


DATED 9th January 2022³

- (1) PETER FRANCIS BROMELL AND GRAHAM WILLIAM BROMELL
- (2) TORRIDGE DISTRICT COUNCIL
- (3) DEVON COUNTY COUNCIL

AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990
RELATING TO
LAND OPPOSITE LANGDON ROAD, BRADWORTHY, DEVON

Certified to be a true and accurate copy of the original, which I have seen (and the photograph is a true likeness of the person described)

Signed 
Print name GARETH PINWELL
Status PARTNER
Dated 17/01/23
Ashfords LLP

ashfords

not to Occupy or allow Occupation of any of the Dwellings on the Site unless and until the Off-Site Affordable Housing Contribution has been paid to the Council.

5. Compliance

- 5.1. To serve notice of Commencement of Development on the Council (addressed to the s106 Strategic Enabling Officer or any other officer of the Council as may be notified by the Council from time to time) 5 Working Days prior to the intended date of Commencement of Development
- 5.2. Not to Commence Development prior to serving on the Council notice of Commencement of Development in accordance with paragraph 2.1 above
- 5.3. To provide evidence of compliance with or discharge of (as relevant) the covenants restrictions and obligations in this Deed within 14 Working Days of request by the Council (or such longer period as may be agreed with the Council)
- 5.4. To notify the Council if the freehold interest in the whole/part of the Site is transferred or if a leasehold interest is created before all the obligations under this Deed have been discharged and to provide details of any transferee and lessee and registered address (if a company or usual address if not) within 28 days of the transfer taking place and shall supply details of the area of the Site purchased by reference to a plan PROVIDED THAT this obligation shall not apply to the disposal of individual Dwellings or the disposal of any part(s) of the Site to a statutory undertaker or service company for the purposes of providing Services to/from the Site

PART 2

Affordable Housing

The following definitions shall apply in this Schedule 1:

1. Definitions

- “Advertising”** means the advertising for sale or letting of any interest in the relevant Shared Ownership Housing Unit in accordance with a scheme to be approved by the Council which scheme shall include (unless otherwise agreed with the Council) an advertisement on the website of Help to Buy South or any other similar organisation promoting Intermediate Housing and such other advertising such as through local estate agents and social media channels as shall be agreed in writing by the Council.
- “Affordable Dwellings”** means 11 of the Dwellings to be provided on the Site as Affordable Housing and reference to “Affordable Dwelling” shall mean any one of them.
- “Affordable Housing”** means Social Rented Housing or Intermediate Housing provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future eligible households and as defined in Annex 2 of the NPPF.
- “Affordable Housing Scheme”** means a scheme for the provision of the Affordable Housing of the Development to be submitted by the Owner to the Council which shall include (unless otherwise agreed with the Council):

- a) Arrangements for the provision of the Affordable Dwellings;
- b) Location of the Affordable Dwellings to be shown on a plan with reference to the appropriate plot numbers;
- c) Details of the unit size of the Affordable Dwellings; and
- d) Arrangements for the transfer of the Affordable Dwellings to a Registered Provider

and such other details as reasonably required by the Council.

“County”

means the County of Devon.

“Devon Home Choice”

means the method or body agreed by the Council in accordance with Department for Communities and Local Government guidance: - “Allocation of Accommodation: Choice Based Letting” (August 2008) for the allocation of Affordable Housing in the District.

“District”

means the administrative area of Torridge District Council.

“Help to Buy South”

means the method or body agreed by the Council for the nomination of Shared Ownership Housing available to buy in the District or such successor body or organisation responsible for the nomination of Shared Ownership Housing available to buy in the District.

“Homes England (HE)”

means the agency so named and established under the Housing and Regeneration Act 2008 for the purpose of procuring and regulating the provision of Affordable Housing and any body that replaces it for the purpose of those functions.

“Housing Need”

means a person who does not have available to him and could not afford (personally or jointly with other members of his household) to acquire or rent a home suitable for his needs and the needs of their household at the normal market values prevailing in the District.

“Intermediate Housing”

means the Dwellings to be provided as Intermediate Housing and “Intermediate Housing Units” shall be construed accordingly

“Local Connection”

means a local connection calculated from the Start Date (defined in Part VII of the Housing Act 1996) with the District (or the Qualifying Area as appropriate) as follows:

- being permanently resident therein for six of the last twelve months, or three out of the last five years; or
- in permanent full-time or part-time (minimum 16 hour contract per week) work therein for 6 months. This may include the need to move to the District in connection with permanent employment (minimum 16 hour contract per week) where commuting from the person’s existing home is accepted by the Council as unreasonable. In all cases there should be no break in the period of employment for more than 3 months over the relevant period; or
- have family connections in the District. Reflecting the Local Government Association guidelines this is normally defined as

the applicant, or a member of their household has parents, adult children or brothers or sisters who have been resident in the District for at least the last 5 years; or

- having immediate relatives (i.e. parents, non-dependent children, brother or sister) who have lived therein for at least 5 years and with whom there has been shown to have been frequent contact, commitment or dependency; or
- other categories or relationships may be considered by the Council including foster relationships where clear evidence of frequent contact, commitment dependency is shown
- other special circumstances which create a link to the District (not including residence in a hospital armed forces accommodation holiday let or person or rehabilitation facility) and having been first verified in writing by the Council as having such special circumstances and this may include the need to reside medical support or (with the approval of the Council) some other form of special support.

“Mortgagee”

means 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 Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receive

“Open Market Dwelling”

means a Dwelling which is not an Affordable Dwelling

“Open Market Value”

means the price which 100% of the freehold interest in a Dwelling would fetch if sold on the open market by a willing vendor to a willing purchaser and disregarding the obligations contained in this Deed which price is to be determined in the event of disagreement by a member or fellow of the Royal Institution of Chartered Surveyors at the cost of the Owner.

“Protected Tenant”

means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right (in respect of a particular Affordable Dwelling)
- (b) has exercised any statutory right to buy (or any equivalent contractual right) In respect of a particular Affordable Dwelling
- (c) is a tenant lessee owner or occupier of a Staircased Dwelling

“Qualifying Area”

means the District, or the County as appropriate.

“Registered Provider (RP)”

means a body which is registered with HE as a provider of social housing under Part 2 of the Housing and Regeneration Act 2008 or such other

	class or body as may be constituted under any legislation replacing that provision.
“Sale Notice”	means a notice which contains details of the Affordable Dwellings to be sold in the form set out and completed in accordance with Annex A to this Deed and which is delivered to the Council and clearly marked for the urgent attention of the Council’s Strategic Enabling Officer.
“Shared Ownership Dwelling”	means an Affordable Dwelling sold on the basis of a Shared Ownership Lease and the rent under such lease may be increased by no more than the Consumer Price Index (All Items) plus 0.5% or other such amount as prescribed by Homes England.
“Shared Ownership Housing”	means Affordable Housing where a person can buy a share in the property and the remaining share is held by a provider of Affordable Housing under a lease based on the appropriate form of shared ownership as published by HE.
“Shared Ownership Lease”	means a Shared Ownership lease in the form as published by Homes England as amended to comply with this Deed or as approved by the Proper Officer (District Council)
“Social Rent”	means a rent which does not exceed HE target rents for the area in which the Site is located as specified by the HE or other successor or replacement body which sets rent levels for Affordable Housing.
“Social Rented Dwelling”	means an Affordable Dwelling(s) let at a Social Rent.
“Staircased Dwelling”	means an Affordable Dwelling which is a Shared Ownership Dwelling for which the tenant has purchased one hundred per cent (100%) of the leasehold or freehold equity as the context requires under the terms of the tenant’s Shared Ownership Lease.
“Staircasing and Staircase”	means the exercise by a tenant of a Shared Ownership Dwelling of the right to increase his or her share of the equity in the Affordable Dwelling
“Staircasing Payment”	means a payment made by the tenant under a Shared Ownership Lease to the Landlord for the purchase of an additional share of the equity in the Shared Ownership Dwelling.
“Start Date”	means the date immediately preceding the date on which the Affordable Housing Dwelling is Occupied by a person in Housing Need;
“Subsidy”	means social housing grant or similar provided by the Council and/or HE or such other body as may succeed it.
“Valuer”	a professionally qualified valuer who is a member of the Royal Institution of Chartered Surveyors or equivalent.

2.2.2. Not to Commence Development in any Phase until the Council has approved the Affordable Housing Scheme and Reserved Matters Application in respect thereof and to construct the Housing Units in that Phase as approved.

2.3. Subject to the provisions of this Deed the Affordable Dwellings shall not be used for any purpose other than for the provision of the Affordable Housing as set out in this Deed and the Affordable Housing Scheme.

Construction of the Affordable Dwellings.

2.4. Not to cause or permit first Occupation of more than 25% of the Open Market Dwellings until such time as the construction of 50% of the Affordable Dwellings has been completed and the Affordable Dwellings are ready for Occupation and have been transferred in accordance with the approved Affordable Housing Scheme.

2.5. Not to cause or permit first Occupation of more than 50% of the Open Market Dwellings until such time as the construction of 75% of the Affordable Dwellings have been completed and the Affordable Dwellings are ready for Occupation and have been transferred in accordance with the approved Affordable Housing Scheme.

2.6. Not to cause or permit first Occupation of more than 75% of the Open Market until such time as the construction of 100% of the Affordable Dwellings have been completed and the Affordable Dwellings are ready for Occupation and have been transferred in accordance with the approved Affordable Housing Scheme.

2.7. The Affordable Dwellings shall be constructed in accordance with the agreed Affordable Housing Scheme and using the same materials as the Open Market Dwellings, so as to be indistinguishable from the Open Market Dwellings

2.8. If the Affordable Housing Scheme identifies that the Affordable Dwellings will be transferred to a Registered Provider the transfer of the Affordable Dwellings shall be on the following terms:-

2.8.1. the transfer shall be of the unencumbered freehold of the Affordable Dwellings and their curtilages (save for any encumbrances (not being financial charges existing prior to the date of this Deed) with full title guarantee and vacant possession;

2.8.2. the transfer shall grant all rights and easements (if any) as are required to give pedestrian and vehicular access between the Affordable Dwellings and the public highway and as are required to connect all sewers, drains pipes cables and all other conducting media serving the Affordable Dwellings to the relevant networks.

Marketing, Allocation and Occupation of Affordable Dwellings

2.9. Not to permit allow or cause the Affordable Dwellings to be Occupied by a person unless that person:

(a) is a person in Housing Need who has a Local Connection at the time of his first Occupation of the Affordable Dwelling; or

(b) is a member of the household of and living with a person in Housing Need at the time of his first Occupation of the Affordable Dwelling; and

(in either case) occupies the Affordable Dwelling as his or her sole or main residence.

2.10. No person shall let any housing for Social Rented Dwellings for a rent which exceeds the Social Rent.

Shared Ownership Housing

2.11. Where an Affordable Dwelling is shown within the approved Affordable Housing Scheme as intended to be disposed of as a Shared Ownership Dwelling:

- 2.11.1. the Shared Ownership Dwelling shall only be disposed of by way of a Shared Ownership Lease;
- 2.11.2. the minimum initial share of the equity in the Shared Ownership Dwelling that a purchaser may purchase shall be restricted to 25-75% of the equity as per the Shared Ownership Lease or such lower initial share as may be permitted under guidance issued by HE;
- 2.11.3. the rent payable shall not exceed two decimal point seven five per cent (2.75%) of the Open market value of the equity retained by the landlord.

Marketing Social Rented Housing

- 2.12. If within a period of 2 (two) weeks for initial lettings and 1 (one) weeks for subsequent lettings from the date that the Affordable Dwelling becomes available for Occupation no prospective occupier in Housing Need and with a Local Connection to the District wishes to Occupy the Affordable Dwelling then Occupation is permitted by a person in Housing Need and with a Local Connection as applied to the County

PROVIDED THAT throughout the periods specified in this paragraph the Affordable Dwelling shall have been continuously marketed within the District and County and the Affordable Dwelling will be allocated in terms of priority to the District first and the County second .

Marketing - Intermediate Housing

- 2.13. If within a period of 12 (twelve) weeks for initial sales and 12 (twelve) weeks for subsequent sales from the date that the Affordable Dwelling becomes available for Occupation no prospective occupier in Housing Need and with a Local Connection to the District wishes to Occupy or purchase the Affordable Dwelling then Occupation or purchase is permitted by a person in Housing Need and with a Local Connection as applied to the Adjoining Districts.
- 2.14. If after a period of 4 (four) weeks from the end of the period referred to in paragraph 6 above no prospective purchaser with a Local Connection to the Adjoining Districts (as applicable) has come forward then a prospective purchaser in Housing Need with a Local Connection to the County may be considered PROVIDED THAT priority will be given to those in Housing Need with a Local Connection to the District.

PROVIDED THAT throughout the periods specified in this paragraph the Affordable Dwelling shall have been continuously marketed within the District and County and the Affordable Dwelling will be allocated in terms of priority to the District first and the County second.

- 2.15. Not to Occupy or permit the Occupation of the Affordable Dwelling before written material has been delivered to the Council's Strategic Enabling Officer evidencing the compliance of such Occupation of the Affordable Dwelling with such of the eligibility requirements as set out in this Schedule 1 as may be applicable.
- 2.16. Where the owner of the Affordable Dwelling is a Registered Provider the Affordable Dwelling may also be Occupied in accordance with any nomination and management scheme in effect between the Council and that Registered Provider.
- 2.17. Any transfer for the sale or lease of the Affordable Dwellings should include such covenants and restrictions so as to ensure the future compliance with the planning obligations in this Schedule 1 subject to the exclusions contained in this Schedule and subject also to any subsequent amendment or variation to this Agreement as agreed with the Council to ensure that the Affordable Housing remains as such in perpetuity.

Mortgagee Exclusion

2.18. Notwithstanding the other provisions of this Deed, the covenants, restrictions and obligations contained in this Schedule 1 shall not be binding on a Mortgagee or any purchaser from or successor in title to such Mortgagee or any other Mortgagee of any Affordable Dwelling(s) or part thereof or any purchaser from or successor in title to such Mortgagee PROVIDED THAT:

2.18.1. the Mortgagee shall prior to seeking to dispose of the Affordable Dwellings (or any part thereof) pursuant to any default under terms of the relevant security documentation first give written notice to the Council of its intention to dispose of the Affordable Dwellings (or any part thereof) and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Dwellings (or any part thereof) to another Registered 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 principal monies, interest and costs and expenses; and

2.18.2. if such disposal has not completed with the 3 (three) month period, the Mortgagee shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely.