
Schedule 4

Affordable Housing

Definitions

1. In this Schedule unless the context otherwise requires the following expressions shall have the following meanings:-

“Affordable House” means each individual dwelling comprising the Affordable Housing.

“Affordable Housing” means the 7 (Seven) Affordable Houses comprising 22% of the total number of dwelling rounded to the nearest whole number to be built pursuant to the Application and Planning Permission for persons who cannot afford to buy or rent houses generally available on the open market and being: -

- (a) a dwelling for rent at a rent which does not exceed the Affordable Rent;
- (b) a dwelling for sale at a price not exceeding the Restricted Price; or
- (c) a dwelling to be let to a purchaser as a shared Ownership House where the price paid for the equity acquired by the purchaser (either in a single purchase or a series of purchases) does not exceed the Restricted Price.

“Affordable Housing Contribution” means for each Affordable House, the Unrestricted Value less a sum equivalent to the amount that might have been paid by the RSL purchasing subject to the restrictions contained in this Agreement such commuted sum being determined by the Proper Officer, in the absence of agreement between the Council and the Owner by the District Valuer at the Council's expense.

“Affordable Housing Policy” means that contained in Policy HSC2 of the Torridge District Local Plan 1997 – 2011 the Supplementary Planning Guidance

		(Consultation Draft February 2003) and elsewhere to require affordable housing within residential developments where there is evidence of a community need for such housing and to control its future Occupancy.
"Affordable Housing Scheme"	Housing	means the Affordable Housing specified in Clause 2.2 of this schedule.
"Affordable Housing Plan"	Housing	means the Plan appended to this Agreement as Appendix 5 to this Agreement showing the location of the Affordable Housing.
"Affordable Rent"		means a rent which does not exceed twenty five percent of the weekly average household income within the area of Torridge District Council ("Torridge").
"Average annual household income"	annual	means the average annual household income for families within Torridge to be notified in writing by the Proper Officer when requested to do so by the Owner.
"Housing Need"		means a person who does not have available to him or her and could not afford (personally or jointly with other members of his or her household) to acquire or rent a home suitable for his or her needs and the needs of their household at the normal market values prevailing in the district.
"Local Requirement"		means: - <ul style="list-style-type: none">(a) a minimum continuous residence by a prospective owner or occupier of five years in the Parish immediately prior to the Offer Date; or(b) residence by a prospective owner or occupier in the Parish for five years within the ten years preceding the Offer Date; or(c) where one or both parents or guardians of a prospective owner or occupier have resided in the Parish for a minimum period of ten years prior to the Offer Date; or(d) where a prospective owner or occupier has had

continuous employment in the Parish for the past five years prior to the Offer Date; or

- (e) a key worker under a scheme approved by the Council; or

and a person to whom a Mortgagee sells an Affordable House under paragraph 11 of this Schedule, shall be deemed to have a Local Requirement.

“Offer Date”

means the date on which the Owner first makes an offer to sell one or more of the Affordable Houses to an RSL or RSLs (as the case may be) or the date on which the Owner or Developer (as the case may be) offers to sell or grant a tenancy of an Affordable House to a tenant or purchaser, as the context requires.

“Parish”

means the parish of Shebbear and for the purpose of clause 6 below any immediately adjoining parish including an immediately adjoining parish in another district.

“Proper Officer”

means The Council’s Head of Community Planning and Development Services or in his/her absence such person who is properly designated to undertake his/her duties.

“Released Dwellings”

means -

1. After the Owner has also satisfied the obligations in paragraphs 2.4 and 2.5, the remainder of the Unrestricted Dwellings contained on a list provided to the Council being those Unrestricted Dwelling that the Owner intends to occupy prior to the satisfaction of the obligations set out in this Agreement.
2. After the Owner has also satisfied the requirement referred to in paragraph 2.6 all the Unrestricted Dwellings
3. All the affordable houses in respect of which the Owner has paid the Affordable Housing Contribution if required

to under paragraph 8; and

4. Any Affordable House sold by the mortgagee of an RSL's interest in that Affordable House or by a receiver appointed by such a mortgagee under paragraph 11.3.1.

"Rented Houses"	means Affordable Housing comprising houses to be let at an Affordable Rent
"Restricted Price"	means the price calculated in accordance with Clause 7 of this schedule
"RSL"	means a Housing Association or similar organisation registered with the Housing Corporation (or successory Body) and approved by the Council (such approval not to be unreasonably withheld or delayed)
"RSL Price"	means the price at which the Owner shall transfer the Affordable Housing to the RSL, calculated in accordance with paragraph 3 of this schedule
"Shared Ownership Houses"	means Affordable Houses comprising dwellings let to purchasers on the basis that the purchaser acquires a percentage share of the equity and pays a rent to the retained equity owner in proportion to its share of the equity under a lease which has been approved by the Housing Corporation or the Proper Officer (such approval not to be unreasonably withheld or delayed)
"Staircasing Payment"	means any monies received by the Owner following the sale or lease of an Affordable Dwelling as a result of a tenant exercising a right to increase his share of the equity or acquisition of the freehold (and any part of such monies).
"Stand Alone Construction Cost"	means the cost which an RSL would incur to build the Affordable Houses if it let a separate contract to an independent contractor to be ascertained by seeking tenders from three suitable building contractors active in the area.

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- “Torridge”** means the Administrative District of Torridge
- “Unrestricted Dwelling”** means those dwellings to be constructed on the Land other than the Affordable Houses (save to the extent provided in clause 8.1 hereof).
- “Unrestricted Value”** means the value that any Affordable House would have if it was not subject to this Agreement or any other restriction on the price at which it could be sold or the person who would occupy it.
- “Weekly Average Household Income”** means the weekly average household income within Torridge District as notified in writing from time to time by the Proper Officer.

The Planning Obligations

2. Provision of Affordable Housing

- 2.1 The Owner shall use all reasonable endeavours to enter into a contract for the sale of the Affordable Housing to a nominated RSL at the RSL Price and upon the price for the Affordable Housing being agreed or determined in accordance with paragraph 5 of this Schedule and upon the RSL having indicated in writing to the Owner its willingness to purchase the Affordable Housing at such a price within two months of such indication the Owner shall (save in the event of default on the part of the RSL) contract to sell the Affordable Housing with full title guarantee on the Standard Conditions of Sale 4th Edition to the RSL.
- 2.2 The sale shall be free from encumbrances or other obligations except for (i) that contained or referred to in the title documents relating to the Land so far as these affect the Affordable Housing and (ii) such encumbrances and obligations as the Owner has also imposed on the Unrestricted Dwellings for the proper control and management of the Development and with the benefit of full unrestricted rights of access over the road to be built to a standard required for adoption by the Highway Authority from the Affordable Houses to an adopted highway (and vice versa) and full unrestricted rights for all services in conducting media and drains

or sewers to be laid or built to a standard capable of adoption by the respective public utility companies.

- 2.3 The owner shall provide the following dwellings as Affordable Houses for rent and shared ownership :-

Plot Number	Type	Accommodation	Tenure
26	FX21B	1 Bed Flat	Rented
27	FX22B	2 Bed Flat	Rented
28	L	3 Bed House	Rented
29	G	2 Bed House	Rented
30	FX22B	2 Bed Flat	Shared Ownership
31	FX21B	1 Bed Flat	Shared Ownership
32	CH4	2 Bed Coach House	Shared Ownership

- 2.4 A contract for sale to an RSL may provide either for the sale of completed housing or for the sale of land and the construction of houses under a contemporaneous building contract between the Owner and the RSL
- 2.5 If an RSL is unable to purchase Affordable Houses within a period of 26 weeks or such longer period as shall be agreed with or directed by the Council, (agreement for such an extension of time not to be unreasonably withheld or delayed through lack of funding) and the construction of the Affordable Dwellings has not commenced then the Council may require the Owner to dispose of plots of land to the RSL for the consideration of £1 instead of the same number of Affordable Houses so long as the Owner also makes a payment in respect of the construction of the houses to the RSL such payment to be equivalent to the amount (if any) by which the Stand Alone Construction Cost exceeds the RSL Price or as otherwise agreed between the Owner and the RSL
- 2.6 Prior to the occupation of the twelfth Unrestricted Dwelling the owner shall make available all Affordable Houses ready for occupation to the satisfaction of the RSL in accordance with paragraph 2.2 of this Schedule.
- 2.7 The Owner shall not occupy or permit the occupation of the twelfth Unrestricted Dwelling until it has satisfied the requirements of paragraph 2.7 above.

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- 2.8 If within 10 months from the Commencement of the Development the Owner has not exchanged contracts to sell the Affordable Dwellings to an RSL the Owner may give written notice to the Council that it intends to provide the Affordable Dwellings for Rent by a private landlord or for sale ("Owners Notice") and on the giving of such a notice paragraphs 4 and (as appropriate) 5 of this Schedule shall apply.
- 2.9 The Affordable Housing shall be constructed and completed to a minimum standard as that defined as Code 3 by a Code for Sustainable Homes published by the Housing Corporation or any such comparative document applicable at the time of the Commencement of Development.

3. The RSL Price

- 3.1 The RSL Price for each Affordable House shall be the price which represents the maximum loan which the RSL could support on the most preferential terms available to it to purchase that Affordable House for letting on a Shared Ownership scheme or as the case may be Affordable Rented basis arrangement.
- 3.2 If within three months from the Commencement Date no agreement on the RSL price shall have been reached the Owner or the RSL or the Council shall be entitled to refer the matter of the RSL Price which has not been agreed for decision of an independent surveyor with knowledge of the Housing Corporations systems who shall be agreed between the parties or in default of agreement within 14 days shall at the request of either party be appointed by the president for the time being of the Royal Institution of Chartered Surveyors. Within one month of his appointment such independent surveyor shall determine the price in accordance with paragraph 3.1 of this Schedule and shall act as an expert and not as an arbitrator and his decision shall be final except where it is manifestly wrong, as agreed by both parties.
- 3.3 For the avoidance of doubt nothing shall prevent the Owner from continuing with the Development during the course of the negotiations in relation of the transfer of the Affordable Housing.

4. Affordable Housing for Rent provided by a Private Landlord

- 4.1 If the Owner gives and Owner's Notice under paragraph 2.9 above the Owner

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- 4.1.1 shall provide those Remaining Affordable Houses comprising Rented Dwelling and which are is such size, tenure and type as identified for letting in paragraph 2[2] of this Schedule (unless otherwise agreed with the Council) under the Affordable Housing Scheme for letting at a rent not exceeding an Affordable Rent.
- 4.1.2 may contract to sell with (and thereafter sell to) a person not being an RSL those remaining Affordable Houses (or any of them) comprising Rented Dwellings as specified in the Owner's Notice for letting at a rent not exceeding an Affordable Rent;
- 4.2 Any Owner Notice served under paragraph 2.9 shall (if any of the Remaining Affordable Houses comprise Rented Dwellings) include the Owners proposals for: -
- 4.2.1 the form of tenancy for such lettings; and
- 4.2.2 procedures for renting by first and future tenants and how the Council may nominate tenants from the Councils lists for future lettings.
- 4.3 The Proper Officer may approve the proposals submitted under paragraph 4.2 of this Schedule or may seek to agree amendments to them and if agreement cannot be reached either party may refer the matter for determination under the dispute procedure.
- 4.4 The provisions of paragraph 6 of this Schedule (as appropriate) shall apply to Affordable Houses provided under this paragraph [4].
- 5. Affordable Houses for Sale**
- 5.1 If the Owner gives an Owner's Notice under paragraph 2.9 above that it intends to provide the remaining Affordable Houses for sale or long leasehold the Owner shall provide the Affordable Houses of such size tenure and type as identified for sale in paragraph 2.2 of this Schedule (unless otherwise agreed with this Council) under the Affordable Housing Scheme (other than any which it elects to provide for rent) for sale or long leasehold at a price not exceeding the Restricted Price or may alternatively let those Affordable Houses (or any of them) as Shared Ownership Houses or let them at an Affordable Rent.
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- 5.2 The Owner Shall: -
- 4.2.1 make the Affordable Houses prescribed by this paragraph 5 available for sale prior to the occupation of the twelfth Unrestricted Dwelling;
 - 4.2.2 not sell any Affordable House except at the Restricted Price;
 - 4.2.3 not do anything in relation to the provision of Affordable Houses for sale which conflicts with the Council's requirement that such dwellings shall always be available as Affordable Houses.
- 5.3 On each and every sale of a Remaining Affordable House prescribed by this paragraph 5.1 the procedure for sale shall be as follows: -
- 5.3.1 the Owner shall contact the Proper Officer who shall advise the Restricted Price (such price shall only be valid for six months after which period the price will have to be re-advised);
 - 5.3.2 the Owner shall not sell the relevant house except to a person in Housing Need who satisfies the Local Requirement PROVIDED THAT in the event of there being more prospective purchasers than homes available allocation be made on the basis of length of residence in the Parish or on the period of employment in the Parish;
 - 5.3.3 the Owner shall notify the Council on each occasion it offers each Affordable House for sale and the Owner shall give priority to any person the Council may within 4 weeks of such notice nominate to acquire that estate or interest if the Council believes that that person (together with any other member of his or her household living with him or her) is able to secure finance to purchase that Affordable House.
But if such nominee has not exchanged contracts with the Owner for the acquisition of that interest within two months of the date of the Owner's notification the Owner shall be free to dispose of that estate or interest to any person in Housing Need who satisfies the Local Requirement it selects during the six months after service of the notification.
- 5.4 If the Owner elects to let any Affordable House as a Shared Ownership House;-
- 5.4.1 the price paid for the share of the equity purchased by the tenant shall not exceed the Restricted Price;
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5.4.2 the rent on the shared of the equity retained by the Owner shall not exceed the sum generated by multiplying the Affordable Rent by the percentage of the equity retained by the Owner.

5.5 The provisions of paragraph 6 shall apply to Affordable Houses provided under this paragraph 5.

6. Management of Affordable Housing

6.1 No person who is not an RSL shall sell or buy an Affordable House (or in the case of a Shared Ownership House an share in an Affordable House) other than for a price which does not exceed the Restricted Price.

6.2 Except as provided in paragraph 6.1 above no Person who is not an RSL, the Council or a mortgagee may own an Affordable House (or in the case of a Shared Ownership House a share in an Affordable House) unless that person was a person in Housing Need and had a Local Requirement at the time of his or her purchase of the dwelling.

6.3 No person shall let an Affordable House for a rent that exceeds an Affordable rent.

6.4 No person shall occupy an Affordable Housing unless that person: -

6.4.1 is a person in Housing Need and had a Local Requirement at the time of his first occupation of the Affordable House or

6.4.2 is a spouse or resident dependant of a person who had a Local Requirement at the time of his or her first occupation of the Affordable House and (in either case); and

6.4.3 occupies an Affordable House as his or her sole or main residence.

But nothing in this paragraph shall require any person who satisfied such a requirement when they first occupied an Affordable House to vacate the dwelling if they cease to qualify under paragraph 8.4.2 by virtue of the death, hospitalisation or breakdown of a relationship with a person who qualified under this paragraph 6.4.1.

6.5 If no prospective owner or occupier meeting the Local Requirement wishes to occupy the Affordable House within a period of three months from the date that the Affordable House becomes available for sale or three months from the date that the Affordable House becomes available for rent (subject to the application of the Local Requirement to the new parish) the Council may permit an applicant from any parish within the Torrridge to own or occupy the Affordable House and should there still be no suitable prospective owners for a further period of three months a prospective owner or occupier from any parish within the districts of North Cornwall, North Devon, West Devon and Mid Devon.

6.6 Where the Owner of an Affordable House is an RSL the Affordable House may also be occupied in accordance with any nomination and management agreement in effect between the Council and that RSL.

7. Calculation of the Restricted Price

7.1 On any sale or lease of an Affordable House to any person prior to its first occupation in accordance with this Agreement (and any other such sale or lease where no proportion has been certified under paragraph 7.2 below) the Restricted Price shall be the price that does not exceed that which can be purchased with a ninety five per cent mortgage equivalent to two and one half times the average annual Household Income within Torrridge, the exact price being certified to the Owner by the Proper Officer within 10 working dates of receipt of notice by the Owner to the Council requiring such a certificate.

7.2 Prior to the completion of an sale or lease to which paragraph 7.1 applies the Owner shall notify the Council of the proposed sale price of that dwelling and the price at which any Unrestricted Dwellings have been sold and the Council shall within 10 working days of the receipt of such notification issue a certificate stating the proportion of the Unrestricted Value of the said Affordable House represented by the price certified under paragraph 7.1 of this Schedule.

7.3 On any sale or lease of an Affordable House by any person (other than an RSL) subsequent to its first occupation in accordance with this Agreement the restricted price shall be the Unrestricted Value of that dwelling at the time of the

proposed sale multiplied by the proportion certified under paragraph 7.2 of this Schedule.

7.4 After any Affordable House has been acquired by an RSL and has then been let as a Shared Ownership House the Restricted Price shall be the Unrestricted Value of the share of the equity to be acquired by the tenant of that house and accordingly noting in this Agreement shall prevent such a tenant purchasing an increased share of the equity (up to and including the whole of the equity value of the freehold estate) in accordance with the terms of his lease.

7.5 If the amount outstanding under any charge granted solely for the purpose of assisting an Owner to acquire an Affordable Housing (including not more than 12 months' interest on that principal and costs accruing under that charge) exceeds the Restricted Price (calculated ignoring the uplift permitted under this paragraph) then: -

7.5.1 the Restricted Price for any sale by the mortgagee shall be increased to the amount then owing to the mortgagee

7.5.2 the Proper Officer shall certify the uplifted Restricted Price by calculating the appropriate proportion of the Unrestricted Value

7.5.3 the Restricted Price for any subsequent sale of that dwelling shall be calculated by applying the proportion so certified.

8. Payment of Affordable Housing Contribution

8.1 If the Council so elects by written notice served within 28 days of the service of an Owner's Notice under paragraph 2.9 the Owner shall pay the Affordable Housing Contribution (based on the actual number of Remaining Affordable Houses notified in the Owner's Notice) to the Council such payment be made on the later of: -

8.1.1 the twenty eighth day after the service of the notice by the Council; or

8.1.2 the first occupation of the twelfth Unrestricted Dwelling.

8.2 Immediately upon the payment of any Affordable Housing Contribution in accordance with the provisions of this paragraph 8 the Remaining Affordable

Houses for which such contribution is paid shall be deemed for the purpose of this Deed each to be an Unrestricted Dwelling.

9 Use of Staircasing Payments

In respect of any Shared Ownership Houses not owned by an RSL: -

- 9.1 Any Staircasing Payment received by the Owner shall be paid to the Council who shall apply such money for the provision of Affordable Housing in the area.
- 9.2 The Owner shall provide the Council with details of all Staircasing Payments it receives and the purposes to which they have been applied.

10 Released Dwellings and Dwellings Purchased by RSLs

- 10.1 No person who is the purchaser or lessee of a Released Dwelling shall be liable for any breach of this Agreement and accordingly shall have no cause to enquire whether the Owner or other person is in breach.
- 10.2 No person who is an RSL or the purchaser or lessee of an Affordable House in compliance with the requirements of paragraph 5 of this Schedule shall be liable for any breach of this Agreement other than any breach of the requirements of paragraphs 5, 6 and 9 in relation to that Affordable House and accordingly shall have no cause to enquire whether the Owner or any other person is in breach of any other requirement.

11 Mortgage Provisions

- 11.1 For the avoidance of doubt and notwithstanding the terms of any legal charge over the Land or any rule of law incidental thereto, the mortgagee shall be bound by the terms of this Agreement upon exercising any power to take possession lease or otherwise deal with premises or any part thereof.
- 11.2 In relating to any estate or interest in an Affordable House which is owned by any person other than an RSL.
- 11.2.1 Where an Affordable House is offered for sale by a mortgagee in possession or where a mortgagee has appointed a receiver under the mortgage it shall be offered for sale only on the basis that the sale price

shall not exceed the Restricted Price and it shall be sold on the basis that it shall first be offered by the mortgagee in possession to persons or groups nominated by the Proper Officer.

11.2.2 If within three months of a mortgagee first notifying the Council that it intends to exercise a power of sale referred to above the Council has not introduced a purchaser ready and able to exchange contracts to purchase the Affordable House for the Restricted Price the mortgagee or the receiver may sell the house for the Restricted Price to any person who requires it as their sole or main residence but for the avoidance of doubt the provisions of this Agreement, and particularly Clause 6 shall continue to apply to the Affordable House after such a sale.

11.3 In relation to any estate or interest in any Affordable House which is owned by an RSL: -

11.3.1 The provisions of this Agreement shall not be binding upon the mortgagee of an Affordable Dwelling or upon a receiver appointed by such a mortgagee.

11.3.2 Any Affordable House sold by the mortgagee or an RSL's estate or interest in that Affordable House or by a receiver appointed by such a mortgagee shall be a Released Dwelling.

11.3.3 A mortgagee or receiver to whom this paragraph 11.3.2 applies may notify the Proper Officer of any such intended disposal and the Council shall within 10 working days of such notification provide the mortgagee or receiver with a certificate confirming that the Affordable House is a Released Dwelling.