schemes as affordable housing is to restrict the share which a shared owner may purchase (eg 80 per cent), provided schemes are mortgageable.
69. Local authorities and providers should be aware that there are potential legal difficulties in restricting staircasing on houses offered for sale on shared ownership terms, as this can risk shared owners circumventing the terms of their lease to enfranchise (buy the freehold). In these circumstances the provider could receive a reduced receipt and would have no control over future occupiers. This is not a problem for flats, where purchasers cannot enfranchise until they have bought 100 per cent.
70. Leases granted by RSLs are exempt from enfranchisement under the leasehold legislation (Schedule 4A of the Leasehold Reform Act 1967), provided the lease allows the shared owner to staircase to full ownership. They can in some circumstances restrict staircasing without risk of enfranchisement by relying on the low rent test under existing leasehold legislation. RSLs wishing to restrict staircasing are advised to take their own legal advice. RSLs should be aware that restricting staircasing for grant funded properties is only permitted where the property lies within a rural exception site. Shared ownership leases granted by other providers are not protected from enfranchisement in the same way within the leasehold legislation.
71. Although private landlords of affordable housing are not treated in the same way as RSLs in the leasehold legislation, they may choose to work in partnership with RSLs. Private providers may also include provision in shared ownership leases giving them a right of first refusal to buy back properties when the purchaser wishes to sell and move on. The Government is keeping this position under review.

Provisions for recycling subsidy

72. If a property comes within the definition of affordable housing and was grant funded by the Housing Corporation, but is subsequently lost to the affordable housing sector, because a social rented tenant exercises a Right to Acquire, a shared owner staircases to full ownership, or the home is no longer needed for affordable housing, then any subsidy

obtained by the developer upon sale is required to be reinvested by him to meet future identified affordable housing needs. If the developer is a RSL this is required by statute or grant conditions. If the developer is unregistered, it will be imposed through grant conditions. If the developer does not wish to continue with the provision of affordable housing the subsidy can be returned to the Corporation for redistribution in line with national, regional or local housing priorities.

73. Receipts of RSLs from Right to Acquire sales and the majority of receipts from the new Social HomeBuy scheme are required to be used to provide replacement social rented housing. Subsidy from staircasing sales of New Build HomeBuy properties may be reinvested for wider affordable housing provision. Full details of the reinvestment of subsidy by grant funded RSLs can be obtained from the Housing Corporation's Capital Funding Guide on the Corporation's website. For other grant funded providers details are set out in the grant agreement.

Additional safeguards in rural areas

74. Specific safeguards exist within the Right to Acquire scheme and the HomeBuy scheme to ensure the long term supply of affordable housing in those rural areas which are subject to particular housing pressures (and, as in other areas, providers also have the right to buy back homes). These safeguards are:
- RSL social rented tenants in designated rural areas (under Section 17 of the Housing Act 1996 and SIs 1997/620-25 inclusive and 1999/1307) are not eligible for Right to Acquire or Social HomeBuy. These are small settlements of under 3,000 inhabitants with the same coverage as rural exception sites.
 - Where a shared ownership property is on a rural exception site or in a small rural settlement of less than 3,000 inhabitants, the Housing Corporation will prioritise repurchase for grant funding if the various funding avenues available to the RSL have been discounted. Full details are set out in the New Build HomeBuy chapter of the Housing Corporation's *Capital Funding Guide*.⁶

Concerns of lenders

75. The variety of options available for retaining properties within the affordable housing market can cause concern for mortgage lenders who may become reluctant to lend on affordable housing properties with restrictions. Consequently potential purchasers may encounter difficulties in obtaining the additional finance that they need.

⁶ *Capital Funding Guide* www.housingcorp.gov.uk/server/show/nav.2227

76. Issues which may cause concern include restrictions intended to:
- ensure that future re-sales of properties are restricted to certain types of eligible households (eg key workers, those on the council waiting list, or those earning below a specified income)
 - control the future sale price by restricting it to a percentage of the market value (for discounted sale products) or restricting the amount of equity which may be purchased by the owner (for shared ownership).
77. Some lenders may consider that these restrictions:
- do not give the existing shared owner an opportunity to move on because they are unable to dispose of their property at full market value within a reasonable time period;
 - mean the lender is not be able to dispose of the property easily and at the market price within a reasonable time period, in the event of mortgage default where a lender would take possession.
78. Local authorities, the Housing Corporation and affordable housing providers should be aware of lenders' concerns and where possible introduce options to help alleviate them. One option is to introduce an occupancy 'cascade' that provides the opportunity for the housing to be made available to a broader group of people or a wider area, if nobody meeting the given criteria should come forward within some specified period. Normally⁷, grant funded schemes must allow purchasers to staircase to full ownership when they can afford to do so, and the subsidy received is then recycled to provide further affordable housing. Even where there is a limit on the amount of equity that can be obtained by the purchaser, the cascade mechanism may be used to ensure that the provider and the purchaser can raise a mortgage. These issues are also referred to in paragraphs 8-10 of Annex A to the model planning obligation agreement.

⁷ Though not where full ownership is prohibited – see paragraph 74 above.

Annex E: Provision of grant and developer contributions

Availability of Housing Corporation grant funding

79. Affordable housing is normally only viable where a subsidy is provided, usually the Housing Corporation National Affordable Housing Programme (NAHP). The Housing Corporation will set out the basis upon which they will assess bids and allocate grant so as to achieve agreed national and regional outputs in an initial prospectus. The NAHP is open only to affordable housing providers who have pre-qualified as suitable grant recipients.
80. Bids for the NAHP are assessed by the Housing Corporation to ensure that funding decisions must be made on the basis of the most pressing priorities and best use of scarce funding. Key criteria considered in the bid assessment process include value for money, fit with local needs, deliverability and sustainability. Local authorities have a key influence on schemes' deliverability through planning policies and their role in developing the Regional Housing Strategy.
81. To ensure bids are eligible and increase likelihood of success, bidders are advised to read the Housing Corporation's guidance, the RHS and relevant local housing strategies and other plans carefully. They are also advised to contact the Corporation and local authorities at an early stage and work closely with them to identify development opportunities and priorities in local housing markets. In making assessments the Corporation will canvass the views of local authorities.
82. The Housing Corporation works with strategically-minded local authorities on protocols which cover a pipeline of schemes over the medium term (eg 5 to 7 years) and to define appropriate policies on section 106 agreements and the likely availability of grant. Such agreements can give a degree of certainty of funding.

Alternative sources of subsidy

83. The NAHP is the main source of public subsidy for new affordable housing, but there are other possible sources, including:
 - local authority cash reserves and receipts;
 - local authority land;
 - grants made under the Local Government Act 1988;
 - money collected through the council tax on second homes;
 - on-site developer contributions through planning obligations;
 - commuted sums taken from planning obligations made in the context of other developments to fulfil the requirements of the Local Development Framework for off-site contributions in lieu of on-site;
 - assistance from other public bodies such as English Partnerships.

Availability of developer contributions through planning obligations

84. A planning obligation is a private agreement, usually negotiated in the context of a planning application, between a local authority and persons with an interest in the land. Planning obligations are currently negotiated under section 106 of the Town and Country Planning Act 1990, as substituted by section 12 of the Planning and Compensation Act 1991.
85. The Government (in ODPM Circular 05/05 Planning Obligations)⁸ requires that planning obligations should only be sought by local authorities in order to “make acceptable development which would otherwise be unacceptable in planning terms” and where certain tests are met. In particular, a planning obligation must be: relevant to planning; necessary to make the proposed development acceptable in planning terms; directly related to the proposed development; fairly and reasonably related in scale and kind to the proposed development; and reasonable in all other respects.
86. In relation to affordable housing, planning obligations can be used to prescribe the nature of a development by requiring the inclusion of a given proportion of affordable housing. The requirement for the provision of an element of affordable housing in a residential development or mixed-use development with a residential component should reflect planning policies (see PPS3 paragraphs 20-30).
87. Planning obligations make an increasingly important contribution to the delivery of affordable housing. In 2004-05, it is estimated that 46 per cent of all affordable housing delivered on sites supported by social housing grant included a developer contribution through planning obligations. Planning obligations support the delivery of a mix of tenure within developments, including affordable housing, and can help provide access to land in high value areas. There is considerable variation between local planning authorities in the level of affordable housing secured through planning obligations, and in some areas there may be scope for additional units to be delivered.
88. Policy and guidance on the use of planning obligations is set out in ODPM Circular 05/05, and *Planning Obligations: Practice Guidance*⁹ A model legal agreement is included with the Practice Guidance, prepared in conjunction with the Law Society.

⁸ www.communities.gov.uk/index.asp?id=1500145

⁹ *Planning Obligations: Practice Guidance*, Communities and Local Government www.communities.gov.uk/index.asp?id=1500820, August 2006.

Housing Corporation approach to grant on sites subject to planning obligations

89. Many schemes approved by the Housing Corporation will be on sites where affordable housing is funded through a mixture of social housing grant and developer contributions secured through a planning obligation.
90. The Housing Corporation's approach for paying grant on subject to planning obligations ("section 106 sites") within the 2006-08 NAHP was:
 - The preference is for affordable housing on section 106 sites to be delivered without grant input from the Corporation when economically viable;
 - For grant to be considered, the Corporation requires early involvement in negotiations over the content of the section 106 agreement as it relates to affordable housing, and, in particular, the expectations about the availability of Housing Corporation grant. Their objective in negotiations will be to ensure that the site delivers more affordable homes or a different mix than would have been possible without grant.
91. The Housing Corporation will use financial appraisal tools to help ensure that it receives value for grant from section 106 sites, ie that grant delivers additional benefits and does not artificially inflate land prices. An economic viability tool used by the Housing Corporation for this purpose is available from their website at: www.housingcorp.gov.uk
92. The Corporation only funds section 106 sites which integrate different tenures in a single site design, following mixed communities principles. Some local authorities have an agreed planning policy of achieving affordable housing on section 106 sites without grant. The Corporation will work with such policies, only funding sites with their agreement and to achieve specific improved outcomes, eg in terms of tenure mix.

Options where public subsidy is not provided

93. The availability of public subsidy for provision of affordable housing will have a significant impact upon the development viability of a site and the amount of affordable housing which can be provided. The Housing Corporation assesses bids for funding on a competitive basis and local authorities and providers should not assume that grant will be available.
94. In case grant is not forthcoming, the provider and the local authority should consider alternative options. These may be specified in local development documents and should take account of funding priorities in the RHS. If funding is not available from other sources, this could include requiring intermediate housing instead of social rented from developer contributions, or reducing the overall number of affordable homes required.

95. Decisions on alternative options should be made with regard to what is economically viable and realistic on that site and local housing need as well as taking into account the mix of tenures on the site (including the need for social rented housing within a mixed community). Developers should be consulted on alternative options in advance. The level of developer contribution should be at least maintained, but it should not be assumed the developer can meet the whole cost of the shortfall.

Provision of affordable housing without grant

96. The Government is keen to encourage provision of affordable housing without grant where possible. Some providers may be able to deliver high quality affordable homes which meet need despite the absence of grant.
97. The definition of affordable housing set out above applies to both grant funded and grant free homes. Where social housing grant is provided, the Housing Corporation ensures that the homes meet the definition of affordable housing by imposing conditions related to design and construction standards, as well as the criteria necessary to ensure the homes are provided to those identified as needing them. These criteria include eligibility and price, for initial purchase and for resale.
98. Where no grant is provided, it will be for the local authority to ensure that these matters are dealt with fully. The local authority may be able to do this through a planning obligation.
99. Such an agreement should include requirements that homes be built to suitable standards and could include provision requiring that the property be transferred on completion by the developer to a RSL. In these circumstances, the RSL may be required to retain the unit as affordable housing or recycle any receipts for affordable homes, in accordance with the Housing Corporation's regulatory code. (Unregistered bodies may have contracts with the Housing Corporation with similar safeguards).
100. Alternatively, the local authority may permit a private company to own and manage the affordable housing stock. In this case, it may be necessary to ensure through the planning obligation or another legally binding document that the homes remain affordable. The Government does not provide draft text for such agreements. Private companies developing affordable housing products may be able to provide security that the necessary safeguards are met.
101. Annex D gives details on how eligibility, resale and other criteria are met for HomeBuy (see in particular paragraph 66). These could apply equally to grant-free intermediate housing, though there is no requirement that this be similar in all respects to HomeBuy.

102. Local authorities should consider in particular how resale is restricted to eligible households. Mortgage lenders can be reluctant to lend to purchasers where there are restrictions on resale, and this should be resolved as early as possible through discussion with lenders, as suggested in paragraphs 75-78; see also paragraphs 8-10 of Annex A to the model planning obligations agreement, which explain how the occupancy 'cascade' works and potential solutions in case suitable occupants cannot be found. Different affordable housing models are likely to require separate approval by lenders.