

Schedule 1

Affordable Housing

[full planning permission version¹]

1. Definitions²

1.1 Unless the context otherwise requires, the following terms have the following meanings:

“Affordable Housing” means housing for sale or rent within the Council’s administrative area for those whose needs are not met by the market and which complies with the definition of Affordable Housing in Annex 2 of the National Planning Policy Framework³ as the same may be updated from time to time;

[“Affordable Housing Contribution” means a financial sum to be paid by the Owner to the Council in lieu of the provision of any or all of the Affordable Housing Units, such sum to be used by the Council for the provision or improvement of Affordable Housing within the Council’s administrative area and

[which shall be £[X] [Index Linked]]

[such sum to be calculated in accordance with the Council’s policy document entitled []]

[such sum to be equal to the difference between (A) the Market Value of the relevant Dwellings and (B) the value at which those units would reasonably have been disposed of to an Affordable Housing Provider as an Affordable Housing Unit (in accordance with the Affordable Housing Mix), each assessed at the time the payment is due]

[such sum to be equal to x% of the Market Value of the relevant [insert relevant tenure definition] Units and y% of the Market Value of the [insert relevant tenure definition] Units⁴;

¹ This template is suitable for full planning permissions. There is a separate template for use with outline planning permissions.

² While example definitions of common affordable housing tenures are set out in this template, local authorities may have specific tenure definitions and requirements for each of the tenures required, as well as affordability and eligibility requirements set out in local policy and based on local need. Model clauses for First Homes are available at the following link and are not replicated in this template: [First Homes: Model Section 106 Agreement \(for developer contributions\) - GOV.UK](#).

³ This will be updated to “Annex B” or as necessary when the new NPPF is published.

⁴ Local planning authorities generally have their own approaches to calculating financial contributions towards affordable housing. The definition provides some common options. Where the Council has an adopted policy, it is recommended that this methodology is adopted.

“Affordable Housing Mix”	means the mix of tenures and sizes (by reference to the number of bedrooms) of the Affordable Housing and the numbers of [Affordable Housing Units] / [habitable rooms to be provided as Affordable Housing] as set out in Annex 1 to this Schedule or such amended mix as may be agreed in writing by the Council whether by approval of an Alternative Affordable Housing Mix or otherwise ⁵ ;
“Affordable Housing Plan[s]”⁶	means the plan attached to this Deed at Annex 2 showing the locations of the Affordable Housing Units ⁷ ;
“Affordable Housing Provider”	means: (a) an organisation which provides Affordable Housing and is registered in accordance with the Housing and Regeneration Act 2008 (which shall include the Council if so registered); or (b) a body proposing to provide Affordable Housing under equivalent arrangements which is approved or accredited by Homes England or an equivalent successor body whose terms of approval or accreditation have been evidenced to the satisfaction of the Council in writing; or (c) any other provider approved in writing by the Council⁸;
“Affordable Housing Units”	means the Dwellings which are to be provided as Affordable Housing in accordance with this Schedule;
“Affordable Rented Unit”	means an Affordable Housing Unit provided by an Affordable Housing Provider that meets the conditions for ‘other affordable housing for rent’ set out in paragraph b of Annex 2 ⁹ of the NPPF ¹⁰ and rented to eligible households;

⁵ This form of this definition allows for amendments to be made to the mix without requiring a deed of variation.

⁶ This definition is appropriate if it is agreed that specific units should be identified in the agreement; the plan should show the location and details (tenure and size) of the Affordable Housing Units within the Development. However, a plan is not always necessary to show the locations of the units, and it may be satisfactory to simply describe the locations in words in the Affordable Housing Mix without the need for a plan, for example by identifying which blocks or buildings the units are to be located within.

⁷ Imposing requirements in relation to matters such as design details and requirements to provide specified numbers of affordable housing units as wheelchair accessible or adaptable units should be dealt with by planning conditions.

⁸ Some Councils have an approved list of affordable housing providers; if this is the case, this definition should simply list those providers.

⁹ This will be updated to “Annex B” or as necessary when the new NPPF is published.

¹⁰ As explained in footnote 2, local planning authorities may have their own bespoke definition of Affordable Rented Units.

“Allocations Policy”	means the Council’s policy for allocating tenants to the Affordable Housing Units (applicable at the relevant time);
“Alternative Affordable Housing Mix”	means a scheme setting out the mix of tenures and sizes (by reference to the number of bedrooms) of the Affordable Housing and the numbers of [Affordable Housing Units] / [habitable rooms to be provided as Affordable Housing] indicating (where relevant) if any of the Affordable Housing Units have been transferred or are subject to an unconditional contract for their transfer to an Affordable Housing Provider, such scheme to be submitted to the Council for approval pursuant to the provisions of this Schedule;
“Dwelling”	means any residential dwelling (including a house, flat or bungalow) permitted by the Planning Permission ¹¹ ;
“Market Housing Unit”	means a Dwelling which is not an Affordable Housing Unit ¹² ;
“Nominations Agreement”	means an agreement entered into by an Affordable Housing Provider with the Council which permits the Council to nominate prospective tenants or lessees for the Affordable Housing Units ¹³ ,
[“Market Value”¹⁴	means the estimated amount for which the relevant Dwelling could exchange on the valuation date assuming: (a) a willing buyer and a willing seller; (b) an arm’s length transaction; (c) that the Dwelling is disposed of free of the Affordable Housing obligations and restrictions in this Schedule; (d) proper marketing and the parties having acted knowledgeably, prudently and without compulsion;]
“Practically Complete”	means the issue of a certificate of practical completion by the Developer’s architect, engineer or other certifying officer as the case may be under the relevant building contract entered into in

¹¹ “Planning Permission”, “Planning Application”, and “Development” are defined in the boilerplate templates and the same definitions are intended to apply for this Affordable Housing Schedule template.

¹² This template does not deal with types of residential development other than private market housing such as build to rent (which often require discount market rent as the affordable product).

¹³ The Council’s model agreement or draft form of nomination agreement may be attached but this is not a requirement.

¹⁴ Definition to be included if required for the definition of Affordable Housing Contribution.

respect of the Development [or particular Phase¹⁵] or part thereof;

["Residential Phase"]

means a Phase which includes Dwellings;

"Shared Ownership Unit"

means an Affordable Housing Unit provided by an Affordable Housing Provider to eligible households pursuant to shared ownership arrangements within the meaning of Section 70(4) of the Housing and Regeneration Act 2008, where a proportion of the equity is sold on a long lease to the purchaser and the remainder of the equity is retained by the Affordable Housing Provider subject to rent being charged on the retained equity, on terms that entitle the purchaser to acquire up to [] %¹⁶ of the equity in the relevant unit;

"Social Rented Unit"

means the Affordable Housing Units provided by an Affordable Housing Provider as social rented housing to eligible households and which conform with guideline target rents determined through, and subject to the controls specified in, the national rent regime;

2. Owner's covenants

- 2.1 The Owner shall provide the Affordable Housing Units in accordance with the Affordable Housing Mix [in the locations shown on the Affordable Housing Plan].
- 2.2 Unless otherwise agreed in writing with the Council, the Owner shall not Occupy or permit the Occupation of more than [[x] percent] of the Market Housing Units] / [number] Market Housing Units]¹⁷ [within a Residential Phase] until:
- (a) [[x] percent] of the Affordable Housing Units] / [[number] Affordable Housing Units] [in the Residential Phase] are Practically Complete; and
 - (b) those Affordable Housing Units have been transferred in accordance with paragraph 2.3 to an Affordable Housing Provider by way of a transfer of the freehold or grant of a lease or an unconditional contract for such transfer has been entered into.
- 2.3 Any transfer of the Affordable Housing Units to an Affordable Housing Provider shall be:

¹⁵ "Phase" and "Phasing Plan" are defined in the boilerplate templates and the same definitions are intended to apply for this Affordable Housing Schedule template.

¹⁶ In most circumstances this number will be 100% but there are some circumstances in which this number may be less than 100%, such as for schemes located in Designated Protected Areas. Please see relevant Homes England guidance in this regard.

¹⁷ It may be appropriate to have two delivery deadlines for the development so that a certain percentage of the affordable housing units is to be provided prior to occupation of a certain percentage or number of the market housing units, with the remainder to be provided prior to occupation of a further percentage or number of the market housing units. In this case, paragraph 2.2(a) and (b) should be replicated and completed with the second set of percentages or number of units. For development of this scale setting out precise numbers of units may be preferable to specifying a percentage to avoid ambiguity.

- (a) with full title guarantee and with vacant possession;
 - (b) free of all financial charges and of any restrictive covenants or other third-party rights which would prevent the use of the Affordable Housing Units for the purpose for which they are transferred; and
 - (c) with the benefit of all necessary easements, rights and utilities.
- 2.4 The Owner shall not Occupy or permit the Occupation of [a Social Rented Unit¹⁸] [and / or] [an Affordable Rented Unit] [until a Nominations Agreement relating to the unit has been entered into and the Owner shall not permit the granting of a tenancy, letting or any other disposal in respect of the unit otherwise than in accordance with the terms of a Nominations Agreement] / [by a tenant otherwise than in accordance with the Allocations Policy].
- 2.5 Subject to paragraph 4.2 of this Schedule 1, the Owner shall not Occupy or permit the Occupation of:
 - (a) the Affordable Housing Units for any purpose other than as Affordable Housing;
 - [(b) the Social Rented Units for any purpose other than as Social Rented Units;]
 - [(c) the Affordable Rented Units for any purpose other than as Affordable Rented Units;]
 - [(d) the Shared Ownership Units for any purpose other than as Shared Ownership Units.]
- 3. [Cascade¹⁹]**
- 3.1 The Owner shall use reasonable endeavours for a period of no less than six (6) months to enter into an unconditional legally binding contract with an Affordable Housing Provider for the transfer of the Affordable Housing Units on reasonable commercial terms. For the avoidance of doubt this may include offering the Affordable Housing Units to the Council in its capacity as an Affordable Housing Provider.
- 3.2 If the Owner has been unable to enter into an unconditional contract with an Affordable Housing Provider for the transfer of one or more of the Affordable Housing Units by the date of expiry of the six (6) month period referred to in paragraph 3.1 above, the Owner may:
 - (a) notify the Council in writing of the expiry of the six (6) month period;
 - (b) set out in writing the reason why the Owner has been unable to enter into an unconditional contract for the relevant Affordable Housing Units, supported by details of the steps taken and responses received and appropriate documentary evidence to demonstrate the Owner has used reasonable endeavours in accordance with paragraph 3.1 above; and

¹⁸ Social Rented Units will generally always be subject to a nominations agreement. Other intermediate rented tenures are also sometimes subject to nominations agreements and this paragraph can be adapted accordingly to capture all appropriate tenure to be subject to a nominations agreement.

¹⁹ Paragraph 3 sets out a cascade mechanism to allow for circumstances where it has not been possible to dispose of the Affordable Housing to an Affordable Housing Provider. It sets out a process to agree an amended Affordable Housing Mix with the Council if the mix is the reason that it has not been possible to find an Affordable Housing Provider to buy the relevant units, and ultimately to allow for a financial contribution to be paid if it is still not possible to find a buyer. Inclusion of the cascade mechanism is not mandatory, but it can be used where appropriate to local circumstances.

- (c) if the reason an unconditional contract has not been entered into is identified as being the Affordable Housing Mix, submit an Alternative Affordable Housing Mix to the Council for approval.
- 3.3 If following consideration of the information provided under paragraph 3.2, the Council is not satisfied that the Owner has used reasonable endeavours in accordance with paragraph 3.1:
 - (a) the Council shall notify the Owner and provide reasons for its decision in writing; and
 - (b) the Council may require the Owner in writing to use reasonable endeavours to enter into an unconditional legally binding contract for the transfer of the relevant Affordable Housing Units for a further period of time having regard to the reasons provided by the Council for its decision, PROVIDED THAT the Council shall not require this period to exceed three (3) months.
- 3.4 If the Owner uses reasonable endeavours for a further period pursuant to paragraph 3.3 but is still unable to enter into an unconditional contract with an Affordable Housing Provider to transfer the relevant Affordable Housing Units, paragraph 3.2 shall apply with any necessary changes. If following consideration of the information provided, the Council is still not satisfied that the Owner has used reasonable endeavours to enter into an unconditional contract for the transfer of the Affordable Housing Units the matter shall be referred to an expert pursuant to clause 26 (Dispute Resolution).
- 3.5 If the Council confirms in writing that an Alternative Affordable Housing Mix submitted to it is not approved, the Owner may submit an amended mix to the Council for approval. If that amended mix is not approved by the Council the matter shall be referred to an expert pursuant to clause 26 (Dispute Resolution).
- 3.6 If the matters in paragraphs 3.4 and/or 3.5 above are referred to an expert pursuant to clause 26 (Dispute Resolution), such referral shall require that if the expert determines that:
 - (a) the Owner has not used reasonable endeavours in accordance with paragraph 3.4, the expert shall provide directions to the Owner of the steps necessary to satisfactorily demonstrate use of such reasonable endeavours; and/or (as applicable);
 - (b) the Alternative Affordable Housing Mix should not be approved, the expert shall provide directions to the Owner setting out the amendments required to the submitted Alternative Affordable Housing Mix to make it acceptable.
- 3.7 If the Owner is directed pursuant to:
 - (a) paragraph 3.6(a) above, the Owner may take the steps prescribed by the expert and submit documentary evidence of compliance with the directions supported by details of the steps taken for approval to the Council; and/or (as applicable)
 - (b) paragraph 3.6(b) above, the Owner may submit the amended Alternative Affordable Housing Mix to the Council in accordance with the directions of the expert.
- 3.8 If the Council is satisfied that the directions from the expert have been complied with by the Owner in accordance with paragraph 3.7(a) above, it shall confirm in writing that the Owner has used reasonable endeavours to enter into an unconditional contract with an Affordable Housing Provider for the transfer of the relevant Affordable Housing Units. If the Council is not satisfied that the directions have been complied with the matter may be referred to the expert again as necessary pursuant to Clause 26.
- 3.9 If the Owner submits an amended Alternative Affordable Housing Mix to the Council pursuant to paragraph 3.7(b) above which accords with the directions of the expert the Council shall promptly

and in writing approve the Alternative Affordable Housing Mix. If the Council does not approve the Alternative Affordable Housing Mix the matter may be referred to the expert again as necessary pursuant to Clause 26.

3.10 If an Alternative Affordable Housing Mix is submitted and the Council or an expert (as applicable, in each case) notifies the Owner in writing that:

- (a) it is satisfied that the Owner has used reasonable endeavours to enter into an unconditional contract with an Affordable Housing Provider for the transfer of the relevant Affordable Housing Units but has been unable to do so; and
- (b) an Alternative Affordable Housing Mix is approved,

the Owner shall use reasonable endeavours for a period of three (3) months to enter an unconditional legally binding contract for the transfer of the Affordable Housing Units on reasonable commercial terms and in accordance with the provisions of this Schedule and the approved Alternative Affordable Housing Mix.

3.11 If:

- (a) the Council or an expert (as applicable, in each case) notifies the Owner in writing that it is satisfied that the Owner has used reasonable endeavours to enter into an unconditional contract with an Affordable Housing Provider for the transfer of the relevant Affordable Housing Units but has been unable to do so, and the reason an unconditional contract has not been entered into is not identified as being the Affordable Housing Mix; or
- (b) the Owner has been unable to enter into an unconditional contract with an Affordable Housing Provider for the transfer of the relevant Affordable Housing Units by the date of expiry of the three (3) month period undertaken pursuant to paragraph 3.10 with the approved Alternative Affordable Housing Mix,

the Owner may elect in writing to pay the Affordable Housing Contribution in lieu of the provision of the relevant Affordable Housing Units [and shall submit confirmation of the proposed quantum of the Affordable Housing Contribution to the Council for agreement]²⁰.

3.12 If the Owner elects to pay the Affordable Housing Contribution pursuant to paragraph 2.16 payment of such contribution shall constitute compliance with the requirements of paragraph 2 to the extent of the [number/percentage] of Affordable Housing Units which the Affordable Housing Contribution is paid in lieu of.

3.13 If the agreed Affordable Housing Contribution is to be paid in lieu of provision within the Development of all the Affordable Housing Units, the contribution shall be paid in accordance with the deadlines and restrictions set out in paragraph 2.2. If the agreed Affordable Housing Contribution is to be paid in lieu of some but not all of the Affordable Housing Units, the Affordable Housing Units that are to be provided on Site within the Development and the Affordable Housing Contribution shall be provided and (as applicable) paid in a manner and at the times required so as to comply with those same deadlines and restrictions in paragraph 2.2.

3.14 Upon receipt by the Council of the Affordable Housing Contribution in respect of the relevant Affordable Housing Units, the provisions of this paragraph 2 shall no longer apply to those Dwellings and the Owner shall be entitled to dispose of the same on the open market as Market Housing Units free of the obligations and restrictions in this Schedule.]

²⁰ This wording in square brackets will not be required where the sum of the Affordable Housing Contribution has already been calculated and is set as a fixed amount.

4. Enforceability²¹

- 4.1 None of the provisions contained at paragraph 2 [or 3] of this Schedule shall be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a “Receiver”)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principle monies, interest, costs and expenses; and
 - (b) if such disposal has not been completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions contained at paragraph 2 of this Schedule which provisions shall determine absolutely in relation to those Affordable Housing Units only.
- 4.2 The provisions contained in paragraph 2 [or 3] of this Schedule shall not bind nor be enforceable against the following:
- (a) any owner or tenant of an Affordable Housing Unit who has exercised a statutory or equivalent right to acquire or right to buy or preserved right to buy;
 - (b) any part or parts of the Affordable Housing Units disposed of in accordance with paragraph [4.1 / 4.1];
 - (c) [any Shared Ownership Unit²² where the tenant has acquired all the equity in the relevant Shared Ownership Unit]²³; or
 - (d) any successors in title to or any persons deriving title through any of the persons referred to in sub-paragraphs (a)-(c) above.

²¹ This is based on the National Housing Federation Mortgagee in Possession clause. For strategic schemes in London there is also a GLA model Mortgagee in Possession clause.

²² This may also apply to other intermediate products where there is a right to purchase equity in the unit and become the full owner.

²³ This will not apply and can be deleted where purchasing 100% of the equity in a Shared Ownership Unit is not permitted, see footnote 14 above.

Schedule 1: ANNEX 1

Affordable Housing Mix

²⁴ Tenure	Size (by number of bedrooms)	Number
[Social Rented Units]	[1 bedroom Dwelling]	[]
	[2 bedroom Dwelling]	[]
	[3 bedroom Dwelling]	[]
		Total [Social Rented Units]
[Affordable Rented Units]	[1 bedroom Dwelling]	[]
	[2 bedroom Dwelling]	[]
	[3 bedroom Dwelling]	[]
		Total [Affordable Rented Units]
[Shared Ownership Units]	[1 bedroom Dwelling]	[]
	[2 bedroom Dwelling]	[]
	[3 bedroom Dwelling]	[]
		Total [Shared Ownership Units]
		TOTAL [All tenures and sizes]

[Schedule 1: ANNEX 2

Affordable Housing Plan]

²⁴ This table is an example only and should be amended to insert the relevant tenures, sizes and totals of each.