

Compliance Inspector Building Lease – Scope

SUMMARY

Overarching Duties

- i. This is the Scope for an Independent Compliance Inspector and central to that role is monitoring the progression of a development and the compliance, performance and progress of the developer tenant (**Developer**) with an Agreement for Lease (**Agreement**) and Building Lease (**Lease**) granted by Homes England to the Developer.
- ii. The Compliance Inspector is required to monitor the development and complete reports in accordance with this scope (**Scope**).
- iii. The Compliance Inspector may subcontract to specialist service providers (relating to **civil and structural engineering, GIS and digital mapping specialists (to undertake detailed review of boundaries against the Approved Plans), fire safety and health and safety**) where the Compliance Inspector does not possess those specialist skills and qualifications as set out in Schedule 1.

The specialist service provider must be identified at the beginning of the instruction and the cost be clearly set out separate to the Compliance Inspector's fee quote.

Reporting

- iv. Homes England requires an Initial report, progress reports throughout the duration of the development and a Final Report.
- v. The Initial Report will be delivered on a date agreed with the Homes England project manager.
- vi. The progress reports are required on a [monthly] basis unless your instruction provides otherwise. The form of the interim progress report is [prescribed by Homes England][attached].
- vii. It is the duty of the Compliance Inspector to request information from Homes England and the Developer as the Compliance Inspector considers necessary in order to prepare the Reports. The Compliance Inspector must notify Homes England if the lack of information is causing difficulties in preparation of the Reports.

- viii. Homes England takes no responsibility for the accuracy of the Compliance Inspector's reports or correspondence.
- ix. The reports will be issued to Homes England in digital (web-based), electronic, or PDF scanned copy or as otherwise directed by Homes England.
- x. Where Homes England has no prescribed form of report, the Compliance Inspector will send a sample or specimen report to Homes England in electronic form in order to agree the final format which is to be used.

1. OVERVIEW

1.1. Definitions

Where words and terms in this Scope have capital letters, those words and terms shall have the meanings attributed to them in the Lease (unless otherwise directed).

1.2. Overview

Under the terms of the Agreement and the Lease, the Developer is required to demonstrate to Homes England that the Development and any Developer's Infrastructure Works are in compliance with the terms of the Lease in every aspect.

The Compliance Inspector will be required to provide a report on the compliance with the Lease at the start of construction ("Initial Report"), throughout the build period ("Progress Reports") and at the end of construction ("Final Report") – in accordance with this Scope.

In particular (but not limited to), the Development [and the Developer's Infrastructure Works], are in compliance with:

- Start on Site;
- House Build Commencement;
- the House Build Targets;
- Construction Related Deadlines; and

- standards relating to design and construction quality and the delivery of the Performance Criteria is of extreme importance.

1.3. **General**

- 1.3.1. The Compliance Inspector is to undertake a series of site inspections on the Land. The Compliance Inspector will be required to monitor, record and report compliance of the physical construction in accordance with the Approved Plans, the Lease, design covenants and Performance Criteria covering both design and construction quality criteria in accordance with the Lease.
- 1.3.2. The Compliance Inspector will also be required to represent Homes England by informing the Developer (or the Nominated Officer) of any non-compliance issues with the terms of the Lease.
- 1.3.3. The Compliance Inspector will need to visit the Land on a monthly basis (or as otherwise agreed with Homes England) to review construction progression and record any changes which may impact on delivery of the construction criteria as demanded by the Lease and in accordance with the Approved Plans, the House Build Targets and Construction Related Deadlines and the Performance Criteria for the completed Development and the Developer's Infrastructure Works.
- 1.3.4. The Compliance Inspector will report compliance with the Performance Criteria both during and on completion of the Development.
- 1.3.5. The Compliance Inspector will issue final [the Compliance Certificates in respect of any non-residential units and]the Final Completion Certificate in accordance with the terms of the Lease
- 1.3.6. The Compliance Inspector will calculate the Overage and the amounts due to Homes England and to the Developer

1.4. **Specific Requirements**

The Compliance Inspector will be required to sign off each Dwelling [and Non-Residential Unit] at slab level (to record services installation locations), wall plate and final completion confirming each building has been built in accordance with the Approved Plans. Off site manufacture and modern method of construction may

require specific consideration and the methodology should be agreed with Homes England at the commencement of the instruction.

2. HEALTH AND SAFETY AND FIRE SAFETY

In addition to reporting on compliance with the Lease the Compliance Inspector will prepare a health and safety section within each report issued to Homes England advising on and noting to the attention of Homes England the following:

- 2.1. **Site Security** - The Compliance Inspector will comment upon the effectiveness of security measures at the Land including fences, hoardings, gates and other measures to limit unauthorised access to the Land and the appropriateness of those measures given the location of the Land within the local community. Proximity to schools, hospitals and other public facilities should be considered as should efforts to minimise any peril or discomfort to the neighbouring community.
- 2.2. **Health & Safety** - The Compliance Inspector will confirm that they have reviewed information necessary to assess the compliance of the CDM Client with the Health & Safety provisions of the Lease. The Compliance Inspector will confirm that in their opinion the CDM Client has taken all necessary steps required to comply with the Health & Safety obligations imposed on them within the Lease, including but not limited to:

To provide assurance that the CDM Client / developer in their capacity as CDM client, are discharging their duties and obligations, and has made suitable arrangements for managing their project, enabling those carrying it out to manage health and safety risks in a proportionate way. This will include but not limited to:

- Confirm the appointment of the principal designer and principal contractor on projects involving more than one contractor.
- Comment on adequacy of arrangements in place for making sure contractors and designers including the principal designer and principal contractor (on projects involving more than one contractor) have the skills, knowledge, experience and organisational capability.
- Comment on adequacy of the arrangements in place to make sure that any principal designer and principal contractor appointed carry out their duties in managing the project e.g. monitoring arrangements progress meetings and site inspections.

- Comment on the adequacy of arrangements in place for providing pre-construction information to every designer and contractor either bidding for the work or already appointed to the project.
- Comment on the adequacy of arrangements in place for allowing sufficient time and resources for each stage of the project.
- Confirm the arrangements in place for ensuring suitable welfare facilities are provided for the duration of the construction work.
- Comment on the adequacy of arrangements in place to maintain and review the management arrangements for the duration of the project.
- Confirm that the principal contractor or contractor (for single contractor projects) has prepared a construction phase plan and comment on its adequacy.
- For notifiable projects (where planned construction work will last longer than 30 working days and involves more than 20 workers at any one time; or where the work exceeds 500 individual worker days), that the project has been notified to the HSE and a copy of the notification is displayed on site.
- The Developer agrees to maintain an accurate record of all health, safety and environmental incidents and provide a report to Homes England's Health & Safety Manager quarterly in the specified in the relevant schedules.

Confirm the arrangement in place for reporting and investigating accidents and incidents and that where applicable, notifiable accidents and incidents reportable under RIDDOR are notified to the Health and Safety Executive, and that such accidents and incidents are reported to Homes England, in accordance with the relevant clause in the Lease.

2.3. Mandatory Requirement: Environmental Monitoring and Assurance - To provide assurance that the CDM Client / developer has made suitable arrangements for managing their project in line with applicable environmental legislation and other compliance obligations, enabling those carrying out the project to manage environmental risks. This will include, but is not limited to:

- Confirm that the CDM Client/Developer has prepared a construction phase environmental management plan and comment on its adequacy.
- Comment on adequacy of arrangements in place for identifying and managing the Project / Development's key environmental risks, e.g. waste and materials management, ecology, pollution prevention and response, noise and nuisance, etc.
- Comment on adequacy of the arrangements in place by the CDM Client / Developer to monitor and manage environmental risks and their mitigation on site.
- Comment on the availability and competence of specialist resources required to support delivery of the Project / Development, e.g. ecologists, archaeologists, etc.

- Comment on any environmental observations that may adversely affect the delivery of the scheme in relation to funding, programme and reputation.
 - Confirm the arrangements in place for reporting and investigating environmental incidents and statutory nuisance complaints, and are reported to Homes England, in accordance with the relevant clause in the Lease.
- 2.4. **Fire Safety** – The Compliance Inspector will confirm that if a building is higher than 11 metres must have regulatory compliant cladding and comply with building control. Additionally, the Compliance Inspector will confirm that the required fire safety reports have been issued for the Development and send a copy of each report with comments as to the findings to Homes England highlighting any concerns Homes England should have as to the findings or observations in the fire safety reports.

3. INITIAL REPORT

3.1. **Pre-Start Meeting**

Compliance Inspector will:

- a) Hold an initial meeting with Homes England (if required);
- b) Provide Monitoring Reports in accordance with this Scope on a monthly basis on the nearest working date to the monthly anniversary of the date of appointment (or as otherwise agreed with Homes England); and
- c) Agree with Homes England any arrangements required for the completion of this Scope for the Compliance Inspector to access the Land for monitoring / inspection purposes
- d) Be provided with copies of the Approved Plans and Tender Form 5 to be able to ensure compliance with Homes England's adopted design quality assessment which includes Building for a Healthy Life.

3.2. **Start on Site Monitoring Report**

No more than 10 working days following the Start on Site inspection the Compliance Inspector will prepare and circulate a first report covering the Start on Site ("Initial Report") that will confirm:

- a) The Developer has made all applications to the Local Planning Authority to discharge all planning conditions that are required to be discharged prior to the Start on Site;
- b) The date on which Start on Site was achieved (and from which the Construction Related Deadlines will be measured);
- c) That the Developer has satisfied all conditions (imposed on them under the Agreement for Lease / Lease) necessary to permit Start on Site; and
- d) Details of any agreement required with the Developer for the Compliance Inspector to access the site(s) required for the completion of this Scope for the Compliance Inspector to access the Land for monitoring / inspection purposes.

4. Progress Reports

4.1. Monthly Monitoring Reports

No more than 5 working days after each site inspection the Compliance Inspector will prepare and circulate a monthly Monitoring Report on a monthly basis (at a date each month as agreed with Homes England) of this Scope throughout the full duration of the Development. In the Monitoring Report the Compliance Inspector shall:

- a) Provide confirmation as to whether any Dwelling has achieved Golden Brick threshold.
- b) Confirm and record the Actual House Build Commencement Date.
- c) Confirm and record achievement of the Construction Related Deadlines as they occur and monitor the Developer's performance against these deadlines and confirm that they are within the tolerances permitted in the Construction Related Deadlines in the Lease.
- d) Confirm and record the Developer's performance in adhering to the Approved Plans: The Compliance Inspector will be required to review the construction processes (and also the design development/construction drawings) against the

Approved Plans to highlight any non-compliance with the Approved Plans and Performance Criteria.

- e) Confirm and report specifically the Developer's performance in adhering to the key principles of Building for a Healthy Life as proposed by the Developer in Tender Form 5 and incorporated in the Approved Plans.
- f) Confirm and report specifically the Developer's performance in adhering to the Developer's proposals for the use of off-site manufacturing and other advance construction technologies for the Development comprised in the Approved Plans.
- g) Confirm and report the Developer's build-out and sales performance – specifically recording the number of:
 - i. Dwellings and Non-Residential Units (if any) under construction;
 - ii. Dwellings and Non-Residential Units (if any) being actively marketed;
 - iii. Dwellings and Non-Residential Units (if any) completed (having secured NHBC Buildmark Confirmation and CML Certificate (or similar) sign off/a Compliance Certificate (for all tenures or as otherwise agreed with Homes England) and sold;
 - iv. Dwellings and Non-Residential Units (if any) completed (having secured NHBC Buildmark Confirmation and CML Certificate (or similar) sign off/a Compliance Certificate) and remaining unsold at that point; and
 - v. Dwellings which qualify as standing stock pursuant to paragraph [8.6] of Schedule 2 of the Lease.

These figures are to be expressed both as in month figures and cumulative figures over the whole of the Development.

- h) Confirm that no Dwellings or Non-Residential Units (if any) have been physically occupied prior to the freehold transfer of the Dwelling/Non-Residential Unit by Homes England (i.e. verifying that there has been no unauthorised access via lease / license, etc.).

- i) Confirm and report the Developer's progress in terms of making applications to / completing agreements with statutory bodies (i.e. agreements under section 38 Highways Act 1980/ agreements under section S.104 Water Industry Act 1991).
- j) Confirm and report the Developer's adherence to their covenants under the Lease
- k) Record any formal requests made by the Developer for variations to the Approved Plans and making recommendations to Homes England as to whether these are justified requests and whether the changes are appropriate.
- l) Record any formal requests by the Developer for extensions of time pursuant to paragraph [8.1] and/or [8.2] of Scope 2 of the Lease and confirming the validity of the Developer's request and the appropriateness of the length of time extension requested.
- m) Identify any unauthorised deviations from the Approved Plans, Planning Permission and Performance Criteria and / or breaches to the Lease that may have occurred.
- n) In the event of breaches being identified:
 - i. whether the breach is capable of remedy;
 - ii. whether any proposed Remediation Plan is satisfactory / the optimal solution for rectifying the breach.
- o) Confirm and report the Developer's performance in complying with any approved Remediation Plan.
- p) Report any Reduction Event that Homes England has reported to the Compliance Inspector.
- q) any Overage Reductions that are to be imposed.
- r) Confirm and report the Actual House Build Completion Date.

4.2. **Verification of Retained Land**

Clause [10] of the Lease contains provisions regarding the transfer of the Retained Land by Homes England to the Developer.

The Compliance Inspector shall review and confirm the accuracy of the Digital Plan. This will involve the Compliance Inspector reviewing the boundary of the Land and the boundaries of all of the parcels of the Land that have been transferred pursuant to the provisions of the Lease and confirming that the residual parts of the Land correspond to the Digital Plan transfer plan subsequently produced by Homes England.

4.3. **Compliance Certificates**

- a) The Compliance Inspector shall inspect each Non-Residential Unit (if any) within 5 working days of receipt of an instruction from the Developer that the Non-Residential Unit is practically complete.
- b) The Compliance Inspector shall satisfy themselves that:
 - i. the Non-Residential Unit has been erected in accordance with the plans and specifications for the construction of the Non-Residential Unit contained in the Approved Plans; and
 - ii. that practical completion has been achieved as evidenced by the issue of a certificate of practical completion; and
 - iii. that the Highways sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Non-Residential Unit have been completed commissioned and are ready for use by the Non-Residential Unit or occupiers thereof; and
 - iv. In relation to the Non-Residential Unit there is no extant breach by the Developer of the terms of this Lease and/or the Agreement for Lease; and
 - v. That the Non-Residential Unit reaches the Performance Criteria

and within ¹ Working Days of the inspection the Compliance Inspector shall either issue the Compliance Certificate in respect of the Non-Residential Unit or

¹ Cross reference with clause 4.2(b)(ii) of the Lease

otherwise inform the Developer what actions are required by the Developer to secure the issue of the Compliance Certificate.

- c) If the Compliance Inspector cannot issue the Compliance Certificate the procedure set out at sub-paragraphs (a) and (b) above shall be repeated until the Compliance Inspector is satisfied and actually issues the Compliance Certificate
- d) The Compliance Inspector shall provide a copy of the Compliance Certificate to both the Developer and to Homes England

5. Final Report

5.1. Final Completion Certificate

To issue [the Compliance Certificate and²]the Final Completion Certificate in accordance with the terms of the Lease

The Compliance Inspector will prepare a Final Completion Certificate and issue it to Homes England when it is satisfied of all of the following:

- a) An NHBC Warranty Confirmation (including for different tenures e.g. Buildmark Choice for affordable homes) and CML Certificate. Noting that the CML Certificate has been obtained for every Dwelling and a copy has been provided to Homes England
- b) A Compliance Certificate has been issued for every Non-Residential Unit (if any) and a copy has been provided to Homes England
- c) the whole of the Development has been substantially completed to the reasonable satisfaction of the Compliance Inspector in accordance with the Approved Plans and the Performance Criteria (having due regard to planting seasons and other matters beyond the Developer's reasonable control)
- d) all Adoptable Highways and Adoptable Common Services have been adopted or the Developer has entered into all necessary s.38 Agreements and/or s.104 Agreements to procure adoption where this has not been achieved the Compliance

² Only where the scheme includes Non-Residential Units

Inspector will note the status of the works and conditions to Homes England for Homes England's consideration before issuing the certificate;

- e) any Common Areas have been transferred in accordance with the provisions of Clause [8] of the Lease;
- f) the Developer has completed a transfer to it of the Remainder Land (or parts of it) as required by a notice served pursuant to Clause [10.4] of the Lease or it has been deemed pursuant to Clause [10.5] of the Lease that Homes England does not require the Developer to take a transfer of the Remainder Land or any part or parts of it prior to the issue of the Final Completion Certificate;
- g) compliance by the Developer with the other terms of the Lease

5.2. **Overage Calculation**

On receipt by the Compliance Inspector of the CML Certificates for the final 2 Dwellings to achieve such certification, the Compliance Inspector shall within 3 working days:

- a) Calculate and issue details to Homes England / the Developer of the Overage (if any) that is payable to Homes England and any that is due to the Developer.
This will involve the Compliance Inspector:
 - i. Determining the sum of money that is subject to overage sharing
 - ii. Identifying the share of overage that is due to each party according to the Actual House Build Construction Period versus the Target House Build Construction Period
 - iii. Accounting for any Overage Reductions to be netted from the Developer's share of the overage
 - iv. Calculating the Overage SDLT
 - v. Confirming the final payment to be made by the Developer to Homes England

IMPORTANT NOTICE:

Time and Resource Allocation

The Compliance Inspector will be required to provide a maximum of two person day input every [month][two weeks] (one day visiting the Land and one day writing reports) dependent on the extent of the construction activities on the Land. The Compliance Inspector will be required to devise a suitable programme of site visits and follow up report writing to suit the required inspection regime which is required to meet their responsibilities in this Scope on the understanding that the programme will need to be established in consultation with the Developer and Homes England and following a greater understanding of the Development as it progresses.

Schedule 1

Health & Safety Competence for Compliance Inspectors undertaking H&S Checks

Competencies – Experience and Qualifications
<p>Professionally qualified safety practitioner Chartered Member (CMIOSH); or Graduate member of IOSH (Grad IOSH) or Technician Member (Tech IOSH) working under the supervision / direction of Chartered Member (CMIOSH).</p> <p>Experience of working in a construction related field of work or in a construction related discipline with extensive experience and knowledge of the Construction Design and Management (CDM) Regulations.</p> <p>Desirable qualifications / training including NEBOSH Construction Cert, APS, SMSTS, SSSTS; Construction Managers. Demonstratable CPD.</p>

Notes

1. IOSH – Institution of Occupational Safety & Health.
2. SMSTS - Site Management Safety Training Scheme Certificate of training (37.5hrs)
3. SSSTS – Two-day CITB Site Safety Plus Accredited Site Supervisor Safety Training Scheme for the construction site supervisor
4. Construction Manager- Experienced in planning, managing and co-ordinating construction workers and construction works on site.
5. Demonstrable CPD – Having demonstrated a continuous 12 months of CPD in construction site layout, works planning and construction site safety principles.