

**Forest Heath District Council and St Edmundsbury Borough Council**  
**DRAFT**  
**Affordable Housing SPD**

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## Section 1- General Information

### 1. Introduction

- 1.1. The object of this supplementary planning document (SPD) is to assist both Authorities in meeting its objective of delivering affordable housing. The document is designed to provide supplementary guidance on Forest Heath District Council (FHDC) and St Edmundsbury Borough Council (SEBC) affordable housing policies adopted in the Development Plan, and while it does not in itself make it a policy it will be a material consideration in the determination of planning applications.
- 1.2. The SPD seeks to provide greater certainty and clarity for all parties involved in the delivery of affordable housing through the planning system. The document explains how policies in each of the Core Strategies will be implemented to assist in the delivery of housing both in towns and villages and what processes both the Authority and applicants will need to follow when a planning application is submitted. The document will also provide guidance to applicants on exceptions sites, where affordable housing is wholly provided on sites that would not otherwise normally be permitted for housing as well as guidance on commuted sums where applicable.
- 1.3. Housing affordability is one of the biggest challenges facing both Authorities. House prices in Forest Heath are lower than the Sub-Regional average with Forest Heath being the second cheapest place to live within the Cambridgeshire Sub-Region, whilst St Edmundsbury is slightly higher than the Sub regional average.<sup>1</sup> The average house price is between 5-6 times the average earnings for each Authority in 2008/09. Ongoing evidence from the Strategic Housing Market Assessment (SHMA) suggests that there is a significant need for affordable housing in the Local Authority areas. However not only is more affordable housing needed, but it needs to be the right kind of housing in the right location.<sup>2</sup>
- 1.4. Both Authorities have identified affordable housing as a Corporate Priority. Planning for good quality and appropriate housing plays an important role in maintaining an inclusive and balanced society, as well as helping to achieve the Authorities other objectives such as those relating to economic development. Good design and layout of affordable housing within residential and mixed-use developments creates vibrant, interesting, engaging and sustainable communities in which to live and work.
- 1.5. Both Authorities are strongly committed to ensuring that it makes effective use of its planning powers and will work with a wide range of partners in the provision of affordable housing.

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<sup>1</sup> Cambridge Sub Housing market bulletin December 2011  
<http://www.cambridge.gov.uk/public/docs/housing-market-bulletin-december-2011.pdf>

<sup>2</sup> Refer to Section 3 for more details on the SHMA

1.6. The issue of affordable housing is highlighted by each Council in the following documents:

- Core Strategy for Forest Heath, as adopted in May 2010 but as subsequently amended in 2011 following a successful Judicial Review in the High Court
- Core Strategy for St Edmundsbury, as adopted in December 2010
- Housing Strategy;
- Corporate Delivery Plan;
- Cambridgeshire Sub-Region Strategic Housing Market Assessment

### **1.7 Purpose and Status of the Supplementary Planning Documents (SPD)**

1.8 SPD's were introduced by the Planning and Compulsory Purchase Act 2004 to replace Supplementary Planning Guidance (SPG) and form part of the planning authority's Local Plan (LP).

1.9 The purpose of this SPD is to set out the Authorities approach to delivering affordable housing in accordance with their local plan and national policy. This includes the range of approaches, standards and mechanisms required to deliver affordable housing which meet local needs and contributes towards maintaining mixed sustainable communities and balanced housing markets.

1.10 The SPD will provide Guidance on the implementation of policy CS9 (FHDC) and CS5 (SEBC) on affordable housing contained within their Core Strategies.

## Section 2: Planning Policy Context

### 2.0 National Policy Context

2.1 The National Planning Policy Framework (NPPF) was published on 27<sup>th</sup> March 2012. This requires Local Planning Authorities, where they have identified that affordable housing is needed, to set policies for meeting this need on site, unless off site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.

### 2.2 Definition of Affordable Housing

2.3 In planning terms 'affordable housing' refers to a particular type of housing tenure, which is delivered by Private Registered Providers of Social Housing<sup>3</sup> and secures affordable housing in perpetuity. The terms 'affordability' and 'affordable housing' have different meanings. '**Affordability**' is a measure of whether housing may be offered by certain groups of household, while '**affordable housing**' refers specifically to housing provided outside of the main housing market (open market housing) typically by Housing Associations or other Registered Providers.

2.4 The National Planning Policy Framework (March 2012) provides a definition of 'affordable housing', as set out below

- **Affordable housing:** Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.
- **Social rented housing:** This is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.
- **Affordable rented housing:** This is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

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<sup>3</sup> For the purpose of this document we will call Private Register Providers of Social Housing, "Registered Providers" (RP)

- **Intermediate housing:** This is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

2.5 Homes that do not meet the above definition of affordable housing, such as “low cost market” housing, may not be considered as affordable housing for planning purposes.

## 2.6 Regional Policy Context

2.7 The East of England Plan, published in May 2008, is the region's spatial strategy (RSS) and guides major development in the region to 2021.

2.8 The plan sets out regional and sub-regional spatial policies including the location of development proposals including for housing.

2.9 Within the overall housing requirement Local Authorities should set appropriate targets for affordable housing taking into account, inter alia:

- the objectives of the RSS;
- Local assessments of affordable housing need, as part of strategic housing market assessments,
- the need where appropriate to set specific, separate targets for social rented and intermediate housing;
- evidence of affordability pressures;

2.10 At the regional level, delivery should be monitored against the target for some 35% of housing to be affordable.

2.11. The RSS remains extant at the time of the preparation of this SPD and must therefore be considered as part of the preparation of this document. However, the abolition of Regional Strategies is contained in Section 109 of the Localism Act 2011. In reality, this is unlikely to happen for some time given the work required to conclude the Strategic Environmental Assessment process before the Section 109 power can be invoked.

## 2.12 Local Policy Context

### 2.13 Core Strategy

2.14 Both Authorities' Core Strategies encourage the development of sustainable communities, which are vital, healthy and prosperous. It aims to meet the current needs of local residents whilst recognising the importance of having regard as far as possible to future circumstances and the legacy being created for future residents.

2.15 The two main aims of the Core Strategies affordable housing policies are:

- To establish the overall target for the provision of affordable housing in the district
- To set out the broad framework within which developer contributions towards meeting affordable housing need will be sought in association with normal market housing.

2.16 Working as part of the Cambridge Housing Sub Region, Forest Heath and St Edmundsbury completed an Affordable Housing Economic Viability Appraisal (Adams Integra, 2009) which showed that they had an affordable housing requirement of over 30% for any housing development but a target in excess of this was unlikely to be viable in the foreseeable future.

2.17 Based on this evidence both Authorities have set themselves a long term target for the Core Strategy period up to 2031 to secure 30% affordable housing from total housing provision from all sources, not just in association with private developments.

2.18 Given Forest Heath and St Edmundsbury are rural in character and have a high affordable housing need there is justification for operating lower thresholds than the national indicative site size threshold of 15 dwellings, subject to compatibility with levels of viability. Supplementary work on the relative viability of varying threshold levels has been undertaken, which has established that a site size of 10 units is the minimum which makes the provision of affordable housing units sufficiently viable in larger settlements. For Primary and Secondary villages both Authorities will seek the provision of affordable housing on schemes of 5-9 dwellings.<sup>4</sup>

2.19 The site size and percentage requirements which will be applied by both Authorities are set out in the SPD, and based on national policy in NPPF and supported by key evidence from the Strategic Housing Market Assessment (SHMA) data, see section 3.

2.20. Both Authorities will continue to assess the circumstances of each proposed development individually and will take into account the following points when considering proposals:

- The need locally for affordable dwellings as evidenced in the SHMA
- The economics of the development (including the cost of any contributions towards the achievement of any other planning objectives also being sought for the development of the site); and
- Government guidance and sustainability considerations

## 2.21 Forest Heath District Council

2.22 There are two key policies within FHDC Core Strategy that deal with affordable housing, namely:

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<sup>4</sup> For further details on affordable housing provision please refer to policy CS9 for Forest Heath and Policy CS5 for St Edmundsbury

- Policy CS9, which sets out the size, threshold and the percentage of affordable housing that will be negotiated; and
- Policy CS10, which deals sustainable rural communities

**2.23 Policy CS9 Provision for Affordable Housing**

**2.24 *In new developments of 10 dwellings or more, or a residential site of 0.33 hectares or more, provision should be made for up to 30% of the total dwellings to be in the form of affordable housing;***

**Or**

**2.25 *On sites in Primary Villages and Secondary Villages only, for schemes of 5 to 9 units or on sites larger than 0.1 hectares a target of 20% of the number of net new dwellings will be sought as affordable housing***

2.26 Where this policy would result in a requirement that part of a dwelling should be affordable a financial contribution of equivalent value will be required.

**2.27 St Edmundsbury Borough Council**

2.28 There are four policies within St Edmundsbury Core Strategy and replacement St Edmundsbury Local Plan 2016 which deal with affordable housing, namely;

- Policy CS5 Affordable Housing
- Policy CS11 Bury St Edmunds Strategic Growth
- Policy CS12 Haverhill Strategic Growth
- Policy RU8 Rural Housing Exception Sites

**2.29 Policy CS5 Provision for Affordable Housing**

**2.30 *In new developments where sites are between 0.17 hectares and 0.3 hectares or between 5 and 9 dwellings, 20% shall be affordable;***

**Or**

**2.31 *Where sites are 0.3 hectares and above or 10 dwellings or more are Proposed, 30% shall be affordable***

**2.32 Joint draft Forest Heath and St Edmundsbury Development Management Policies Preferred Options Document January 2012**

2.33 Policy 50 within the joint document relates specifically to the provision of rural housing exception sites within St Edmundsbury. It will eventually replace Policy RU8 in the existing adopted Local Plan.



2.34 For both Authorities the proportion of affordable housing in new developments of 10 units or more is set at 30% of the total numbers of dwellings, as recommended by the Affordable Housing Economic Viability Assessment 2009. For developments of 5 to 9 dwellings in Primary and Secondary villages, the proportion of affordable housing to be achieved is set at 20% of the total numbers. Both Authorities also operate site size thresholds as set out above.

### **2.35 Housing Priorities**

2.36 Both Authorities, in their role as a strategic housing authority, has the responsibility of influencing private and social housing activity within their local authority. A key aspiration is to ensure that every resident in the local authority has a home that is affordable and suitable to their needs. This is expressed in each Authorities Corporate Plan for 2011/12

2.37 Forest Heath District Council – Meeting the District’s housing need

2.38 St Edmundsbury Borough Council - maximising the delivery of affordable housing throughout the Borough.

2.39 The priorities agreed by the Cambridge Housing Sub Region in September 2011 reflect the current housing climate. In summary, the sub region acts in partnership to share learning and experiences across the housing market area, to:

- Deliver new homes which support economic success.
- Create mixed, balanced, sustainable communities.
- Improve standards in existing homes.
- Meet housing needs and tackle homelessness.
- Enable better health through housing and support.

2.40 Further detail can be found in the Housing Strategy for each authority.

**Links to be added**

## **Section 3: The Need for Affordable Housing**

### **3. Strategic Housing Market Assessment (SHMA)**

- 3.1 Information on housing requirements for both local authorities is largely drawn from the Strategic Housing Market Assessment, which brings together a large amount of data on issues across the Cambridge housing sub region, which both local authorities are part of. It is a robust foundation for understanding housing need and formulating appropriate policy responses.
- 3.2 The full SHMA can be found at: [www.cambridgeshirehorizons.co.uk/shma](http://www.cambridgeshirehorizons.co.uk/shma)
- 3.3 In order to provide more frequent updates to key metrics of the housing market, such as average prices and affordability ratios, Cambridge housing sub region produces and disseminates Housing Market Bulletins. These are based on data from Hometrack Housing Market Intelligence System, and give a snapshot of the current market for housing. The bulletins can be found here: [www.cambridge.gov.uk/crhb](http://www.cambridge.gov.uk/crhb)

### **3.4 Housing Registers**

- 3.5 Both Authorities manage a comprehensive housing register for all social housing providers, which provide a useful database from which to assess and monitor housing need for communities throughout the districts. Whilst the SHMA provides information at a local authority level, the Housing Register can provide a solid understanding of local housing needs for individual areas.
- 3.6 Analysis of affordable housing requirements suggests that a range of affordable dwellings is required and demand in all locations across both local authorities' areas exceeds potential supply. Housing requirements are sensitive to changes in trend, particularly in the balance between rented and intermediate tenure. Information relating to split of affordable tenure can be obtained within the SHMA.
- 3.7 Advice should be sought from the both Authorities Housing Enabling Teams.

### **3.8 Rural Housing Need**

- 3.9 Both Authorities recognise the need to preserve rural communities whilst trying to ensure that local people on modest incomes can access affordable accommodation that enables them to live in the rural communities.
- 3.10 Although there is limited scope for new affordable housing to be built in rural areas both Authorities have the ability to permit rural affordable housing schemes outside a Housing Settlement Boundary. These sites are classed as Exception Sites and are explained in more detail in section 4 of this document.
- 3.11 Planning permission on Exception Sites for affordable housing will only be granted where local need can be demonstrated. To help accurately demonstrate need, both Authorities work in partnership with the Rural Housing

Enabler who is based at Suffolk Acre and Parish Councils to carry out Housing Needs Surveys. Where Parish Councils have undertaken detailed and qualitative Local Housing Needs Surveys (within five years of a scheme being proposed and which determines specific local needs for affordable housing) the findings of the survey will be a material consideration when considering planning permission for Exception Sites.

- 3.12 Any Exception Site granted planning permission will remain affordable in perpetuity, allowing local people to continue to benefit from the scheme in the future.

## **Section 4: Delivery of Affordable Housing**

### **4 Size, Type and Tenure of affordable housing**

4.1 Proposals for affordable housing should reflect the size, type and tenure of affordable housing based on the evidence of need.

#### **4.2 Site size and Suitability**

4.3 The type of affordable housing to be provided should be discussed with the Councils Enabling Teams at the pre-application stage, taking into account the nature of housing need and the location of the site relative to services, facilities and the availability of public transport.

4.4 In accordance with the Core Strategy Policy CS9 (Forest Heath) and CS5 (St Edmundsbury), both Authorities will require the appropriate level of affordable housing for a scheme.

4.5 Both Authorities will apply this policy to planning applications on sites falling below the threshold where the Authority can demonstrate that the site is capable of delivering more housing than proposed and/or the site forms part of a more substantial development, which would in its totality, be above the affordable housing threshold. This can include where a site has been split into phases which individually fall below the threshold. This will apply regardless of ownership.

4.6 Housing for wheelchair users will need to achieve a significantly higher Housing Quality Indicator (HQI)<sup>5</sup> score in relation to size and therefore sizes will be greater than the minimum achievable above. Developers are encouraged to engage at an early stage of the development process with any concerns they have regarding unit sizes.

#### **4.7 Type and Tenure**

4.8 The exact number, type and size of affordable housing will be based on an assessment of need which will include:-

- Information from the most up to date SHMA or other housing needs data
- Current information from our Housing Registers
- Existing affordable housing provision in the locality
- Local housing market characteristics
- Current priorities set out in our Housing Strategies

4.9 Both Authorities expect that a range of dwelling sizes and types will be provided based on the characteristics of the site, the proposed development, viability, local factors and the overall need across the district at the time of a planning application. Affordable housing provision in rural areas will need to be tailored according to the results of individual villages Housing Needs Surveys.

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<sup>5</sup> For reference please see Glossary of Terms

4.10 An element of housing for people with special needs will be included in the overall amount of affordable housing being agreed. Based on proven need both Authorities will require an amount of affordable housing to be considered for special needs.

4.11 On current housing needs evidence, Forest Heath Council will seek a tenure split of 70% rented and 30% intermediate whilst St Edmundsbury Council will seek 80% rented and 20% intermediate based on evidence from the SHMA and Housing Register. This may change over time, but will be based on evidence contained within the SHMA, and should be clarified with the relevant Authority's Housing Team prior to submission of your application.

#### **4.12 Design and Layout**

4.13 As with all forms of residential development the Authority expects affordable housing to be built to a high standard of design and amenity. Affordable housing units provided within a new residential development should be of a similar size and quality to open market housing and should be visually indistinguishable as far as practicable. So that affordable housing will be sustainable in use, when developing accommodation for the provision of affordable housing, there will be an absolute requirement that developers must adhere to the Homes and Communities Agency (HCA) Design and Quality standards (or any subsequent standard set by the Homes and Communities Agency) on affordable housing.

4.14 This includes inter alia:

- Internal Environment – providing comfortable and convenient homes, meeting the needs of intended user groups, including in terms of size, layout and service provision;
- External Environment – providing good places to live, with well-mixed and integrated communities and providing an appropriate balance between private and public open space;
- Sustainability – providing homes that better adapt to climate change, with lower running costs and incorporating features that enhance health and well-being, including compliance with the Code for Sustainable Homes targets.

4.15 Both Authorities will encourage all affordable homes to achieve Lifetime Homes Standard. Lifetime Homes Standard incorporates design features, which can adapt to different occupiers' needs or the occupiers needs as they change over time. Both Authorities wishes are to encourage the provision of lifetime homes and will work with developers to ensure such provision.

4.16 Where a specific special need is identified at the time of an application, which may be at local authority level or a particular family in housing need, the Authority will insist on the provision of special needs properties to address the

needs identified, e.g. for people with disabilities, including supported and accessible/wheelchair accessible properties.

4.17 The Design and Access Statement accompanying a planning application should set out clearly the design approach to the affordable housing element of the scheme.

4.18 Affordable housing should be interspersed throughout the development to help ensure that concentrations of affordable housing are not created. The integration of affordable homes within market housing developments works towards social inclusion and against segregation, in accordance with government aims for balanced, mixed and sustainable communities.

4.19 Both Authorities will aim to ensure that affordable housing is not concentrated in clusters greater than six properties in towns and villages under 3000 in population and 15 properties in other locations. This will be determined on a site specific basis, recognising that where developments contain a block of flats it may be appropriate to group affordable units, rather than be interspersed throughout the development.

#### **4.20 Delivery of Affordable Housing within a phased development**

4.21 To help enable the delivery and timing of affordable housing units, both Authorities will seek to ensure phasing of the affordable housing (where applicable) throughout the housing development. The timing of the delivery of affordable housing is paramount to securing mixed and balanced communities at all stages during the implementation of a development. Wherever possible (i.e. provided that there is no slump in the sale of market properties), affordable housing should be provided in tandem with the provision of the market housing. This is particularly important in the case of larger or major developments, where it can cause particular problems for the logical delivery of a development. This will be set out through the legal agreement accompanying any planning application subject to consultation with the developers.

#### **4.22 Affordable Housing in Rural areas**

4.23 Both Authorities aim to ensure that rural areas continue to develop as sustainable, mixed and inclusive communities. Both Authorities will support ways of addressing the needs of such communities by accommodating households who are either current residents or have an existing family or employment connection. In addition Policies CS9 and CS10 (Forest Heath) and RU8 (St Edmundsbury) of the adopted Development Plan's allows for rural exception schemes to provide affordable houses in villages and small settlements (in the case of Forest Heath) and in rural areas with a population below 3,000 people (in the case of St Edmundsbury). This SPD does not affect these policies.

## **Section 5: Managing the Provision of Affordable Housing**

### **5.0 Allocating Homes**

5.1 Both Authorities' will ensure that adequate mechanisms are in place to secure the affordable housing and control its future occupation, so that it is occupied initially by eligible household and is retained for future eligible households.<sup>6</sup> Any subsidy obtained by the Registered Provider (RP) upon sale will be required to be reinvested to meet current affordable housing needs.

5.2 Both Authorities' preferred approach for allocating homes is to involve a RP. This is because they are regulated by the HCA and Tenant Services Authority. Both Authorities are happy to work with a range of RP's. However an existing local presence is required within the Authorities area or it is considered reasonable that the RP's local office is no more than 50 miles from the development site. Nomination agreements will also be put in place to ensure that people whose circumstances require subsidised housing get access to it.

5.3 Both Authorities are part of a Choice Based Letting Scheme which comprises of two Suffolk Local Authorities (Forest Heath and St Edmundsbury) and seven Cambridgeshire Local Authorities. Properties will be advertised and offered to qualifying households in accordance with the housing priorities of the scheme.

5.4 In order to provide equality of access to affordable housing and ensure that households in need are prioritised for new lettings/sales, the selection of new tenants for rented properties will be via the Sub-Regional Choice Based Lettings system (or its successor) and the selection of new purchasers for intermediate home ownership properties should be via the government appointed HomeBuy Agent (subject to any special arrangements approved by the Authority, e.g. for specified groups of Key Workers).

5.5 The local Choice Based Lettings system is called Homelink (details at <http://www.home-link.org.uk/default.aspx>) and includes local authority and housing Association rented homes in the Cambridge sub region. Vacancies are advertised to households on the Housing Register (the "waiting list") and applicants bid for properties that meet their needs and for which they are eligible (ie. the property is of the right size and type for their household).

### **5.6 Role of Registered Providers**

5.7 Both Authorities strongly recommend that developers put forward proposals of affordable housing schemes with a partner RP, approved by the Authority, in order that they can be involved in the negotiations at the earliest possible stage. The RP will be required to enter into a nominations agreement with the Authority. Appendix E illustrates our preferred Affordable Housing Performa.

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<sup>6</sup> The exception to this are statutory provisions covering the Right to Acquire and standard clauses allowing staircasing to full ownership where a shared ownership property has been provided with public grant.

5.8 Both Authorities preferred option is that the developer builds and then transfers the completed units to a RP. In some circumstances the developer may transfer serviced land to the RP to enable the building of each affordable unit. Whatever option is chosen both Authorities will expect the affordable housing to be provided without the need for public subsidy.

5.9 Both Authorities require 100% nomination rights on the first lets/sales of all affordable homes, potentially dropping to 75% for subsequent relets. This is normal practice in the sector as it allows the RP to determine the allocation of a proportion of the properties in accordance with their own objectives. However in practice, many RP locally continue to accept nominations from the Authority on a 100% of all future relets.

#### **5.10 Affordable homes delivered using a Registered Provider**

5.11 Where developers are transferring completed units to a RP then there will be no need to seek additional controls to ensure that only specified eligible households occupy the affordable units. RP's have statutory duties to seek nominations from the relevant Authority. The RP will be required to enter into a nominations agreement with the Authority, to secure the provision of the units and to ensure that the units remain affordable in perpetuity and provide mechanisms to recycle any capital receipts or subsidy provided.

#### **5.12 Affordable homes delivered without Registered Provider involvement.**

Where a developer intends to retain ownership of the proposed affordable units or to transfer them to an Affordable Housing Provider which is not an RP, it will be necessary for the Authority, by means of clauses in a Section 106 agreement or unilateral undertaking, to ensure that the homes will be occupied by specified eligible households whose needs are not met by the market.

#### **5.13 Perpetuity of Affordable Housing**

5.14 Affordable housing should seek to be affordable in perpetuity, and should the housing cease to be affordable in the future, there must be an agreed mechanism for any subsidy initially required in the construction of it to be recycled when the home ceases to be affordable or shares in the home are purchased after the initial occupation.

5.15 In order to be able to replace any affordable housing lost to full ownership or interim staircasing receipts, both Authorities will require net capital receipts to be recycled towards the provision of additional affordable housing. However where HCA funding has been provided to deliver the affordable housing both Authorities will expect any net capital receipts to be recycled in accordance with the requirements of the HCA Capital Funding Guide. Such requirements will be included within a legal agreement.



## **5.16 Making it affordable**

5.17 The cost of affordable housing should be affordable to eligible tenants. Both Authorities will, before granting planning permission, need to be satisfied that any agreement reached between a developer and PRPSH for the on-site provision of affordable housing, will ensure that the rental levels or shared ownership costs will be affordable initially and in the long term (or in perpetuity in the case of rural exception sites,). Service charges for dwellings should be set at levels which do not exceed the amounts needed to manage and maintain the properties to housing association standards, and should be fully transparent in their contents and calculation methods.

5.18 Therefore, affordable housing will be made available:

- for rent at social rent levels,
- for rent at affordable rent levels,
- for sale under shared ownership leases (or other equity share arrangements approved by the local authority) at affordable shares,
- Any emerging hybrid models conforming to the agreed definitions e.g. initial affordable rent followed by shared ownership, sometimes known as deferred purchase or rent to buy.

5.19 Affordable housing must be managed by an RP that are able to demonstrate their ability to fund the scheme, and provide guaranteed and appropriate long-term management and maintenance arrangements, within an appropriate regulatory regime.

## **5.20 Social Rented Properties**

5.21 Rents charged for social rented housing, by RP's or other managing bodies, must be in line with the Homes and Communities Agency (or successor body) rent setting policies, which will be deemed to be affordable for the purposes of the affordable housing policy.

## **5.22 Affordable Rented Properties**

5.23 This is housing let by RP's of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

## **5.24 Intermediate Properties (Shared Ownership)**

5.25 In intermediate home ownership properties, the relationship between incomes and house prices is complicated by factors such as household composition,

savings and property sizes as well as by fluctuations in interest rates and lending policies. Government guidance for Strategic Housing Market Assessments suggests that a property priced at 3<sup>7</sup> times gross annual income or less should be affordable for a single income household but this does not take account of households where there is more than one income, rental payments for shared ownership properties or the nature of the property.

- 5.26 The target for general needs intermediate home ownership costs in both local authorities will be set at approximately 33% of gross household income to cover mortgage costs and any “rental charge.” This equates to a figure which is slightly higher than the Government’s indicative figure (which is expressed as a guideline) to allow for the lower running costs (e.g. heating and repairs etc) expected of new build properties compared with the general housing stock.
- 5.27 In addition, to keep overall valuations within acceptable levels, the design standards for intermediate home ownership properties should be equivalent to the standards used by the Homes and Communities Agency to determine eligibility for Social Housing Grant (or any subsequent Homes and Communities Agency or regulator standards)
- 5.28 Where intermediate rented properties are concerned, rental charges should not exceed the equivalent costs of intermediate home ownership for similar units.

### 5.29 Local Connection

5.30 Affordable Housing in Forest Heath and St Edmundsbury will primarily be allocated to those with a Local Connection to the Local Authority area. In rural parishes the affordable housing will be available in the first instance to people with a local connection to that parish, based on the following criteria:

- I. current residence in the parish for a minimum period of *two* years; or previous residence in the parish, for a period of not less than *five* years; then
- II. a family connection through mother, father, brother or sister, son or daughter, being resident in the parish for a period of not less than *five* years; and then;
- III. employment in the Parish, as a main place of work,
- IV. and then current residence; family connection, where the time periods conditions referred to at i and ii above have not been met

Priority will be given in the order set out above. Provided that no person with relevant connect to the parish can be nominated a person with an equivalent relevant connection with the [agreed parishes] can be nominated.

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<sup>7</sup> Or 33% of gross income

5.31 If a local person in need of accommodation cannot be found to occupy the affordable property, a cascade mechanism will be used to widen the search area. The definitions of local connection will be set out in the Section 106 agreement, where applicable.

### **5.32 Legal Agreement**

5.34 The affordable housing will be secured through a planning obligation under Section 106 of the Town and Country Planning Act 1990. Our preferred method is to secure provision through unilateral undertakings which can be found in Appendix A and B. There is also a draft indicative s106 agreement which we expect to be used on larger developments phased over a number of years. This can be found in Appendix C.

### **5.35 Mortgagee in Possession Clauses**

5.36 Mortgagee in Possession Clauses may be included in a section 106 agreement forming part of a planning permission, in order to facilitate lending from financial institutions to housing associations by protecting the value of the lender's investment. In the event of a default by the RP in repaying their loans and the lender taking possession of the affordable properties, the clause would release the lender from the affordable housing occupancy conditions, which could then be sold on the open market. These clauses would only be allowed where the housing provider was a RP regulated by the Homes and Communities Agency and the Tenant Services Authority, or any successor bodies. They would not be allowed on Rural Exception Sites. Mortgagee in Possession clauses will only be used in S106s when a RP is involved with the project.

## Section 6: Financing Affordable Homes

### 6.0 Delivering Affordable Housing

- 6.1 There will be a presumption that the development will include full and appropriate provision for affordable housing unless it is demonstrated that it cannot be provided in accordance with Policy CS9 (FHDC) and CS5 (SEBC). The onus is therefore on a developer to demonstrate that viability would be jeopardised by this level of provision. This will require a full economic appraisal of the costs of development and for returns from the sale of housing to show what sum could be made available for affordable housing.
- 6.2 The methodology, underlying assumptions and any software used to undertake this economic appraisal should be agreed with the Authority. Both Authorities preferred methodology is the HCA Development Appraisal Toolkit (DAT), as it is readily available and there are no licence issues. The DAT can be accessed via this link: <http://www.homesandcommunities.co.uk/ourwork/development-appraisal-tool>
- 6.3 Financial Viability Assessments need to cover all costs and expected receipts arising from a development and the profit margin to which the developer operates (which may vary), in order to provide the necessary net residual valuation.
- 6.4 Any consideration of viability must look at the overall package of requirements on a development and the Authorities' objective will be to secure some affordable housing through any prioritisation of contributions, if possible. Indeed, as set out in Appendix D; Pre- Application Protocol, the amount of affordable housing in line with policy CS9 (FHDC) and CS5 (SEBC), if tested, demonstrates that a higher level of affordable housing provision is viable and demonstrated accordingly within the SHMA, then the Authorities' will seek to amend their over-arching affordable housing policy within their Core Strategy. This may be particularly important on larger or major developments, or those phased over a number of years, as both Authorities may seek to review their affordable housing requirements throughout each phase of the development.
- 6.5 The Authority will work with developers to explore the issue of viability on a site-by-site basis. We would expect the developer to carry out due diligence in the purchase of the site and will expect the process of partnership, information sharing and negotiation to meet the following schedule:

<p><b>Site or building acquisition cost:</b> <i>Information to be provided by the developer:</i></p>	<p>How much the developer has paid or is proposing to pay for the land or building, net of any site abnormal and including VAT if applicable.</p> <p>Whether the site or building has been fully acquired at this price and when exchange of contracts took place ('full acquisition' would not normally mean</p>
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<p><b>Action to be taken by the Council:</b></p>	<p>exchange of a conditional contract or entering an option agreement).</p> <p>Both Authorities will operate on an open book valuation basis, will conduct an in-house valuation of:</p> <p>The value of the site or building in its existing use, without any hope value.</p> <p>The value of the site or building for the proposed residential use.</p> <p>The value of the site or building for any realistic alternative uses.</p>
<p><b>Construction costs: Information to be provided by the developer:</b></p> <p><b>Action to be taken by the Council:</b></p>	<p>How much the developer is estimating to pay for all aspects of the construction of the development including abnormal's, siteworks, housework's and estate completions. Abnormal's should be itemised and costed individually and general construction costs should also be expressed as a price per m<sup>2</sup> or ft<sup>2</sup> of proposed built form.</p> <p>What allowances are made within the estimated figures for building cost inflation.</p> <p>Both Authorities operate on an open book basis, will conduct their own valuation of: the reasonableness of the estimates for general construction.</p> <p>The reasonableness of the estimated abnormal costs and the construction solutions which underlie them.</p> <p>What assumptions were made in the original price paid for the land and evidence that these abnormal costs were identified.</p>
<p><b>Fees and Other On-Costs Information to be provided by the developer:</b></p>	<p>An itemised breakdown of the main development and sales related fees and other costs the developer expects to incur including fees for design, engineering, planning, building control, surveying, warranties and such like, legal</p>

<p><b><i>Action to be taken by the Council:</i></b></p>	<p>fees, introduction fees, marketing and direct sales costs and interest charges where identified at a scheme level.</p> <p>Both Authorities may obtain independent advice from a qualified professional quantity surveyor and/or development consultant on the reasonableness of the estimates.</p>
<p><b>Projected Sale Prices for Dwellings</b> <b><i>Information to be provided by the developer:</i></b></p> <p><b><i>Action to be taken by the Council:</i></b></p>	<p>How much the developer is proposing to sell the completed dwellings for broken down by dwelling type.</p> <p>What allowance if any has been made by the developer for inflation on values up to point of sale when compared to prices applicable at the time of compiling the information.</p> <p>Both Authorities may obtain an independent opinion from a qualified professional valuer with local market knowledge of both the proposed sale prices compared to reasonable market expectations and the assumptions on house price inflation.</p>
<p><b>Gross Margin</b> <b><i>Information to be provided by the developer:</i></b></p>	<p>As a percentage of the proposed gross sales value of the development, what contribution the developer is assuming to achieve for overheads and profit, combined.</p> <p>Both Authorities may obtain independent advice from a qualified professional quantity surveyor and/or development consultant on the reasonableness of the estimates.</p>
<p><b>Other Costs and Receipts</b> <b><i>Information to be provided by the developer:</i></b></p>	<p>How much the developer has allowed, by item, for any other contributions or costs associated with the development including planning gain contributions for education, transport, local facilities and such like.</p> <p>How much the developer has allowed in its assessment of viability for receipts attributable to providing affordable</p>

**Action to be taken by the Council:**

housing in accordance with the Authority's policy expectations, broken down by dwelling numbers, types and tenures.

The Authority will compare the estimated figures with its own knowledge on levels of planning gain contributions sought and affordable housing required and prices attributable to this. When appropriate, the Authority may seek advice from suitability qualified external consultants to validate certain cost or receipt assumptions.

6.6 Where the Authority is satisfied that the financial viability of a development would be jeopardised by full provision of the affordable housing target, and taking into account any other planning obligations, it will first seek to agree varying the preferred mix and tenure of dwellings with a view to establishing whether this would enable the CS9 (FHDC) and CS5 (SEBC) position to be met. If this cannot be achieved in a way that addresses housing needs in an acceptable way, both Authorities will then seek to agree to varying the percentage of affordable housing being sought.

6.7 If an initial percentage of less than the CS9 (FHDC) and CS5 (SEBC) requirement is agreed, the S106 Agreement will include provisions for a review mechanism such that if the development is not completed within 3 years of the date of the planning permission, a further consideration of viability will be carried out at that stage (and every 3 years thereafter). It will be down to the Authority to use its discretion for the purposes of determining whether the percentage of affordable housing should increase on the balance of the development still to be completed and any revision should not be limited to the appropriate percentage as set out in policy CS9 (Forest Heath) and CS5 (SEBC) but may increase to cover a shortfall on an earlier part of the development, provided that, overall, no more than the original policy target is achieved.

6.8 Where the Authority needs independent advice to agree a viability appraisal submitted by an applicant that seeks to justify a variation on CS9 (FHDC) and CS5 (SEBC), reasonable costs will be met by the developer/applicant.

6.9 Appendix F provides our preferred Affordable Housing Financial Appraisal Checklist.

### 6.10 Rural Exception Sites

6.11 As these sites are an exception to normal planning policies, it is important that the affordable housing provided is available on an affordable basis to each successive occupier. Developers of exception sites will need to demonstrate to

the relevant Authority how they intend to ensure that the affordable housing remains affordable for future occupiers. Both Authorities will ensure that the provisions required for the homes to be retained as affordable in the future are in place by means of clauses in the s106 agreement. Such clauses include:

- The prevention of the right to buy or acquire for social rented properties
- Preventing shared ownership properties from full staircasing to market ownership.

## **6.12 Off site provision and Commuted sums**

6.13 In exceptional circumstances, as a last resort, and where it can be robustly justified, an off-site provision or a financial contribution in lieu of on-site provision may be considered. The applicant and the Authority should ensure that such arrangements would result in provision of the affordable housing elsewhere or the earlier provision of already programmed affordable housing.

6.14 The NPPF paragraph 50 states that local authorities should:

6.15 *“where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities.”*

## **6.16 Off-site provision**

6.17 Off-site provision of affordable housing will only be considered where there are sound planning reasons why on-site provision is not possible or appropriate. Both Authorities will want to be assured that off-site provision is delivered. The off-site provision must be broadly equivalent in value, and sufficient to provide elsewhere the affordable housing provision that would have been expected to be provided on the application site.

6.18 It is not possible to be definitive about the circumstances in which off site provision or a commuted sum may be considered. Each case will be considered on its merits but in all circumstances the presumption will start from on-site provision unless the alternative is robustly justified.

6.19 There may be practical difficulties in finding and securing suitable alternative sites in rural districts like Forest Heath and St Edmundsbury, where developable land in sustainable locations is scarce. It may also be impractical for either Authority to accept a payment-in-lieu without knowing there was suitable alternative land available to satisfy the need for affordable housing. Given the potential for such difficulties, the Authority may reach an agreement with the developer to accept off-site provision in the form of:



- Direct provision of an appropriate type and standard for rent on a suitable alternative site within the district. These dwellings will be transferred to a RP and managed by them in perpetuity,

or

- Provide suitable alternative land for affordable housing development within the district,

or

- Provide the required number of suitable properties by acquiring them on the open market. These dwellings must be within the district and legally transferred to a RP and managed by them in perpetuity

6.20 The subsequent scheme must be approved by the relevant Authority.

6.21 In circumstances where the Authority accepts that the provision of affordable housing cannot be provided on site and an alternative site is not available or acceptable to the Authority the applicant will be required to pay a commuted sum.

### **6.22 Financial Contributions in Lieu (Commutated Sums)**

6.23 The provision of contributions in lieu of on or off-site provision is the Authorities least preferred option, and will only be considered in exceptional circumstances.

6.24 The level of payment in the form of a commuted sum is decided upon by the Authority and this will be broadly equivalent in scale to what would have been provided on-site and will be used to provide elsewhere within either district what the Developer is not providing on the application site.

6.25 The contribution should take into account the broadly equivalent value of the on site provision and be subject to appropriate indexation. This requirement including any necessary valuations will be undertaken at the developer's expense and will be incorporated into the planning obligation.

6.26 As such, the method for calculating the value of a commuted sum for off-site provision will be based on the quantity and mix of affordable housing reflective of that which would have been expected from the subject site had an on site contribution been practical or appropriate.

6.27 The Commuted sum is the sum to be paid by the developer. In the case of off site provision being required, payments will be made on commencement of the construction of the development or phase which the commuted sum is sought.

6.28 All cash payments will be in a ring-fenced account and used to fund affordable housing in line with the relevant Authorities Housing Strategy. Contributions will be used to increase overall affordable housing supply across the district.

### **6.29 Calculation for a commuted sum**

- 6.30 If a commuted sum payment is concluded to be acceptable in principle, the method of calculating the amount of payment will be clearly set out and will be the same in every case. However, there are a number of site-specific variables which means that the end result may not always be the same and therefore there is not a flat rate “per plot” which can be applied.
- 6.31 In order to calculate the commuted payment it is necessary to establish the details of the notional scheme that has been “lost”. This must be based on what would have been provided on the affordable housing part of the site (taking the appropriate percentage as set out in policy CS9 (Forest Heath) and CS5 (SEBC) of the net development site), having regard to identified housing need and the unit size(s) required by the Authority and financial viability. The applicant should agree a notional scheme with the Authority. It is at this stage that viability and deliverability issues will be taken into account.
- 6.32 Once the notional scheme has been agreed, this will inform the amount of free serviced land that would have been provided as part of the development in the case of on-site provision. The financial calculation must therefore be sufficient to cover the cost of making provision elsewhere, and a formulaic approach is used to calculate this amount.
- 6.33 **Basis of calculation**  
The basis of the calculation is by reference to the affordable dwellings that would have been provided on the application site. The calculation will reflect an appropriate dwelling mix, type and tenure that would meet the requirements. For each dwelling, an independent Valuer will be instructed to determine its:
- Open Market unencumbered Value and its
  - Social Rented Value or Intermediate Value (as appropriate)
- 6.34 **“Social Rented Value” housing** is based on the amount that a RP could pay from their own resources (i.e. without the aid of public subsidy or grant) for the purchase of a social rented property. It is predominantly determined by the total that they are able to borrow that can be repaid from the affordable rents they receive, after allowing for their management and other expenses.
- 6.35 **“Intermediate Value” housing** Intermediate housing to be New Build Homebuy (NBHB) is based on the amount that an RP could pay from their own resources (i.e. without the aid of public subsidy or grant) for the purchase of properties which will be sold to initial purchasers at no more than 40% of market value with an annual rent of no more than 1.5% of the unsold equity.
- 6.36 **Formula**  
The financial contribution will be sum of the value of an equal clean unencumbered site plus the difference between the Open Market Value, less the Social Rented Value or Intermediate Value housing for each unit in the scheme that would have been required if on-site provision had been made. This is broadly the equivalent value of not providing the units on site which gives sufficient funds to deliver the units off site via market purchase or development.

### **6.37 Securing Planning Obligations**

6.38 Developers are advised to consult with the Authorities designated Affordable Housing Enabling Officer at the earliest opportunity within the site development process. This should be prior to the land acquisition stage and prior to the submission of a planning application. The Authorities policy is that pre-application charges will apply for advice that relates to a specific site.

6.39 CIL Legislation requires that planning obligations (or Section 106 Agreements and Undertakings) need to be necessary, directly related & fairly and reasonably related to the proposed development. They are an established and valuable mechanism for securing planning matters arising from a development proposal. They are commonly used to bring development in line with the objectives of sustainable development as articulated through the relevant local, regional and national planning policies. Planning obligations should be flexible to enable and encourage the scheme to proceed and are only sought if they are relevant to planning, necessary, directly related, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects. Planning obligations will be used to ensure that the affordable housing built is occupied only by people that fall within the identified categories of need for affordable housing.

## **Section 7: Monitoring and Review**

7.0 Both Authorities will monitor the supply of affordable units in their area; both in relation to its Core Strategies and the other Authority initiatives including Homes produced through the Councils Empty Homes Strategy. Each Authority will also monitor the demand for the future housing through the SHMA. Other indicators, which may be monitored include:

- Monitoring of Housing Completions by financial year (gross and net); by rent, low cost home ownership as well as i) those wholly funded by the RP, ii) wholly funded through the developer/ landowner contribution iii) funded through a mix of public subsidy and developer contribution.
- Delivery of affordable housing units through the planning system, in urban and rural locations and by type of dwelling units e.g. flats, houses and number of bedroom; as well as provision of older people; and people with special mobility requirements
- The percentage of affordable houses achieved on an open market development.

7.1 Any collection of financial contributions, will all pull together to help deliver affordable housing within the relevant district of Forest Heath or St Edmundsbury.

## Glossary of Terms

**Affordable Housing** –includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market and is provided at a cost low enough for them to afford, determined with regard to local incomes and local house prices.

**Allocated Sites** - Sites that are identified in the Local Plan for the development of new housing.

**Affordable Housing Provider** - Any Affordable Housing Provider who is registered and receives funding from HCA.

**Exceptions Site** - A site that is granted planning permission for affordable residential development, which is beyond the limits to development of a settlement and would not be granted permission for market housing. This would only be granted permission or allocated on the basis of a housing need identified in the local area.

**HomeBuy Agents** - administer the HomeBuy scheme. They work closely with the Authorities housing department and housing associations developing new homes in the area, register interest from applicants, assess their eligibility and provide details of schemes in the area.

**Housing Corporation (and its successor the Homes and Communities Agency HCA).**-The non-departmental public body whose role is to fund and regulate Registered Providers of Social Housing in England.

**Housing Quality Indicator**- The HQI system is a measurement and assessment tool to evaluate housing schemes on the basis of quality rather than just cost. They incorporate the design standards required of affordable housing providers receiving funding through the National Affordable Housing Programme (NAHP) and Affordable Homes Programme (AHP).

**Housing Strategy** - The Authorities statement of its housing policy objectives and programmes, which is subject to a continual process of review.

**Intermediate Housing** - Housing at prices and rents above those of social rent, but below market prices or rents, and which meet the criteria for affordable housing (see above).The homes can be shared equity products and other low cost homes for sale and intermediate rent.

**LA** - Local Authority

**Lifetime Homes** - A standard of housing design developed by the Joseph Rowntree Foundation that provides a series of design features to permit a dwelling to be adapted to a household's changing circumstances over their lifetime.

**Local Plan** - The name given to the system of Development Plans prepared by the Authority that outline how planning will be managed in the Local Authority area.

**Material Consideration** - A matter that is taken into account in deciding on a planning application, or on an appeal against a planning decision. Examples include Supplementary Planning Documents.

**Mortgagee in Possession Clause** - a means of allowing lenders of private finance of affordable housing to dispose of a property on the open market as a last resort, if the affordable housing provider experiences financial difficulties and is in danger of defaulting on a loan.

**National Affordable Housing Programme (NAHP)** - The HCA two year funding system that enables PRPSH and unregistered bodies to bid for grant to finance affordable housing.

**Open Market Value** - The price at which a property would be sold, given a willing vendor and a willing purchaser, with no financial incentives, discount or subsidy.

**Parish Housing Needs Surveys** - Surveys which are carried out in parishes, or groups of parishes, to establish the extent of local housing need among existing and potential households which have a connection with that parish or group of parishes.

**Private Registered Provider of Social Housing (PRPSH)** - A not for profit organisation, often referred to as a Housing Associations, which provides both social rented and shared ownership housing, and which is registered with and regulated by the HCA.

**Rural Housing Enabler** - an independent body who works with the Authority and parish councils to help identify need within a parish through a parish wide Housing Needs Survey.

**Section 106 Agreements** - An agreement by a local authority with a landowner/developer restricting or regulating the development or use of land in accordance with the Town and Country Planning Act 1990.

**Supported Housing** - housing for those with special needs, such as young single people, students, elderly people (especially the frail elderly), disabled people (including people with learning difficulties or mental health problems), homeless people, rough sleepers, those recovering from addictive illnesses and women at risk, including those with children.

**Sustainable Community Plan** - The document prepared under the Local Government Act 2000 for promoting or improving the economic, social and environmental well being of the Local Authority area and contributing to the achievement of sustainable development. It has to meet four objectives: (a) allow local communities (based on geography and interest) to articulate their aspirations, needs and priorities; (b) co-ordinate the actions of the council, and of the public, private, voluntary and community organisations that operate

locally; (c) focus and shape existing and future activity of those organisations so that they can effectively meet community needs and aspirations; (d) contribute to the achievement of sustainable development both locally and more widely, with local goals and priorities relating, where appropriate, to regional, national and even global aims.

**Social Rented Housing** - Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime.

**Supplementary Planning Document (SPD)** - SPDs are documents providing more detailed and supplementary information on specific statutory policies. SPDs replace the old-style SPGs.

**Staircase to full ownership**- Term used to describe residents who live in shared equity housing, who initially buy a percentage share of the house and can then afford to increase their percentage share up to full ownership.

**Statutory Housing Register** – now referred to as the Council's housing waiting and transfer lists from which all social rented housing is allocated.

**Windfall Sites** - Sites which are not specifically allocated within the Local Development Framework, but which come forward as part of the normal development control process and are consistent with other Local Plan policies.

**Zone Agent** – A registered social landlord that markets housing schemes across an area. They deal with applications and nominations and assess eligibility for affordable housing.

**Appendix A: Unilateral Undertaking for Off-site Contribution**

**DATE.....**

**(1) OWNER.....**

**(2) FOREST HEATH DISTRICT COUNCIL/ ST EDMUNDSBURY BOROUGH  
COUNCIL (please delete where applicable)**

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**UNILATERAL PLANNING OBLIGATION  
UNDER THE  
TOWN AND COUNTRY PLANNING ACT 1990**

---

relating to

**Land at ..... Suffolk**



**THIS UNILATERAL PLANNING OBLIGATION is dated**  
**and is given by:**

**2012**

- (1) **NAME OF OWNER**.....of  
**ADDRESS**.....  
.....\* (**“the Owners”**) to
- (2) **FOREST HEATH DISTRICT COUNCIL** of District Offices, College Heath Road, Mildenhall, Suffolk IP28 7EY (**“the Council”**)

**1. Background**

The Owners are the owners of the site in fee simple in possession free from encumbrances at .....Suffolk (**“the Land”**) registered at HM Land Registry under title number.....\*

- 1.1. The Council is the local planning authority
- 1.2. The Owners have by F/2012/..... applied to the Council for planning permission for the erection of .....(**“the Application”**)
- 1.3. The Owners are willing to give an undertaking to perform the obligations set out in this Unilateral Planning Obligation in order to facilitate the grant of planning permission by ensuring that the Council can regulate the Development by securing the benefits contained in this undertaking

**2. Interpretation**

In this Unilateral Planning Obligation:

- 2.1. “the Act” means the Town and Country Planning Act 1990
- 2.2. “agreed” or “approved” means agreed or approved in writing and given for the purpose of this Unilateral Planning Obligation
- 2.3. “the Application Site” means the Land
- 2.4. “Commencement” means the carrying out on the Land of a material operation as specified in Section 56(4) of the Act
- 2.5. “the Development” means the development of the Application Site proposed in the Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning

permission

- 2.6. Interest means interest rate of 4% above Barclays Bank PLC Base Rate
- 2.7. “the Monitoring Charge” means the sum of £510
- 2.8. “Specified Date” means the date upon which an obligation arising under this Unilateral Planning Obligation is due to be performed
- 2.9. Words importing the masculine include the feminine and vice versa
- 2.10. Words importing the singular include the plural and vice versa
- 2.11. Words importing persons include companies and corporations and vice versa
- 2.12. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 2.13. Any reference to a clause or schedule or plan is to one in or attached to this Unilateral Planning Obligation
- 2.14. In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it
- 2.15. References to any party to this Unilateral Planning Obligation shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their functions as local planning authority

### **3. Enabling Provisions**

- 3.1 This Unilateral Planning Obligation is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers

### **4. Commencement and Determination**

- 4.1. This Unilateral Planning Obligation shall come into effect on the date of the grant of the planning permission granted pursuant to the Application
- 4.2. If the planning permission granted pursuant to the Application shall expire before the Commencement of a material operation or shall at any time be revoked then this Unilateral Planning Obligation shall be determined and shall have no further effect

## **5. Owner's Covenants with the Council**

- 5.1. The Owners covenant with the Council they will pay to the Council the sum of £..... prior to Commencement as a contribution towards the provision of Affordable Housing as required by the Council
- 5.2. The Owners covenant with the Council it will pay Interest on the sums due to the Council under this Deed but not paid on the Specified Date from the Specified Date until actual payment and the rate of interest shall be 4% above Barclays Bank Plc base rate

## **6. General**

The Owners acknowledge and declare that:-

- 6.1. the obligations contained in this Unilateral Planning Obligation are planning obligations for the purpose of Section 106 of the Act
- 6.2. this Unilateral Undertaking constitutes a deed enforceable by the Council
- 6.3. this Unilateral Planning Obligation does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999
- 6.4. no person shall be liable for any breach of the covenants restrictions or obligations contained in this Unilateral Planning Obligation after that person has parted with its interest in the Application Site or the part of it in respect of which the breach occurs but without prejudice to liability for any breach subsisting prior to parting with such interest
- 6.5. this Unilateral Planning Obligation may be registered as a local land charge in the Register of Local Land Charges maintained by the Council
- 6.6. that the Owner has the sole proprietary interest in the Application Site and that there are no third party interests which would require any other party to give this Unilateral Planning Obligation
- 6.7. The Owners shall on the date hereof pay to the Council the Monitoring Charge of £510 and also £300 as a contribution towards the Councils reasonable and proper legal costs
- 6.8. the sums due to the Council under this Deed but not paid on the Specified Date from the Specified Date until actual payment and the rate of interest shall be 4% above Barclays Bank Plc base rate

IN WITNESS of which this deed has been executed the day and year first above written

**SIGNED as a DEED by:**            )  
  )  
  ) \_\_\_\_\_

**IN THE PRESENCE of:** \_\_\_\_\_  
**WITNESS NAME:**

**WITNESS ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Appendix B: Unilateral Undertaking for On-site Provision

DATE.....

(1) OWNER.....

(2) FOREST HEATH DISTRICT COUNCIL/ ST EDMUNDSBURY BOROUGH  
COUNIL (please delete where applicable)

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**UNILATERAL PLANNING OBLIGATION  
UNDER THE  
TOWN AND COUNTRY PLANNING ACT 1990**

---

relating to

**Land at ..... Suffolk**

**THIS UNILATERAL PLANNING OBLIGATION is dated**

**2012**

**and is given by:**

(1) **NAME OF OWNER**.....\*of  
**ADDRESS**.....  
.....\* (**“the Owners”**) to

(2) **FOREST HEATH DISTRICT COUNCIL** of District Offices, College Heath Road, Mildenhall, Suffolk IP28 7EY (**“the Council”**)

**7. Background**

The Owners are the owners of the site in fee simple in possession free from encumbrances at .....Suffolk (**“the Land”**) registered at HM Land Registry under title number.....\*

7.1. The Council is the local planning authority

7.2. The Owners have by F/2012/..... applied to the Council for planning permission for the erection of .....(**“the Application”**)

7.3. The Owners are willing to give an undertaking to perform the obligations set out in this Unilateral Planning Obligation in order to facilitate the grant of planning permission by ensuring that the Council can regulate the Development by securing the benefits contained in this undertaking

**8. Interpretation**

In this Unilateral Planning Obligation:

**“the Act”** means the Town and Country Planning Act 1990

**“1985 Act”** means the Housing Associations Act 1985

**“1996 Act”** means the Housing Act 1996

**“Access”** shall mean the provision of roads [footpaths and cycleways] to an adoptable standard together with all rights and easements and obligations as to maintenance over the said roads [footpaths and cycleways] to provide access and egress to the Affordable Dwellings

**“Affordable Dwelling”** shall mean a Dwelling forming part of the Affordable Housing together with Access and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a dwelling

**“Affordable Housing”** means social rented, affordable rented and intermediate housing as detailed in the Councils SPD for Affordable Housing, provided to specified eligible households whose needs are not met by the market

**"Affordable Housing Contract"** means: a binding contract with a Registered Provider (RP) for a binding contract for sale or agreement for lease combining the sale or long lease of the relevant part of the Affordable Housing Land with a contract for the construction of the Affordable Dwellings in each such case includes:-

(a) terms requiring the Registered Provider to offer Nomination Rights to the Council in relation to the Affordable Housing

(b) full and free rights of Access subject to any appropriate conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such Access pending adoption;

(c) full and free rights for the passage of Services through Service Media which shall be in the adjoining land up to and abutting the boundary to the relevant part of the Affordable Housing Land subject to any appropriate conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such Service Media pending adoption; and

(d) such other commercial terms and conditions as may be reasonably required by the relevant owner and/or the developer and/approved RP

**"Cluster"** shall mean a group of Affordable Dwellings

**"Design and Quality Standards"** means standards as required by the HCA or its successor body

**"Dwelling"** shall mean any unit of self-contained residential accommodation constructed pursuant to the Planning Permission

**"Homes and Communities Agency"** is a non-departmental body that is the national housing and regeneration agency and is responsible for the funding of affordable homes in England and shall include any successor body in substitution for the Homes and Communities Agency

**"Long Lease"** shall mean a lease for a term of at least 125 years

**"Market Dwelling"** means any Dwelling other than an Affordable Dwelling

**"Nominations Agreement"** means an agreement negotiated between the Council and an RP which guarantees the Council's ability to access RP-owned new build accommodation and relets for applicants on the Council's Housing Register, either via a Choice Based Lettings system or some alternative route

**"Occupation"** means first residential occupation of a Dwelling, save for the purpose of construction fitting out or marketing and the expressions "Occupy" and "Occupied" shall be construed accordingly

**“Registered Provider”** (RP) shall mean an organisation nominated by the Owners and approved by either the Homes and Communities Agency or the Council and which is either:

- (i) a Registered Social Landlord within the meaning given in Part 1 of the Housing Act 1996; or
- (ii) another organisation whose object is or includes the provision and or management of Affordable Housing

**“Services”** shall mean the supply of water electricity gas telephone and the disposal of foul and surface water

**“Service Media”** shall mean all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and ducting lasers optical fibres electronic data or impulse transmission communication or reception systems broadband and all other conducting media and any other apparatus

**“Staircasing Event”** means any occasion on which a lessee of an Affordable Housing Unit acquires equity in that unit under any current or future legislation that applies to Affordable Housing granting tenants the right to acquire the property

Words importing the masculine include the feminine and vice versa

Words importing the singular include the plural and vice versa

Words importing persons include companies and corporations and vice versa

Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually

Any reference to a clause or schedule or plan is to one in or attached to this Unilateral Planning Obligation

In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it

References to any party to this Unilateral Planning Obligation shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their functions as local planning authority

## **9. Enabling Provisions**

- 3.1 This Unilateral Planning Obligation is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers



**10. Commencement and Determination**

- 4.1 This Unilateral Planning Obligation shall come into effect on the date of the grant of the planning permission granted pursuant to the Application
- 4.2 If the planning permission granted pursuant to the Application shall expire before the Commencement of a material operation or shall at any time be revoked then this Unilateral Planning Obligation shall be determined and shall have no further effect

**11. Owner’s Covenants with the Council that;**

- 5.1 ..... of Dwellings constructed pursuant to the Planning Permission shall be provided as Affordable Housing
- 5.2 The location of the Affordable Dwellings shall be in accordance with the planning permission granted pursuant to the Application
- 5.3. All Affordable Dwellings shall transfer to an Approved RP
- 5.4 No more than 50% occupation of any Market Dwellings shall occur until it has entered into a Affordable Housing Contract with an RP in relation to the Affordable Dwellings and transferred that Affordable Housing in accordance with the Affordable Housing Contract
- 5.5 The Owner will give written notice to the Council when the legal transfer of 50% of the total number of Market Dwellings and 100% of the Affordable Dwellings shall have been achieved.
- 5.6 If a Cluster is proposed it shall be physically separate from and discontinuous with any other Cluster and there shall be no more than 15 Affordable Dwellings within any Cluster.
- 5.7 .....of Affordable Dwellings shall be Social Rented Housing Units
- 5.8 .....of Affordable Dwellings shall be Affordable Rented Units
- 5.9 .....of the Affordable Dwellings shall be Intermediate Housing Units
- 5.10 The mix of Affordable Dwellings shall be as follows;
  - a) Social Rented Housing Units  
consisting of:.....
  - b) Affordable Rented Units  
consisting of:.....
  - c) Intermediate Housing Units  
consisting of:.....
  - d) or such other tenure as agreed in writing with the Council

- 5.11 Intermediate Housing shall not be disposed of on their initial sale other than by way of remaining Intermediate Housing unless otherwise agreed in writing by the Council.
- 5.12 Social Rented Housing Units shall not be disposed of other than by way of remaining Social Rented Housing unless otherwise agreed in writing by the Council.
- 5.13 Social Rented Housing Units, Affordable Rented Units and Intermediate Housing Units must be constructed to meet or exceed the Design and Quality Standards.
- 5.14 the following information shall be provided upon request by the Council;
- a) the cumulative total and location of Dwellings Occupied for the whole site;
  - b) the number of Affordable Housing Dwellings completed with a breakdown specifying the number Affordable Housing Dwellings built and occupied with details of their tenure and unit type and size;
  - c) the number location and tenure of the Affordable Housing Dwellings with details of the rent and service charges and Market Value and equity sold to the occupier if under a Shared Ownership Lease;
  - d) the amount of receipts following a Staircasing Event.
- 5.15 all transfer documentation securing a transfer of Affordable Housing to a Registered Provider shall include the following;
- (a) a mortgagee or chargee appointed by a mortgagee acting pursuant to the terms of a legal charge or mortgage shall be entitled to dispose of an Affordable Housing Unit free from the provisions of this Agreement, subject to the following:
  - (b) The mortgagee or chargee will notify the Council in writing of its intention to exercise its power of sale;
  - (c) The mortgagee or chargee shall use its reasonable endeavours to dispose of the Affordable Housing Unit to an approved RP nominated in writing by the Council within 28 days of the Council receiving notification under (a) above;
  - (d) In the event of a nomination not being made under (b) above or a sale to a nominated Approved RP not being completed within 3 months of a nomination being made the mortgagee or chargee may dispose of the Affordable Housing Unit on the open market free from the restrictions in this Agreement;
  - (e) The Council shall in formulating or promoting any arrangements in respect of the Affordable Housing Unit give consideration to protecting the interests of the chargee in respect of monies outstanding under the charge or mortgage.
  - (f) The mortgagee shall, on completion of the sale of any Affordable Housing Unit apply the proceeds of the sale in the following order of priority (i) being the first and highest priority;

- (i) To the mortgagee in respect of payment of all monies due under its legal charge or mortgagee;
- (ii) To the mortgagee in respect of the reasonable costs incurred in connection with the sale and discharge of the legal charge or mortgage;
- (ii) To the Council the balance of the proceeds of sale up to the equivalent of the Subsidy;
- (iv) To the Approved RP against whom the mortgagee exercised its rights under its legal charge or mortgage the balance of the proceeds.

## **6. Releases**

- 6.1 The provisions of clause 5 above shall cease to bind any of the Affordable Housing Dwellings if in relation to that Affordable Housing Dwelling it shall have been sold under a Intermediate lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100 per cent in a Staircasing Event

## **7. General**

The Owners acknowledge and declare that:-

- 7.1 the obligations contained in this Unilateral Planning Obligation are planning obligations for the purpose of Section 106 of the Act
- 7.2 this Unilateral Undertaking constitutes a deed enforceable by the Council
- 7.3 this Unilateral Planning Obligation does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999
- 7.4 no person shall be liable for any breach of the covenants restrictions or obligations contained in this Unilateral Planning Obligation after that person has parted with its interest in the Application Site or the part of it in respect of which the breach occurs but without prejudice to liability for any breach subsisting prior to parting with such interest
- 7.5 this Unilateral Planning Obligation may be registered as a local land charge in the Register of Local Land Charges maintained by the Council
- 7.6 that the Owner has the sole proprietary interest in the Application Site and that there are no third party interests which would require any other party to give this Unilateral Planning Obligation
- 7.7 The Owners shall on the date hereof pay to the Council the Monitoring Charge of £816 and also £300 as a contribution towards the Councils reasonable and proper legal costs

IN WITNESS of which this deed has been executed the day and year first above written

**SIGNED as a DEED by:**

)  
)  
)

.....

**IN THE PRESENCE of:  
WITNESS NAME:**

.....

**WITNESS ADDRESS:**

.....  
.....  
.....  
.....  
.....

**Appendix C: Indicative S106**

**DATED**

**2012**

**(1) FOREST HEATH DISTRICT COUNCIL/ ST EDMUNDSBURY BOROUGH  
COUNCIL (please delete where applicable)**

**And**

**(2) OWNER**

---

**AGREEMENT**

Under Section 106 Town and Country Planning Act 1990  
as amended and other statutory provisions

Land at .....

---

**THIS DEED OF AGREEMENT** is made the                    day of  
2012

**BETWEEN:**

1.....  
.....(hereinafter called “the Council”); and

2.  
**OWNER**.....  
..... (hereinafter called “the Owner”);

**RECITALS**

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended for the area within which the property described in the First Schedule hereto (hereinafter called “the Property”) is situated and is an Authority who may enforce the planning obligations herein.
- (2) The Property comprises land registered at HM Land Registry under title number .....
- (3) The Owner is the freehold owner of the Property subject only to the charges but otherwise free from encumbrances.
- (5) The Owner has by a written application dated the.....day of.....Two Thousand and Twelve applied to the Council for Planning Permission for .....and has been allocated by the Council the reference number F/..... (hereinafter called “the Application”).
- (6) Having regard to the Development Plan and other material considerations the Council consider it necessary in the interests of proper planning of their area that provision should be made for regulating the Development in the manner hereinafter appearing and the Council is satisfied that the Permission can only be granted subject to and on completion of this Agreement.

**NOW THIS DEED WITNESSETH:**

1. This Agreement is made in pursuance of Section 106 of the Town and Country Planning Act 1990 (“the Act”) as amended and Section 111 of the Local Government Act 1971 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and for the avoidance of doubt it is hereby stipulated that to the extent that the covenant on the part of the Applicant hereinafter contained requires the carrying out of any works or the doing of any other thing on or in relation to the property the provisions of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 apply to the said covenant.
2. The obligations created in the Second Schedule hereto are planning obligations insofar as they fall within the terms of Section 106 of the Act and CIL Regulations 6<sup>th</sup> April 2010 and are enforceable by the Council
3. Insofar as any of the covenants contained in this Agreement are not planning obligations within S106 of the Act they are entered into pursuant to the powers contained in S111 of the Local Government Act 1972 and all other enabling powers.
4. This Agreement shall be a local land charge and shall be registered as such.
5. The Owner hereby covenants with the Council so as to bind the Property and each and every part thereof to carry out and comply with the obligations regulating the Development and use thereof specified in the Second Schedule hereto (“the Planning Obligations”).
6. The Contracts (rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed (other than a successor in title to one of the original parties or their assignees) shall be entitled in that person’s own right to enforce any provisions of this Deed pursuant to the provisions of the said Act.
7. The obligations contained in this Agreement will come into effect on the Commencement Date save that this clause and clause 8 will come into effect on the date hereof.
8. The Applicant shall pay the Council the monitoring charge and reasonable legal costs of the Council incurred in connection with the

negotiation, preparation, completion and registration of this Agreement on the date hereof

9. The following expressions shall have the meanings hereby respectively assigned to them:-

“Affordable Housing” housing that is affordable to those people who cannot afford to rent or buy housing generally available on the open market which is to be provided through the involvement of a Registered Provider of Social Housing and which secures the provision of such housing in perpetuity (where legally permissible) to include the following types of tenure or combination thereof:

- (a) Social Rented Housing;
- (b) Affordable Rented Housing
- (c) Intermediate Housing; and
- (d) any other tenure or combination of tenure approved by the Council;

“Affordable Housing Plan” the plan to be submitted with the Affordable Housing Scheme incorporating the provisions of Affordable Housing required under this Deed;

“Affordable Housing Scheme” as scheme for each Phase and in accordance with the conditions of the Permission which addresses the priority housing needs identified by the Council having regard to:

- (a) the Council’s most recent Strategic Housing Market Assessment;
- (b) the Indicative Affordable Housing Mix or any replacement as approved by the Council and in particular the target therein that a minimum of 30%



of all Dwellings to be provided as Affordable Housing on the Site will be houses;

(c) the grant funding available to the Approved AHP for the development of the relevant Phase; and

(d) the Council's Affordable Housing Supplementary Planning Guidance in order to secure the provision by an Approved AHP of the Affordable Housing Units such scheme to identify for each Phase (inter alia):

(i) the parcels and location of the Affordable Housing as shown for illustration purposes on the Affordable Housing Plan;

(ii) identification of each Sub-Phase within a Phase;

(iii) the mix of accommodation of Affordable Housing Units (including the identification of the number of bedrooms);

(iv) the tenure of the Affordable Housing Units;

(v) the Nominations Agreement or any alternative arrangements for allocations in individual Affordable Housing Units approved in writing by the Council;

(vi) such other information as the Council may reasonably request;

**“Affordable Housing Site”** the part or parts of the Site on which the Affordable Housing is to be provided and each Affordable Housing Site shall be sufficient in extent for the erection of the Affordable Housing including (without prejudice to the generality of the

foregoing) adequate curtilage, parking spaces, walkways, gardens and other normal domestic facilities and “Affordable Housing Sites” shall be construed accordingly;

“Affordable Housing Units” means the Relevant Percentage of the total number of Dwellings provided as part of the Development which are to be used for Affordable Housing and “Affordable Housing Unit” shall be construed accordingly;

“ Affordable Rented Housing” This is housing let by private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

“Approved AHP” means a Registered Provider of Social Housing or other affordable housing provider approved by the Council;

“Design and Quality Standards” the publication “Design and Quality Standards”, April 2007 issued by the Housing Corporation (or successor publication issued by the HCA) which sets out the requirements and recommendations of the Housing Corporation or HCA for quality of housing probity and procurement and procedural compliance or any successor publication current at the date of the building contract for the construction of the Affordable Housing on any relevant Phase;

“Homes and Communities Agency” means the non-departmental public body responsible for creating thriving communities and

(HCA)”	affordable homes in England or such other body that may replace it;
“Indicative Affordable Housing Mix”	the overall mix number and tenure of Affordable Housing Units as set out in the Second Schedule which provide for a mix of ..% Social Rented Housing and ..% Intermediate Housing unless otherwise agreed by the Council;
“Intermediate Housing”	housing provided for those whose incomes in relation to local housing costs are such as to prevent them from accessing Market Dwellings but which shall not include Social Rented Housing;
“Market Dwelling”	means a residential unit which is not an Affordable Housing Unit:
“Model Affordable Housing Transfer”	means a transfer in the form contained in the Second Schedule with such amendments as may be agreed by the Council and the Approved AHP from time to time;
“Nomination Agreement”	means a nomination agreement between an Approved AHP and the Council substantially in the form set out in the Second Schedule or such other form first approved in writing by the Council and which in any event shall include the Nomination Rights;
“Nomination Rights”	means rights to the Council to nominate Qualifying Persons to Affordable Housing Units;
“Qualifying Persons”	means individuals who shall satisfy the Council that they are in “housing need” as defined by and/or described in the Council’s latest adopted policies (so far as may be relevant);

“Registered Provider of Social Housing (“RPSH”)	a Registered Provider of Social Housing within the meaning of Section 80 of the Housing and Regeneration Act 2008 (including and statutory replacement or amendment) and as registered with the Tenant Services Authority pursuant to Section 116 of the Housing and Regeneration Act 2008 and approved in writing by the Council;
“Relevant Percentage”	means thirty per cent (30%) or such other percentage figure as may be approved by the Council
“Shared Ownership”	a form of tenure granted by lease by the Registered Provider of Social Housing to be disposed pursuant to shared ownership agreements within the meaning of Section 70(4) of the Housing and Regeneration Act 2008 and based on the model form of lease issued by the HCA;
“Social Housing Grant”	a grant made to a Registered Provider of Social Housing pursuant to Sections 19 and 31 to 35 of the Housing and Regeneration Act 2008 including any statutory replacement or amendment;
“Social Rented Housing”	housing provided pursuant to a tenancy and through the involvement of a Registered Provider of Social Housing at rents below market rents and at levels controlled by the HCA and set at a level not exceeding the HCA rent restructuring guidelines;
“Strategic Housing Market Assessment”	an assessment carried out by the Council to comply with the “Strategic Housing Market Assessment Practice Guidance” issued by the Department for Communities and Local

Government or any replacement guidance;

“Sub-Phase”

means an area within a Phase comprising Market Dwellings and Affordable Housing Site(s) to be identified as part of the Affordable Housing Scheme, and shall include no fewer than [ ?] and no more than fifteen (15) Affordable Housing Units;

“Tenant Services Authority”

means the Office for Tenants and Landlords which has the statutory functions of managing and regulating social housing in England or such other body that may replace it.

DRAFT

**FIRST SCHEDULE**

**The Property**

**ALL THAT** parcel of land being the Property known as Land at .....Suffolk and shown for identification only edged red on the attached plan.

DRAFT

**SECOND SCHEDULE**  
**The Planning Obligations**

- 1 The Owner will not to implement the Development on any Phase until the following has occurred:
  - 1.1 an Approved AHP has been approved by the Council for the purposes of the Deed;
  - 1.2 the Owner has submitted (having consulted with and agreed the same with the Approved AHP) the Affordable Housing Scheme for that Phase to the Council who has given written approval thereto; and
  - 1.3 an agreement for the sale of the freehold interest in the Affordable Housing Site for that Phase has been signed with the Approved AHP and is in accordance with the conditions contained with paragraph 6 of this Schedule
  
- 2 The Owner will construct the Affordable Housing Units in each Phase and make the same ready for Occupation in accordance with the Design and Quality Standards as part of the Development upon the Site at no cost to the Council;
  
- 3 The owner will not allow more than 50% of the Market Dwellings within each Sub-Phase to be used or Occupied unless and until the Developer has:-
  - (a) disposed of a freehold interest in the Affordable Housing Site within that Sub-Phase to the Approved AHP and has delivered written evidence of such transfer to the Council; and
  - (b) constructed and completed or procured the construction and completion of the Affordable Housing Units to the reasonable satisfaction of the Council and have the same ready for Occupation as aforesaid;

4 The owner will ensure that the transfer to the Approved AHP referred to in paragraphs 3 and 3(a) above requires the Approved AHP to enter into a Nominations Agreement with the Council on the terms to be agreed with the Council prior to Occupation of any Affordable Housing Unit;

5 The owner will not allow Occupation any of the Affordable Housing Units unless and until the Affordable Housing Provider has entered into the Nominations Agreement as aforesaid;

6 the conditions on which the interest in each Phase of the Affordable Housing shall be transferred are set out in the Model Affordable Housing Transfer and shall include the following:

6.1 have good and marketable freehold title;

6.2 remediated so that the land is fit for the proposed use;

6.3 in consideration of the purchase price of one pound (£1.00) in respect of land comprising the relevant Phase payable at the time of transfer;

6.4 on terms that at the date of the transfer the following are (unless otherwise agreed by the Registered Provider of Social Housing) provided up to a point immediately adjacent to the Boundary of the Affordable Housing Site:

(a) an adoptable road constructed to base course and subject to an agreement under Section 38 of the Highways Act 1980;

(b) adoptable public sewers and drains subject to an agreement under Section 104 of the Water Industry Act 1991; and

(c) gas, water, electricity, telecommunications infrastructure with sufficient capacity to serve each Affordable Housing Site

PROVIDED THAT if it has not been possible to complete such works and agreement or agreements as specified in this paragraph 6.4 of this Schedule



by the time of such transfer then the Owner covenants to use all reasonable endeavours to complete such works and to enter into such agreements as soon as possible thereafter and will maintain the estate roads and foul and surface water sewers at their own expense prior to adoptions; and

(d) such necessary rights as the Owner may reasonably require to be reserved.

7 the Affordable Housing Units in any Phase shall not be used for any purpose other than as Affordable Housing in perpetuity in accordance with the Affordable Housing Scheme or as otherwise agreed between the Approved AHP and the Council;

8 the Affordable Housing shall be constructed in accordance with the Design and Quality Standards;

[9 on the date the Affordable Housing Site in a Sub-Phase is transferred to the Approved AHP the Approved AHP shall enter into a Nominations Agreement with the Council for the Affordable Housing in that Phase.

10 within any Phase the Owner will not provide a greater number of Affordable Housing Units than the number the Council has approved for the Affordable Housing Scheme for that Phase pursuant to paragraph 2 of this Schedule

11 the Owner will not to seek to vary the Affordable Housing Scheme other than on the grounds that the Development would not be viable unless the requirements of this Deed to provide Affordable Housing are adjusted and in accordance with the following provisions:

11.1 any proposal by the Owner under paragraph 11 shall specify:

(a) any proposed reduction (in terms of a percentage) of Affordable Housing within the Development; and

- (b) any proposal to provide some of the Affordable Housing Units as Intermediate Housing instead of Social Rented Housing or Affordable Rented Housing within the Development.

11.2 If the Council approves any proposals submitted by the Owner under paragraph 11 then for the purposes of this Deed:

- (a) the Relevant Percentage of Residential Units which are to comprise Affordable Housing Units within the Development shall be adjusted in accordance with such approval; and
- (b) the number of Affordable Housing Units approved by the Council may be provided as Intermediate Housing instead of Social Rented Units or Affordable Rented Housing.

11.3 In determining whether to approve any adjustment to the requirements of this Deed to provide Affordable Housing within the Development, the Council shall be entitled to determine in its absolute discretion whether such adjustment should be achieved by means of a reduction in the Relevant Percentage of Residential Units which are to comprise Affordable Housing Units within the Development or by the provision of Intermediate Housing instead of Social Rented Units, Affordable Rented Units or by a combination of either.

11.4 Any proposals submitted by the Owner shall be accompanied by a development appraisal in a format previously approved by the Council and which accords with the Royal Institution of Chartered Surveyors' Appraisal and Valuation standards and any guidance notes relating thereto in force at the time of preparation of the development appraisal, together with the supporting information which is specified in paragraph 11.5 below.

11.5 The following information shall be submitted to the Council in support of the figures included in the relevant development appraisal:

- (a) Copies of any contract entered into where available to justify an item of expenditure;

- (b) In the case of an item of expenditure which shall be estimated such reasonable evidence that the estimate is realistic and (without prejudice to the generality of the foregoing) in the case of the estimated cost of the works to be comprised in the Development details of the tender prices received for such works or if this shall not be available a copy of the cost plan prepared by a chartered quantity surveyor;
- (c) Written confirmation addressed to the Council from a surveyor that in his opinion (and such to qualifications and assumptions as he may specify):
  - (i) the rents, proceeds of sale and other items of development income estimated in such development appraisal as likely to be receivable; and
  - (ii) the length of all void periods before the completed Development shall be fully let and the cost of all rent free periods and other incentives estimated in such development appraisal as likely to be payable to tenants of the completed Development are realistic having regard to current market conditions and all other relevant circumstances and where relevant comply with the Royal Institution of Chartered Surveyors' Appraisal and Valuation Standards and any guidance notes relating thereto in force at the time of preparation of the development appraisal.

11.6 Where an item of expenditure relating to the Development is ascertainable or known at the time that the development appraisal is prepared, the amount thereof shall be included in the development appraisal but where an item is reasonably expected to be incurred but is not then ascertained or known the Owners shall be entitled to include in the development appraisal such amount as is a reasonable estimate having regard to all the circumstances.

11.7 The Council may require such further supporting information as the Council may reasonably specify to satisfy itself that the figures provided in the development appraisal submitted by the Owner are realistic and have been prepared with due care and attention.

11.8 The Council shall not be required to give any approval to an adjustment of the Affordable Housing requirements for the Development unless it is satisfied with the basis upon which the development appraisal has been prepared, including without limitation, that:

- (a) the value of the development and the nature and amount of any item of development income are reasonable and properly taken into account;
- (b) the nature and amount of any item of development cost is reasonable and properly taken into account;
- (c) the amount of developer's profit is reasonable and properly taken into account; and
- (d) the consideration paid in respect of the acquisition of the land and recognised in the development appraisal is reasonable and properly taken into account and disregards any development or potential development other than (..... )

**THE COMMON SEAL OF** )  
**FOREST HEATH DISTRICT COUNCIL** )

was affixed in the presence of: )

Authorised Signatory:

**EXECUTED as a DEED by** )  
OWNER )  
by the signature of ..... )

in the presence of..... )  
address.....

## **Appendix D: Pre-Application Advice Protocol**

### **1. PRE APPLICATION ADVICE PROTOCOL**

**1.1.** If you are thinking about submitting a planning application, particularly for a proposal defined as minor or major (e.g. new residential or commercial development) we strongly advise you to seek officer guidance and advice before you formally submit an application.

**1.2.** You are also advised to view the Council's planning policies on our website at [www.forest-heath.gov.uk](http://www.forest-heath.gov.uk) or [www.stedmundsbury.gov.uk](http://www.stedmundsbury.gov.uk) to seek guidance prior to preparing your proposal.

### **2. WHAT ARE THE ADVANTAGES OF PRE-APPLICATION ADVICE?**

**2.1.** Both Authorities' encourage pre-application discussion because it can;

- Identify potential problems at an early stage and advise how your proposal should be amended to increase the likelihood of planning permission being granted.
- Assist in the preparation of proposals for formal submission, which, if you follow our advice, should be handled more quickly and be more likely to result in a positive outcome.
- Reduce the time your professional advisors' spend in working up the proposals by identifying issues early in the process thereby reducing the cost to you.
- Identify those proposals that are completely unacceptable, so saving you the cost of pursuing a formal application that will only be refused.
- Result in a better quality development.
- Speed up the decision making process and help ensure that Government targets are met with regards to determining planning applications (to determine 80% of householder applications within 8 weeks, 65% of minor applications within 8 weeks and 60% of major applications within 13 weeks).

### **3. WHAT INFORMATION SHOULD YOU SUBMIT FOR PRE-APPLICATION ADVICE?**

- Submit your request in writing. Relying on conversations with a planning officer on the telephone or in the office can lead to misunderstanding.
- Clearly describe your proposal. If you propose a new building or structure you should include plans in sufficient detail to show what it is you are proposing (e.g siting, parking, indicative heights and breakdown of uses/ floor area).
- A site plan should also be submitted so that the relationship with neighbouring properties can be assessed.

#### 4. WHAT SERVICE CAN YOU EXPECT FROM THE COUNCIL?

- We will respond in writing within ten working days whenever possible. This will set out the main planning considerations and policies on which we would base our decision should you submit a formal application, and the likelihood of permission being granted.
- You will be advised what information will need to be submitted as part of the application to make it valid.
- You will be advised whether you will be likely to be required to submit section 106 agreements to secure benefits such as highway improvements or affordable housing. It is expected that if such a legal agreement is required it will be submitted as part of the planning application or very early in the process as a failure to provide such an agreement within the 8 or 13 week target deadline is likely to lead to refusal.
- If necessary a planning officer will meet you in the Council offices to discuss your proposal.
- If you do subsequently decide to submit an application the case officer will be made aware of the advice that was given to you previously. If your proposal would be classified as a major application (eg. more than 10 houses or a non-residential building with a floor area of greater than 1000sqm) and is particularly complex then we will adopt a **Development Team Approach** which will offer the following additional benefits;
- Officers will facilitate liaison and discussion with any internal or external bodies who would be consulted once the application was formally submitted (e.g. Suffolk County Council, English Heritage, Environment Agency, HSE, the Council's Conservation Officer)
- The presentation of proposals to relevant Councillors as appropriate in the case of larger/more complex/contentious schemes
- The agreement and drafting of Section 106 agreements prior to the submission of the application.
- Provide advice regarding the appropriateness of community consultation at the pre-application stage.
- Agreement of a programme/timetable for the application, including target dates for submission and determination. These dates would be established in response to the needs of the applicant's development programme and the Council's requirement to meet performance targets.

#### 5. WHAT HAPPENS IF I DECIDE NOT TO SEEK PRE-APPLICATION ADVICE PRIOR TO SUBMITTING A PLANNING APPLICATION?

5.1. It is, of course, your choice as to whether you seek pre-application advice.

However, if you do not seek such advice there is an increased chance that the application you submit will not include all the relevant information and

therefore cannot be validated.

**5.2.** Without the benefit of pre-application advice there is also an increased chance that your proposal will not comply with national or local planning policy guidance and is unacceptable. If this is the case the application is likely to be refused without discussion with the applicant or agent.

**5.3.** Pre-application advice should also result in the terms of legal agreements being agreed prior to the formal submission of an application thereby ensuring that they are completed within the deadline of 8 or 13 weeks. A failure to complete such an agreement within the deadline will mean that it will probably be refused as the proposal will not deliver the benefits required in accordance with national and local planning policies.

**5.4.** Finally, it should be noted that if pre-application advice from planning officers is not followed and the submitted application does not accord with the Council's planning policies and standards, the planning application is likely to be refused without discussion with the applicant or agent.

## **6. IS THE ADVICE BINDING ON THE COUNCIL?**

**6.1.** Whilst we always try to give accurate advice, planning applications are subject to extensive consultations and officers' views can change as a result of responses or following a more formal, detailed assessment of the proposal.

**6.2.** In addition, the application may be determined by the Development Control Committee, which is not bound to follow the officer recommendation. Therefore any pre-application advice given is informal and cannot commit the Council to a particular decision on any subsequent planning application.

## Appendix E: Affordable Housing Proforma

Applicant's Contact Details	Agent's Contact Details
Name:	Name:
Address:	Address:
Post code:	Post code:
Tel:	Tel:
E mail:	E mail:

Proposed Development
Outline planning application <input type="checkbox"/> Full planning application <input type="checkbox"/> Full address of site:  Post code:
Name of the development (if any):
Summary of proposed development:
<b>For Outline applications this section must be completed</b>
Total number of residential units:
Total percentage of affordable units proposed:
Percentage of social rented units proposed:
Percentage of Affordable rented units proposed:
Percentage of intermediate units proposed:
Has a financial viability appraisal been submitted? (see Customer Information Note,



Affordable Housing, Financial Appraisal)

**For Full applications this section must be completed**

Total number of residential units:

Percentage of social rented units proposed:

Percentage of affordable rented units proposed:

Percentage of Intermediate units proposed:

Has a financial viability appraisal been submitted? (see Customer Information Note, Affordable Housing, Financial Appraisal)

**A full schedule of accommodation for all the residential units (both market and affordable) indicating unit sizes (floorspace) must be submitted.**

**Affordable housing element**

(Please complete the table to show the number, type and floorspace of dwellings to be made available as affordable housing, cross referenced to site layout plan and schedule of accommodation.)

	Total no. affordable	Floor area/s:		No. Social Rented	No. Affordable rented	No. Intermediate
		Net	Gross			
1 bedroom flat/s						
2 bedroom flat/s						
3 bedroom flat/s						
4 bedroom flat/s						
1 bedroom house/s						

2 bedroom house/s						
3 bedroom house/s						
4 bedroom house/s						
Other (please specify)						
<b>Totals</b>						

**For both Outline and Full applications:**

**Enclosures** Please tick to confirm enclosure of the following (where appropriate):

- Schedule of all accommodation (floorspace details of both market and affordable units) on full planning application
- Site layout plan (where appropriate), showing the dwellings to be made available as affordable housing
- Justification statement (where appropriate, in particular where affordable housing proposal is not in accordance with the SPD)
- Other (please specify)

**OFFICE USE ONLY**

Housing market zone .....

% of affordable housing required .....

Social rented/intermediate split as per policy .....

Social rented/intermediate split offered.....

Are the affordable housing units a pro-rata mix of the overall scheme? Yes/No

Are the affordable units in a suitable location within the overall development? Yes/No

Additional comments .....

Affordable Housing Scheme Reference Number: .....

Name of Housing Officer .....

## **Appendix F: Affordable housing financial appraisal checklist**

### **Customer Information Note Affordable housing financial appraisal**

If you are intending to carry out residential development, you will be required to address the need for affordable housing provision as part of your application submission if either of the following applies:

1. Your proposal is (or is likely to be) for 10 no. or more residential units
2. Your proposal is for part of a larger development which is (or is likely to) provide for 10 no. or more residential units.

Furthermore, your submission will also be required to make provision for affordable housing if:

1. The site is anywhere within Forest Heath and is greater than 0.33 hectares in size, or anywhere within St. Edmundsbury and is greater than 0.17 hectares in size.
2. The site is within a Primary or Secondary Village within Forest Heath, and is greater than 0.1 hectares in size.

Forest Heath Council and St Edmundsbury Borough Council expect that provision for affordable housing will be made in accordance with its publicised policies and guidance. This is set out in Affordable Housing Policy Guidance Note (CS 9 (FHDC) AND CS5 (STEDS) and the Strategic Housing Need Assessment Update. Both these documents can be accessed via Forest Heath District Council and St Edmundsbury Borough Council web site at [www.forest-heath.gov.uk](http://www.forest-heath.gov.uk) and [www.stedmundsbury.gov.uk](http://www.stedmundsbury.gov.uk)

If the affordable housing element within your development proposal is less than that which is set out in the relevant Local Authority policy and guidance, it will be necessary for you to provide justification. It is unlikely that either Authority will consider granting planning permission unless there are exceptional circumstances and the overall public benefits of a development proposal outweigh the need for the full level of affordable housing. You should include details of any justification in the planning statement which accompanies your application. Additionally, we will require evidence, in the form of a financial appraisal, of why the development value of the scheme would be insufficient to cover full affordable housing provision.

The checklist below sets out what should be included in your financial appraisal. Both Authorities would not consider granting planning permission without commissioning its own independent assessment and verification of your financial appraisal. In order to recover our costs for this service, we will make a charge. Cheques should be made payable to the relevant Authority and should be enclosed at the time you submit your affordable housing proposal to us. Please provide a separate cheque for the financial assessment from that covering your application fee. An additional variable fee may be payable for any additional work arising from your financial appraisal.

In this event, we would consult with you first, before incurring any extra expense.

**You should be aware that even if the results of the financial appraisal are supported by the verification process this does not automatically mean that your development can be supported. The Council as Local Planning Authority, in coming to a decision on your application, will still need to weigh the advantages of allowing the development to proceed against any reduced planning benefits and the likely outcome of those benefits not being granted as part of the scheme.**

Further information on affordable housing can be found from the following sources:

- Core Strategy for Forest Heath, as adopted in May 2010
- Core Strategy for St Edmundsbury, as adopted in December 2010
- Housing Strategy;
- Corporate Delivery Plan;
- Cambridgeshire Sub-Region Strategic Housing Market Assessment
- National Planning Policy Framework (March 2012)

Or via the following web sites:

[www.forest-heath.gov.uk](http://www.forest-heath.gov.uk)

[www.setedmundsbury.gov.uk](http://www.setedmundsbury.gov.uk)

[www.communities.gov.uk](http://www.communities.gov.uk)

[www.planningportal.com](http://www.planningportal.com)

**Financial appraisal checklist: To assist with an analysis of viability issues the following supporting information should be provided:-**

1. Ordnance survey plan showing the application site.
2. A site plan showing the layout of the proposed development.
3. A schedule providing both the gross internal floor area and net sales area measured in accordance with the Royal Institute of Chartered Surveyors Valuation Appraisal Manual (prevailing edition).
4. Site purchase price (evidenced) and date of purchase.
5. Normal construction costs (including breakdown of unit costs).
6. Abnormal development costs\* (with supporting technical, survey and contractor costings/estimates).
7. Justification (where applicable) as to why all development costs were not reflected in the purchase price.
8. Details of all anticipated sales revenue including revenues from affordable housing.
9. Levels of developers return/profit as a percentage of net development costs.
10. Section 106 costings for all applicable contributions (greenspace, education, highways etc) to policy compliant levels as advised by the Planning Officer.
11. A residual valuation embodying the above information and principles which is policy compliant with regards to affordable housing provision and other S106 items as requested by the Planning Officer.
12. A second residual valuation detailing the level of affordable housing requirements proposed in support of any justification for a departure from compliant affordable housing requirements indicating clearly the point at which viability becomes unsustainable.
13. The fee (separate cheque payable to the relevant Authority). See following page for current fees.

**General guidance on submission:**

Financial viability should seek to demonstrate why the amount and the tenure mix of affordable housing sought prevents the generation of a commercial rate of return for the applicants proposal and should:

- a) have reference to prevailing market conditions **at the time of the assessment** with particular regard to the use of current sales rates anticipated, other revenue streams, construction costs, developers returns, finance costs and land values
- b) be to the market place generally and not be applicant specific; specifically applicant particular cost factors such as historic land prices, where these are not broadly market facing, are to be disregarded. In other words, proposals will be assessed against current market conditions (including current land values) and will not have regard to historic costs (including if land was purchased some time ago) at a price above current market value

- c) be reflective of the fact that it will be deemed to be at the applicant's own risk if project or development costs are incurred ahead of the receipt of a commitment by the planning authority with regard to a development proposal (through the grant of a full planning permission, a reserved matters approval, a S106 agreement or other legal commitment specifying all conditions and obligations)
  
- d) have regard to other S106 obligations
  
- e) in the case of mixed use schemes testing will be of the viability of the entire scheme
  
- f) be undertaken in line with the general approach and principles of residual valuation contained in the Homes And Communities Agency Economic Appraisal Toolkit which is available at:  
<http://www.homesandcommunities.co.uk/economic-appraisal-tool>  
unless agreement is first reached to any varied approach with the Planning Officer.

**The fees are as follows:**

- (a) £.
- (b)
- (c)

**Please note that verification of a financial appraisal by the council is without prejudice to the determination of the application.**

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