

Schedule 1

Affordable Housing

[outline 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 Framework ³ as the same may be updated from time to time;
“Affordable Housing Provider”	means: (a) an organisation which provides Affordable Housing and is registered in accordance with the provisions of chapter 3 of Part 2 of the Housing and Regeneration Act 2008; 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 Council⁴;
“Affordable Housing Scheme”	means a scheme to be submitted to the Council pursuant to paragraph 2.2 which shall detail the following information in relation to the Affordable Housing Units to be provided [in a Residential Phase]:

¹This template is suitable for outline planning permissions. There is a separate template for use with full 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 Some Councils have an approved list of affordable housing providers; if this is the case, this definition should simply list those providers.

- (a) the number of [Affordable Housing Units to be provided] / [habitable rooms to be provided as Affordable Housing] [in the Residential Phase];
- (b) the size of each of the Affordable Housing Units by reference to the number of bedrooms;
- (c) the tenure of the Affordable Housing Units;
- (d) the location of the Affordable Housing Units (which may include reference to an indicative plan);⁵
- (e) confirmation as to how the Affordable Housing Units will ensure that the Development complies with paragraph 2.1 of this Schedule,

or such other alternative scheme as may be agreed in writing between the Owner and the Council, having regard to local need, available Affordable Housing tenures, government guidance and legislation and planning policy prevailing at the relevant time;

“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 2⁶ of the NPPF⁷ and rented to eligible households;

“Allocations Policy”

means the Council’s policy for allocating tenants to the Affordable Housing Units (applicable at the relevant time);

“Dwelling”

means any residential dwelling (including a house, flat or bungalow) permitted by the Planning Permission⁸;

“Market Housing Unit”

means a Dwelling which is not an Affordable Housing Unit⁹;

⁵ Imposing requirements in relation to matters such as space standards, design, requirements to provide specified numbers of affordable housing units as wheelchair accessible or adaptable units should be dealt with by planning conditions.

⁶ This will be updated to “Annex B” or as necessary when the new NPPF is published.

⁷ As explained in footnote 2, local planning authorities may have their own bespoke definition of Affordable Rented Units.

⁸ “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.

⁹ 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).

"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 ¹⁰ ;
"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 respect of the Development [or particular Phase ¹¹] 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 [] % ¹² 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 Affordable Housing Units shall be provided in accordance with the following parameters [unless otherwise agreed in writing with the Council]¹³:
- (a) a minimum of [x] percent of all Dwellings within the Development shall be provided as Affordable Housing Units;

¹⁰ The Council's model agreement or draft form of nomination agreement may be attached but this is not a requirement.

¹¹ "Phase" and "Phasing Plan" are defined in the boilerplate templates and the same definitions are intended to apply for this Affordable Housing Schedule template.

¹² 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.

¹³ This allows for variations to the parameters by agreement with the LPA without the need for a formal deed of variation.

- (b) [a minimum of [x] percent of the Affordable Housing Units shall be provided as Social Rented Units;]
 - (c) [a minimum of [x] percent of the Affordable Housing Units shall be provided as Affordable Rented Units;]
 - (d) [a minimum of [x] percent of the Affordable Housing Units shall be provided as Shared Ownership Units;]
- 2.2 The Owner shall prior to Commencement of Development [within a Residential Phase] submit an Affordable Housing Scheme [relating to that Residential Phase] to the Council for approval.
- 2.3 The Owner shall not Commence Development [within a Residential Phase] until an Affordable Housing Scheme [relating to the Residential Phase] has been approved in writing by the Council.
- 2.4 The Owner shall provide the Affordable Housing Units [in each Residential Phase] in accordance with the approved Affordable Housing Scheme[s].
- 2.5 Unless otherwise agreed in writing with the Council¹⁴, the Owner shall not Occupy or permit the Occupation of more than [[x] percent of the Market Housing Units] / [[number] Market Housing Units]¹⁵ [within a Residential Phase] until:
 - (a) [[x] percent of the Affordable Housing Units] / [[number] Affordable Housing Units] [in that Residential Phase] are Practically Complete; and
 - (b) those Affordable Housing Units have been transferred in accordance with paragraph 2.6 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 for the units in the relevant Residential Phase.
- 2.6 Any transfer of the Affordable Housing Units to an Affordable Housing Provider shall be:
 - (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.
- 2.7 The Owner shall not Occupy or permit the Occupation of [a Social Rented Unit¹⁶] [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

¹⁴ It may be appropriate to set out a cascade mechanism to allow for circumstances where it has not been possible to dispose of the Affordable Housing to a Registered Provider.

¹⁵ 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 2.5(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.

¹⁶ 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.

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].

- 2.8 Subject to paragraph 3.2 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. Enforceability¹⁷

- 3.1 None of the provisions contained at paragraph 2 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.
- 3.2 The provisions contained in paragraph 2 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 3.1;

¹⁷ 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.

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- (c) [any Shared Ownership Unit¹⁸ where the tenant has acquired all the equity in the relevant Shared Ownership Unit]¹⁹; 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.

¹⁸ This may also apply to other intermediate products where there is a right to purchase equity in the unit and become the full owner.

¹⁹ This will not apply and can be deleted where purchasing 100% of the equity in a Shared Ownership Unit is not permitted, see footnote 12 above.