



**Stockton-on-Tees**  
BOROUGH COUNCIL

Provision of Affordable Housing and the Need for  
Viability Evidence

Supplementary Planning Document 8

Consultation Draft July 2013

Stockton on Tees Borough Council

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## 1. Introduction

- 1.1. The Provision of Affordable Housing and the Need for Viability Evidence  
Supplementary Planning Document (SPD) will be part of the suite of documents that make up the Stockton-On-Tees Local Plan. The SPD will provide guidance on how Local Plan policies relating to affordable housing will be applied, how their requirements can be met and will be a material consideration when determining applications for planning permission within the Borough. It is part of an on-going phased review of the existing Planning Obligations SPD, which will be replaced by a series of topic specific SPDs as required.
- 1.2. This document is draft for formal consultation between 22 July 2013 and 2 September 2013. Comments on this draft should be made in writing and sent to [spatialplans@stockton.gov.uk](mailto:spatialplans@stockton.gov.uk) or posted to the following address:  
  
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- 1.3. The draft SPD can be viewed online at [www.stockton.gov.uk/spd](http://www.stockton.gov.uk/spd). Paper copies of the document can be viewed at all libraries within the Borough.
- 1.4. The guidance within this SPD will help ensure that progress towards achieving the objectives set out in the Borough's Core Strategy continues to be made. This includes enabling all of Stockton's residents to live in prosperous, cohesive and sustainable communities, and providing homes to suit all needs and incomes. The provision of an appropriate proportion of affordable housing in suitable locations, and of suitable types and tenures is essential to achieving this.
- 1.5. The SPD sets out the legal framework for delivering affordable housing provision through development, followed by the national and local policy context. It gives guidance and clarification on the requirements for affordable housing provision set out in the Borough's Core Strategy, in particular Core Strategy Policy CS8 Housing Mix and Affordable Housing and Core Strategy Policy CS11 Planning Obligations, as well as making reference to the emerging Regeneration and Environment Local Development Document. It also provides guidance on the robust justification needed if a developer wishes to vary from the Council's affordable housing requirements on viability grounds.
- 1.6. In some cases, the most ambitious levels of affordable housing provision may threaten the viability of a scheme. This SPD seeks to ensure that the highest

possible proportion of affordable housing is achieved, whilst taking market conditions, site constraints and scheme specific issues into account in a fair and consistent way.

- 1.7. Whilst this SPD gives guidance and clarification on the implementation of Core Strategy Policy CS8 Housing Mix and Affordable Housing, it is important for developers to enter in to pre-application discussions to ensure that adequate information is submitted for assessment. Proposals which do not meet the Council's affordable housing requirements which are not supported by robust viability evidence will normally be recommended for refusal.

## **2. Planning obligations and the Community Infrastructure Levy**

### **What are Planning obligations?**

- 2.1. Planning obligations are formal commitments given by an owner of land enforceable by a local authority against that owner and subsequent owners. They are a means of securing measures to make a development acceptable in planning terms and to accord with national or local planning policies.
- 2.2. The legislative framework for planning obligations is set out in Section 106 of the Town & Country Planning Act 1990, as substituted by Section 12 of the Planning and Compensation Act 1991. Further legislation is set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended)<sup>1</sup>. Government policy on planning obligations is set out in Paragraphs 203 to 205 of the National Planning Policy Framework (NPPF).
- 2.3. Planning obligations can be discharged in two main ways: either the developer provides the physical measures or makes a financial contribution towards any works to be carried out by the local authority or its partners. Planning obligations run with the land and are enforceable against the original covenantor and anyone subsequently acquiring an interest in the land. Section 106A of the 1990 Act provides a procedural mechanism to modify or discharge obligations after five years with a right of appeal to the Secretary of State under section 106B<sup>2</sup>.

### **The Growth and Infrastructure Act 2013 - Section 106 affordable housing requirements**

- 2.4. The Growth and Infrastructure Act 2013 inserted new Sections 106BA, BB and BC into the Town and Country Planning Act 1990. These sections introduce a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing. An explanatory guide has been published by the Department for Communities and Local Government – Section 106 affordable housing requirements – review and appeal (April 2013).

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<sup>1</sup> Please note that there is a current Government Consultation on further amendments to the CIL Regulations which closes on 28<sup>th</sup> May 2013

<sup>2</sup> Recent amendments by the Town and Country Planning (Modification and Discharge of Planning Obligations) (Amendment) (England) Regulations 2013 (which came into force on 28 February 2013 enable an application under section 106A(1) of the Town and Country Planning Act 1990 (and a subsequent appeal under section 106B) for modification or discharge of a planning obligation dated before 7 April 2010. This change did not affect any planning obligations where the five year period has already expired (which can already be the subject of an application for modification or discharge) or any planning obligations entered into after 6 April 2010, which will still not be able to be modified or discharged other than by agreement with the local planning authority for a period of five years from the date of the obligation.

Although the purpose of the document is not directly relevant to this SPD, it is a useful point of reference for applicants and agents because it provides an overview of what evidence may be required in respect of viability appraisals<sup>3</sup>. As such, it complements Appendix 4 of the Regeneration and Environment LDD Preferred Options. The document is available at:

<https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal>.

#### ***What is the Community Infrastructure Levy (CIL)?***

- 2.5. The Community Infrastructure Levy (CIL) is a tariff in the form of a standard charge on new development. Within its administrative area the Council will be setting the CIL charging rates to help the funding of infrastructure. CIL receipts are intended to supplement, or top up, other sources of funding to widen the infrastructure delivery necessary to secure future growth within the Borough.
- 2.6. Most development has some impact on infrastructure and should contribute to the cost of providing or improving infrastructure. The principle behind CIL is for those who benefit financially from a planning permission to pay towards the cost of funding the infrastructure needed to support development.
- 2.7. CIL differs fundamentally from planning obligations in that the funds collected are not tied to a specific development or the provision of specific infrastructure.

#### ***How will planning obligations operate alongside the Community Infrastructure Levy?***

- 2.8. Regulation 122 of the CIL Regulations and Paragraph 204 of the NPPF direct that planning obligations should only be sought if they are:
  - necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.
- 2.9. Regulation 123 of the CIL Regulations also limits the pooling of Section 106 contributions, so that no more than five developments may contribute to the same infrastructure project. This restriction comes into effect when CIL is implemented or, currently, from 6th April 2014<sup>4</sup>, whichever is the sooner, and applies to planning obligations entered into on or after 6th April 2010<sup>5</sup>.

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<sup>4</sup> The Current Government Consultation on further amendments to the CIL Regulations (which closes on 28<sup>th</sup> May 2013) proposes an extension until 6<sup>th</sup> April 2015.

- 2.10. As a result of these changes, planning obligations will be scaled back to cover the provision of affordable housing and site specific measures required to mitigate the impact of development.
- 2.11. CIL will be the mechanism by which contributions are pooled to help pay for items of infrastructure that are needed to support growth. CIL will therefore replace planning obligations as the means of funding off-site infrastructure, such as additional school places, transport improvements or improved leisure facilities, which are required in connection with new development and consequent population or economic growth.
- 2.12. Para 175 of the National Planning Policy Framework advises that, where practical, CIL should be worked up and tested alongside the Local Plan. The Council is in the process of developing its CIL charging rates alongside the new Local Plan, which will be tested to take into account development costs which include the provision of affordable housing.

### 3. Policy Framework

- 3.1. This Supplementary Planning Document (SPD) has been prepared in the context of national, regional and local policy. The relevant documents are outlined below:

#### *National Planning Policy Framework (2012)*

- 3.2. Section 6 ('Delivering a wide choice of high quality homes') of the NPPF advises at paragraph 47 that to boost significantly the supply of housing, local planning authorities should *"use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area..."* and, within paragraph 50, that where 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. Such policies should be sufficiently flexible to take account of changing market conditions over time."*
- 3.3. Ensuring viability and deliverability is a key element of plan making. This message is contained within paragraphs 172-177 of the NPPF which make it clear that to ensure viability, the costs of any requirements to be applied to development, including affordable housing, should, when taking into account normal development and mitigation costs, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
- 3.4. Paragraph 174 of the NPPF advises that "Local planning authorities should set out their policy on local standards in the Local Plan, including requirements for affordable housing. They should assess the likely cumulative impacts on development in their area of all existing and proposed local standards, supplementary planning documents and policies that support the development plan, when added to nationally required standards. In order to be appropriate, the cumulative impact of these standards and policies should not put implementation of the plan at serious risk, and should facilitate development throughout the economic cycle. Evidence supporting the assessment should be proportionate, using only appropriate available evidence."

#### *Definition of affordable housing*

- 3.5. The NPPF defines affordable housing as:

**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 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 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).

Intermediate housing 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.

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.

### ***Core Strategy (2010)***

- 3.6. The Borough’s Core Strategy development plan document (DPD) identifies enabling all of Stockton’s residents to live in prosperous, cohesive and sustainable communities, and providing homes to suit all needs and incomes as strategic objectives for the Development Plan. The provision of an appropriate proportion of affordable housing in suitable locations, types and tenures is essential to achieving this.
- 3.7. Core Strategy Policy 8 (CS8) – Housing Mix and Affordable Housing Provision, sets out the Council’s approach to the provision of affordable housing within the Borough. This includes targets for delivery of affordable housing during the plan period, thresholds for when developments will be expected to contribute to affordable housing and targets for the proportion of affordable housing each development will be required to provide. It also includes the Council’s policy on where and how affordable housing should be provided, including delivery mechanisms.

- 3.8. Core Strategy Policy 11 (CS11) Planning Obligations states that all new development will be required to contribute towards the cost of providing additional infrastructure and meeting social and environmental requirements, and identifies affordable housing as a priority when seeking planning obligations.
- 3.9. This SPD provides guidance on how CS8 will be applied and the priorities identified in CS11 will be achieved.

#### ***Core Strategy Examination in Public Inspector's Report (2010)***

- 3.10. Prior to adoption, the Core Strategy was independently examined by an inspector appointed by the Secretary of State. Affordable Housing was an important matter for discussion during the examination and an independent technical assessor was appointed to assist the inspector in examining Core Strategy Policy CS8 - Housing Mix and Affordable Housing Provision.
- 3.11. The Inspector's report noted that the draft Core Strategy included a target range for the provision of affordable housing of 15-20%, and that a target of 20% affordable housing provision may be less ambiguous.
- 3.12. Whilst recognising the Council's willingness to amend the affordable housing target to the 20% figure, the Inspector was satisfied that "*a range of 15-20% would be viable for certain schemes in favourable market conditions, it is less certain that this would hold true for a figure of 20%*". At the same time, the Inspector recognised that expressing the affordable housing requirement as a target range may result in applicants treating the bottom of the range as a maximum. Given this concern, the Inspector agreed with the Council's intention to publish a guidance note setting out what is meant by the 'robust justification' that an applicant would need to produce to provide less than the target level (20%) of affordable housing. This is referenced in paragraph 12.34 of the Core Strategy, which identifies the need to review the Planning Obligations SPD to identify consistency with the 15 – 20% target range.

#### ***Regeneration and Environment Local Development Document***

- 3.13. The Regeneration and Environment Local Development Document (LDD) will contain, upon adoption, the planning policies which will shape future development within the Borough. It will deliver the aims and objectives of the Council's Core Strategy, which was adopted in March 2010. The Regeneration and Environment LDD will identify sites for housing, employment, transport infrastructure and set out a suggested approach for each of them. A review of the Core Strategy housing policies has been incorporated into the Regeneration and Environment LDD; this includes a revised Housing Spatial Strategy ensuring that the Borough's housing requirement to 2029 will be met. Through the Regeneration and Environment LDD it is also intended that Core Strategy Policy 8 (CS8) – Housing Mix and Affordable Housing Provision will be updated and replaced; the main update to this policy will be the mix of affordable housing which has been informed by the latest Tees Valley Strategic Housing Market Assessment (TVSHMA) completed in 2012.

### ***Planning Obligation SPD***

- 3.14. Supplementary Planning Document 6 - Planning Obligations (Planning Obligations SPD) was adopted in May 2008. The Planning Obligations SPD was prepared to provide developers, planning officers and the public with information and guidance concerning the Council's approach towards securing planning obligations associated with development within the Borough expanding policy within the Local Plan adopted in 1997. As the documents of the new Local Plan reach adoption, the old Local Plan policies will be replaced (as has been the case with the adoption of the Core Strategy). The adoption of Core Strategy policy CS(8) – Housing Mix and Affordable Housing Provision has meant that the guidance contained within the Planning Obligations SPD with regards to affordable housing is out-of-date. The purpose of this SPD is to supersede section 7 'Affordable Housing' within the Planning Obligations SPD and provide guidance on how policy CS8 will be applied.

## 4. Evidence base

- 4.1. This Supplementary Planning Document (SPD) was prepared with regard to a number of studies and assessments that the Council has produced or commissioned in relation to affordable housing provision during the plan period. The relevant evidence documents and a brief summary of their findings are outlined below.

### *Tees Valley Strategic Housing Market Assessment (2012)*

#### Overview

- 4.2. The 2012 Tees Valley Strategic Housing Market Assessment (TVSHMA) updates the 2009 TVSHMA. The study has been carried out by Arc4 Ltd and has included:
- A major household survey which was completed by 8,704 households which represented a 15.7% response rate;
  - Interviews with key stakeholders including local authority housing and planning officers, registered landlords, estate agents, lettings agents and developers;
  - A review of relevant secondary data.

#### Housing need and affordable housing

- 4.3. The 2012 TVSHMA identifies an annual affordable housing requirement of 560 dwellings for the Borough of Stockton-on-Tees. Given that the average annual housing requirement for the borough for dwellings of all tenure types is 555 dwellings it is clearly not realistic to meet the TVSHMA requirement in full and this is recognised in the annual affordable housing targets set by Core Strategy Policy CS8. However, the policy also states that the targets are minimums. Table 2 shows the annual affordable housing requirement by sub area.

Table 2 - Annual affordable housing requirements by sub-area 2012/13 to 2016/17

Sub-area	Total
Billingham	118
Ingleby Barwick	81
Rural areas	33
Core Area	-41
Stockton	210
Thornaby	62
Yarm, Preston, Eaglescliffe	97

Totals	560
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- 4.4. In terms of the split between affordable rented and intermediate tenure products, the household survey identified tenure preferences of existing and newly-forming households. This suggests a tenure split of 70% affordable rented and 30% intermediate tenure.
- 4.5. The TVSHMA has affirmed that the 15-20% target range for affordable housing provision stated at Point 5 of Policy 8 (CS8) - Housing Mix and Affordable Housing Provision, of the Adopted Core Strategy (March 2010) remains valid. Although reduced from the 2009 SHMA which showed an annual affordable housing requirement for the Borough of 866, the requirement of 560 affordable dwellings identified in the 2012 TVSHMA fully supports this requirement. However, it also shows that the mix of affordable housing to be provided should now be revised from 20% intermediate and 80% rented tenures to a 30/70% split.

***Economic Viability of Affordable Housing Requirements - Report for Stockton Borough Council (2009)***

- 4.6. The 2009 TVSHMA identified an annual affordable housing requirement for the Borough of 866 dwellings. The relevant guidance operative at that time was Planning Policy Statement 3: Housing (PPS3). PPS3 stated that the target for affordable housing should also reflect an assessment of the likely economic viability of land for housing within the area.
- 4.7. Arc4 were commissioned to test the economic viability of the affordable housing requirements set out in Policy CS8 in the Core Strategy DPD Publication Draft. The methodology used was the subject of a consultation exercise with the development industry. The report found that, in the still relatively favourable market conditions of late 2007, most sites would be viable with at a level of 15-20% affordable housing provision and with a tenure split of 80% social rent and 20% shared ownership.
- 4.8. The report recommended that the baseline policies for affordable housing provision should be established in the context of market conditions in late 2007. However, it also recommended that these policies would need to be applied with considerable flexibility whilst the market is in recession.
- 4.9. The study was based on fourteen notional sites, referred to as “beacon” sites. The “beacon” sites represented different sectors of the market and were informed by actual opportunities and real-world intelligence but were to be taken as examples of a typical site rather than reflecting any specific site. This approach was considered best suited to informing strategic policy, which the study was designed to do. It was not designed to be a viability appraisal of specific sites and did not attempt to take into account site-specific factors that might have arisen on some sites such as flood risk, contamination, noise intrusion and the need for major highways improvements. Where relevant these factors are taken into account at the planning application stage through officer negotiation.

4.10. Arc4 provided the following policy advice based on the findings of the study:

- As the market conditions will change during the currency of the Local Development Framework, the policies for affordable housing provision should be applicable to a broad range of house prices and land values.
- The baseline policies for affordable housing provision should be established in the context of market conditions in late 2007. In those circumstances, a target of 15-20% affordable housing provision would be economically viable for most sites.
- However, these policies will need to be applied with considerable flexibility whilst the forecast sale prices remain significantly below these late 2007 levels, otherwise housing development may be substantially discouraged.

## **5. Affordable housing requirement**

- 5.1. Core Strategy Policy CS8 (CS8) – Housing Mix and Affordable Housing sets out the Council’s requirement for affordable housing provision to be met on schemes of 15 or more dwellings and on sites of 0.5 hectares or more. This means that planning applications for schemes which include 15 or more dwellings, or with a total site size within the red edge boundary of 0.5 hectares or more will normally be required to meet the Council’s affordable housing requirements. Where schemes include nursing homes, student accommodation or other dwellings which are not considered to be available to the general housing market, these will not be included in the threshold.
- 5.2. On schemes which meet the threshold set out in paragraph 5.1, affordable housing will be required to make up 15 to 20% of the total number of residential units applied for. Where this does represent a whole number, it will be rounded off to the nearest dwelling (0.5 or above of a dwelling will be rounded up to 1 dwelling). The type and tenure of these units should reflect the findings of the most recent Strategic Housing Market Assessment. Affordable housing provision with a tenure mix different from this will only be acceptable where robust justification is provided. This must demonstrate either that provision of the type identified in the SHMA would make the development economically unviable or that the resultant tenure mix would be detrimental to the achievement of sustainable, mixed communities. Affordable housing units should comply with Homes and Communities Agency design and quality standards.
- 5.3. The standard target for all developments is 20% affordable housing provision. Proposals which seek to meet a target affordable housing contribution below 20% must be accompanied by robust evidence that market conditions mean that provision at the standard target would make the scheme economically unviable. The minimum target for affordable housing provision will be 15%.
- 5.4. CS8(5) requires that affordable housing is provided within a target range of 15 to 20%. In adopting and applying this policy, the Council is seeking to achieve the maximum proportion of affordable housing on each site, whilst ensuring that the development remains viable. The proportion of affordable housing which can be achieved whilst allowing a development to proceed depends on a number of factors, including market conditions at the time when the development takes place. This was acknowledged in the Inspector’s Report on the Examination into the Stockton-On-Tees Core Strategy Development Plan Document.
- 5.5. This concluded that a 20% target would not be achievable in sufficient circumstances for it to be set as an achievable target for all schemes; however, in favourable market conditions, 15 to 20% would be a reasonable target range. This has informed the setting of a standard target of 20% affordable housing provision that the Council will seek as part of the affordable housing negotiations.

- 5.6. There may be exceptional circumstances where the agreed affordable housing target is not achievable and the Council may consider a reduction in the affordable housing target where robust justification is provided.
- 5.7. Once the affordable housing target for a scheme has been established, it is expected that this target will be met through on-site provision. If a proposal does not include sufficient suitable affordable housing provision, this must be accompanied by robust justification which demonstrates exceptional circumstances which mean the scheme would otherwise be unviable.
- 5.8. In summary, where affordable housing provision is required, the guidance regarding affordable housing targets and provision has four potential outcomes:
- A 20% affordable housing target is agreed based on local market conditions and provision is made to meet this target
  - The developer demonstrates that local market conditions mean that a 20% target is not achievable and negotiates a lower target (minimum of 15%) and provision is made to meet this target
  - A 20% affordable housing target is agreed based on local market conditions, but the developer demonstrates the exceptional site or scheme specific circumstances mean that the agreed target cannot be achieved – reduced provision is agreed
  - The developer demonstrates that local market conditions mean that a 20% target is not achievable and negotiates a lower target (minimum of 15%) and demonstrates the exceptional site or scheme specific circumstances mean that the agreed target cannot be achieved – further reduced provision is agreed.
- 5.9. Where a development site is sub-divided into separate development parcels below the affordable housing threshold, the developer will be required to meet an affordable housing target which reflects the viability of the site as a whole and make a proportionate affordable housing contribution.
- 5.10. Appendix A provides a guide as how the Council will consider affordable housing provision.



## 6. Viability guidance

### Market conditions

- 6.1. The market conditions affecting a specific development will be critical in understanding where the affordable housing requirement should fall within the 15% to 20% target range. This will be determined on a case-by-case basis, taking into account relevant economic factors which will impact on the development's viability.
- 6.2. A development proposal which includes a target of less than 20% affordable housing provision will require robust justification demonstrating that market conditions would make this unviable. Key issues in understanding the market conditions affecting the relevant housing sub-area include:
- Average comparable house prices within a time period and using source data to be agreed with the Council;
  - Volume of house sales;
  - Length of time (weeks) taken for houses to sell;
  - Supply of properties for sale;
  - Land values;
  - An understanding of committed and completed dwellings by type;
  - An appraisal of the Strategic Housing Market Assessment (SHMA).

### Gross Development Value Calculation

- 6.3. Any development proposal where affordable housing is proposed at a rate lower than the affordable housing target agreed with the Council (between 15% and 20%) or with a tenure mix different from the standard target (30% intermediate and 70% affordable rented) to be supported by a financial appraisal. These appraisals will be assessed on a case-by-case basis, along with other considerations or potential planning obligations. The Council will arrange for the appraisal to be independently assessed by an agent or consultant selected by but independent of the Council. The applicant/developer will be liable for the costs incurred in appointing the assessor.
- 6.4. The appraisal of viability will be based on the Residual Land Value. The Residual Land Value has been taken as the sum remaining out of the gross value of sales after deducting build costs etc and after deducting a profit of 15% of the gross value of sales to be retained by the developer.
- Gross sales (number of units x sales value per unit) value = A
  - Development costs (build costs, fees, finance, planning gain (excluding affordable housing), etc) = B
  - Minimum development profit (benchmarked at 15% of sales value) = C
  - Residual Land Value (gross sales value – development costs – profit –) = D
  - $A - (B + C) = D$  (the amount representing Residual Land Value and prior to netting off affordable housing costs)

- 6.5. If the above calculation shows that the scheme is viable without taking affordable housing provision into account, then the cost of providing affordable housing at a rate of 20% and with a tenure mix of 30% intermediate and 70% affordable rented tenures should be factored in. If this results in the scheme becoming economically unviable then the cost of providing affordable housing at a rate of 15% and with a tenure mix of 30% intermediate and 70% affordable rented tenures should be factored in.
- 6.6. The scheme will be deemed to be viable if the Residual Land Value (D) is sufficient to meet the costs to the developer of providing the requisite percentage of the dwellings as affordable housing, including meeting the reduction in Gross Sales Value, and to meet all other S.106 contributions required for the scheme which are of a higher priority to the Council than affordable housing.
- 6.7. It will be noted that site acquisition costs are not referenced in the viability calculation, as, in this approach, the Residual Land Value calculation is net of both affordable housing costs and of site acquisition costs. Having arrived at the Residual Land Value calculation the developer is able to calculate firstly whether the affordable housing is viable and then secondly (assuming the answer to the first calculation is positive) the remaining finance available for acquiring the site. This means that the site acquisition costs will have taken into account any abnormal development costs or remediation costs that would have to be incurred by a developer to bring the land up to a developable standard and that the reduced sales value of affordable units (in comparison to market housing) will have been factored in.

### ***Information Requirements***

#### Detailed scheme information

- 6.8. The financial appraisal will determine the percentage of affordable housing to be provided overall on the site. The tenure mix in terms of intermediate tenure and socially rented tenures will then be apportioned as a percentage of the total number of dwellings to be provided on the site. The tenure mix may be varied from that outlined in the policy only if the financial appraisal supports the requirement to review the tenure mix to make the development, with affordable housing, viable. The mix of units (1bed, 2 bed, etc) will then be apportioned by percentage to generate a schedule of accommodation which reflects the affordable housing requirements identified in the 2012 TVSHMA.

#### Dwelling Sales Prices and Land Values

- 6.9. The value to be attributed to the private dwelling sale prices shall be based upon valuation evidence to be supplied to the Council. Unless otherwise agreed with the local authority this shall be in the form of certified valuations from local RICS qualified surveyors and include evidence for comparable sites near the area of development.
- 6.10. The value of the intermediate affordable housing market prices to be taken into account shall be taken to be the actual price to be offered by the Registered Provider (RP). Stockton Borough Council's Housing Service team will input a value if this

information is not available at this stage. If this value is disputed then it will be valued independently, the cost of which will be borne by the applicant/developer.

- 6.11. The value of the affordable rented affordable housing accommodation shall be taken to be the actual price to be offered by the RP. Stockton Borough Council's Housing Service team will input a value if this information is not available at this stage. If this value is disputed then it will be valued independently, the cost of which will be borne by the applicant/developer.
- 6.12. For the purposes of undertaking a viability assessment, developers should assume (unless they have had prior agreement from the Homes and Communities Agency) that no grant funding will be available.

### ***Development Costs***

#### Building Costs

- 6.13. The Building costs should not exceed the current rates published by the Building Cost Information Service (BCIS) for New Build units in the appropriate categories and adjusted for Location factor. If the Building costs for the development exceed the BCIS rates, then the developer will be required to provide written evidence to justify the increased costs. The rates are based on Gross Internal Floor Area (RICS definition) and exclude external works and contingencies; these should be costed and added separately within the calculation.

#### Other Costs

- 6.14. The developer will be required to provide written evidence for site infrastructure costs / external works such as roads, sewers, services, landscaping etc.

#### Legal Fees

- 6.15. These should reflect the charging rates of local solicitors and conveyancers.

#### Sale Fees

- 6.16. These should reflect the charging rates of local Agents (although it is recognised that larger house builders may provide this service in-house).

#### Professional Fees

- 6.17. Where relevant, these can include Architect, Quantity Surveyor, Structural Engineer, Mechanical and/or Electrical Engineer, Project Manager, CDM Management, and other necessary consultants. Evidence should be provided.

#### Cost of Finance

- 6.18. For most developments, a rate of 2% above Bank of England Base Rate is expected but developers unable to borrow at this level should provide evidence of the actual rate applicable.

#### Development Period

- 6.19. It is accepted that this will vary from project to project, a reasonable and realistic estimate should be provided.

#### Contingency

- 6.20. The more complex the project, the more likely it is that there will be difficulties or delays. Therefore, contingencies should be calculated at between 2% and 5% of total costs (i.e. building costs, ancillaries and professional fees) depending on the complexity of the development, on the basis that other abnormal costs will be separately identified and reflected in other parts of the calculation.

#### Developer's Gross Margin % of GDV

- 6.21. A typical margin in the region of 15% of gross sales values is expected. However, higher/lower profit levels may be appropriate depending on the nature of the project and the risk/reward scenario. If more than 15% minimum development profit is to be built into the financial appraisal the developer shall be required to provide written justification for this.

#### Abnormal Costs

- 6.22. Standard development costs such as demolition works, landscaping, noise bunds, archaeological and ecological surveys, drainage and flood prevention measures, noise and other environmental attenuation, and appropriate infrastructure provision, which may include highway and public transport measures, will not usually be considered abnormal site costs. In the event that a developer considers that abnormal development costs have been incurred, it will be the responsibility of the applicant to demonstrate how the costs have been derived. A site investigation report, remediation statement, detailed drawings and calculations of how the abnormal costs have been derived must be submitted with the application.

#### S.106 Contributions

- 6.23. The Developer will be required to provide written evidence for any agreed S.106 contributions including the amount.

#### Development Programme

- 6.24. A full development programme/cash flow including build period, sales programme and timing of section 106 payments/contributions etc should be submitted.

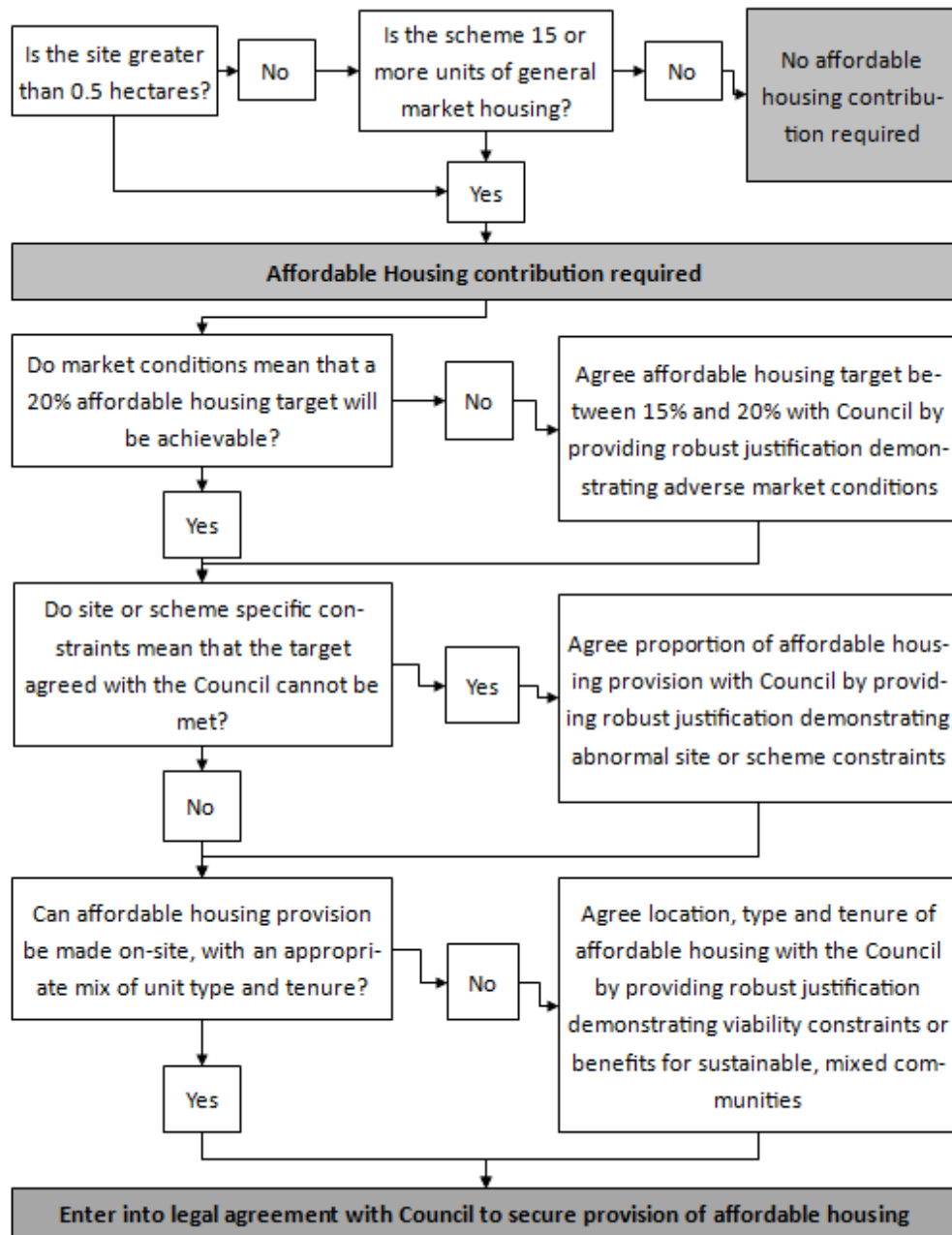
## 7. Delivery

- 7.1. The Council will expect the developer to provide the affordable dwellings on-site in all but exceptional circumstances. This can be achieved through:
- The transfer of land from developers to a Registered Provider (RP) or similar organisation;
  - The developer may sell the completed dwellings to a RP or similar organisation; or
  - The sale of units at a discount below market value.
- 7.2. However, there may be exceptional circumstances where the developer can demonstrate that off-site provision is more suitable. In such circumstances, the developer is encouraged to enter into early discussions with the Council to justify the rationale for off-site provision to and to agree an appropriate site for off-site provision.
- 7.3. Where the Council and developer have agreed the affordable housing provision, a suitable phasing scheme shall be agreed outlining milestones and trigger points for the delivery of the units. This shall require, at least:
- no more than 50% of the open market housing to be developed prior to the handover of 50% of the affordable dwellings to an RSL.
  - no more than 85% of the open market housing to be developed prior to the handover of 100% of the affordable dwellings to an RSL.
- 7.4. In exceptional circumstances, an agreement may be reached whereby the developer provides a commuted sum, or cash in-lieu payment as opposed to actually building out the affordable dwellings. The Council will require the developer to demonstrate why this approach should be followed. Since this would only be applicable in exceptional circumstances, the exact level of payments will be established on a site-by-site basis.
- 7.5. The sum for each unit will be based on the difference between the RSL purchase price and the open market value of an equivalent dwelling in the locality, and be payable before 50% of the open market dwellings have been completed on the original site. The total calculation will be based on the equivalent number of affordable dwellings that would have been required on the original development site.
- 7.6. Any cash in lieu payments received by the Council relating to the provision of affordable housing shall be used to deliver the Council's affordable housing requirements across the Borough, where the need and deliverability exists. Agreement will be reached between the Council and developer over the period of time within which the funds must be spent, before the payee becomes eligible for their return, with interest.
- 7.7. The Council actively encourages that on-site affordable dwellings shall be mixed into the open market dwellings to generate a mixed community. This 'pepper potting'

should also ensure the affordable dwellings are integrated with the overall design of the development. However, there may be exceptions to the rule, which the developer is asked to justify.

- 7.8. Where the developer has agreed to transfer part of a site to a RP or to the Council to hold for a RP, services shall be built out to the edge of the affordable site by the developer. In these circumstances, the developer shall not complete in excess of 25% of the open market dwellings prior to the land transfer.
- 7.9. Planning obligations shall also ensure that the perpetuity conditions over the future occupancy of the affordable dwellings are retained.

## Appendix A – Affordable Housing Provision Flow Chart



***Appendix B – Model Affordable Housing Section 106 agreement***



Dated

2013

THE COUNCIL OF THE BOROUGH OF STOCKTON-ON-TEES (1)

and

[THE OWNER] (2)

and

[THE DEVELOPER – if applicable] (3)

Section 106 Agreement and Planning Obligation relating to

Development of Land at XXXXXXXXXXXX



## OPERATIVE PART

### 1. DEFINITIONS

For the purpose of this Deed the definitions set out in the Third Schedule shall be applicable and the following expressions shall have the following meanings:

“1980 Act”	the Highways Act 1980
“Act”	the Town and Country Planning Act 1990
“Application”	the planning application and supporting documentation submitted to the Council by the Developer and allocated reference number [ ]
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.
“Development”	the Development of the Site for [set out description of development] as set out in the Application.
“Dwelling”	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly

“Index”	all items index of Retail Prices issued by the Office for National Statistics (All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation).
“Interest”	interest at the LIBOR rate of interest
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
“Plan”	the plan attached to this Deed
“Planning Permission”	the outline planning permission subject to conditions to be granted by the Council pursuant to the Application in substantially the same form as set out in the Second Schedule.
“Site”	the land against which this Deed may be enforced as shown edged red on the Plan

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 2.4 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 unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed 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 respective statutory functions.

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

### **4. CONDITIONALITY**

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of (Clauses 7.1, 13 and 14 legal costs jurisdiction and delivery clauses and any other relevant provisions) which shall come into effect immediately upon completion of this Deed.

### **5. THE OWNER'S COVENANTS**

- 5.1 The Owner covenants with the Council as set out in the Third Schedule.

## **6 THE COUNCIL'S COVENANTS**

6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

## **7 MISCELLANEOUS**

7.1 The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registered as a local land charge by the Council.

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be give on behalf of the Council by the Head of Planning and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.8 No persons shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that

part of the Site in relation to which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest

7.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

## **8 WAIVER**

No waiver (whether expressed or implied) by the Council (or Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council ( or Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **9 CHANGE IN OWNERSHIP**

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

## **10 INDEXATION**

Any sum referred to in the Third and Fourth Schedules shall be increased by an amount equivalent to the increase in the Index from the (date hereof) until the date on which such sum is payable

## **11 INTEREST**

If any payment due under this Deed is paid late, interest will be payable from the date payment is due to the date of payment.

**12 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

**13 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales

**14 DELIVERY**

The provision of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.



## FIRST SCHEDULE

The freehold land at [.....] comprising all the land within title numbers [.....]

SECOND SCHEDULE

**(Form of notice of planning permission)**

## THIRD SCHEDULE

### The Owner's Covenants with the Council

#### 1. Affordable Housing

1.1 For the purpose of paragraph 1 of this Schedule the following expressions shall have the following meanings:

"Affordable Housing" As defined within the Department for Communities and Local Government March 2012 publication entitled: "National Planning Policy Framework" or any recognised replacement and/or supplemental policy document(s) that may be published by HM Government from time to time

The definition contained within the Department for Communities and Local Government March 2012 publication entitled: "National Planning Policy Framework" is reproduced at Annex 1 to this Deed

"Affordable Housing Commuted Sum" such sum as may be payable for the provision by the Council of Affordable Housing off Site calculated and payable pursuant to the provisions of paragraph 4.7 of this Schedule

"Affordable Housing Units" that part of the Development comprising Dwellings required for Affordable Housing as identified pursuant to the Approved Affordable Housing Scheme

"Affordable Rented Housing Units" means Affordable Housing let by local authorities or Registered Providers of social households in relation to which guideline target rents are

determined through the national rent regime or are provided under equivalent rental arrangements as agreed with the Council or with the Homes and Communities Agency

“Approved Affordable Housing Scheme”	a scheme for the provision of Affordable Housing on the Site submitted to the Council by the Owner, in accordance with the Obligation in paragraph 4.3 of this Schedule, and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council).
“Area of Housing Land”	any parts of the Site upon which, following the Approval of Reserved Matters, Dwellings are to be located.
“Chargee”	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;
“Chargee’s Duty”	the tasks and duties set out in paragraph 4.6 this Schedule
“Market Housing Units”	that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;
“Intermediate Housing Units”	means Affordable Housing to be provided for sale and rent at a cost above social rent but below market levels which can include shared equity arrangements such as shared ownership or shared equity loans
“Protected Tenant”	any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

“Registered Provider”

a registered social landlord or registered provider which is registered with the Housing Corporation, Tenant Services Authority or Homes and Communities Agency (or any successor body) pursuant to the Housing Act 1996, the Housing and Regeneration Act 2008 or any replacement legislation for the time being in force and which has not been removed from that register and who is approved by the Council (such approval not to be unreasonably withheld or delayed)

- 1.2 Not itself to Implement the Planning Permission, nor permit or suffer any other to implement the Planning Permission, until such time as there is an Approved Affordable Housing Scheme.
- 1.3 To submit to the Council for approval, at or about the time of submission of the first application for Approval of Reserved Matters a draft scheme for the provision of Affordable Housing on the Site, which draft scheme must:
  - 1.3.1 delineate the area or areas of the Site upon which the Affordable Housing is to be constructed;
  - 1.3.2 identify the general type, tenure and size of the Dwellings which are to comprise the Affordable Housing (although exact details of appearance need not be provided at such time, and may be left for further reserved matters applications);
  - 1.3.3 specify the arrangements which the Owner is intending to make to ensure such Dwellings remain Affordable Housing for both initial and successive owners and/or occupiers, including occupancy criteria for identifying housing need and any proposed nomination rights;
  - 1.3.4 state the phasing arrangements for delivery of the Affordable Housing in relation to the delivery of other Dwellings, to ensure that an appropriate provision for Affordable Housing is made throughout the period of the Development  
**AND** such draft scheme must include provision for:
    - 1.3.5 not less than 20% of Dwellings to be Affordable Housing;
    - 1.3.6 80% of those 20% of Dwellings to be Affordable Rented Housing Units
    - 1.3.7 the remaining 20% to be Intermediate Housing Units
    - 1.3.8 proposals for the transfer by the Owner to a Registered Provider of the Affordable Housing Units
- 1.4 The Owner shall provide Affordable Housing in accordance with the Approved Affordable Housing Scheme and in connection therewith:
  - 1.4.1 no more than 35% of the Market Housing Units shall be occupied until 25% of the Affordable Housing Units have been constructed and are ready for Occupation and transferred to a Registered Provider

- 1.4.2 no more than 55% of the Market Housing Units shall be occupied until 50% of the Affordable Housing Units have been constructed and are ready for Occupation and transferred to a Registered Provider
  - 1.4.3 no more than 80% of the Market Housing Units shall be occupied until 75% of the Affordable Housing Units have been constructed and are ready for Occupation and transferred to a Registered Provider
  - 1.4.4 no more than 95% of the Market Housing Units shall be occupied until all of the Affordable Housing Units have been constructed and are ready for Occupation and transferred to a Registered Provider
- 1.5 From the date the Affordable Housing Units are constructed and ready for Occupation they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
- 1.5.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
  - 1.5.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty
  - 1.5.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
- 1.6 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 4 months' prior notice to the Council of its intention to dispose and:
- (a) in the event that the Council responds within 2 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such a transfer
  - (b) if the Council does not serve its response to the notice served under paragraph 4.6(a) within 2 months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

- (c) If the Council or any other person cannot within 6 months of the date of service of its response under paragraph 4.6(a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 4.6(a) the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 4.6 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

- 1.7 The Council hereby acknowledges that if (despite using its reasonable endeavours) the Owner has not been able to reach agreement with a Registered Provider for the transfer to it of the Affordable Housing Units or any of them then the Owner may agree with the Council an alternative scheme for the provision of Affordable Housing (which may include changes to the mix and type of Affordable Housing Units) and if it has still not been possible to transfer all or part of the Affordable Housing Units to a Registered Provider the Council may agree terms which enable the Owner to dispose of such Affordable Housing Units on the open market free from the provisions of paragraph 4 of this Schedule subject to payment of the Affordable Housing Commuted Sum (or the part thereof as is applicable to the Affordable Housing Units in question) the amount of which shall be agreed between the Council and the Owner.



## **FOURTH SCHEDULE**

### **Council's Covenants**

#### **Repayment of contributions**

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 2 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within (five) years of the date of receipt by the Council of such payment together with the interest actually accrued on the sum from the date of payment to the date of refund. For the avoidance of doubt where the payment is to be paid in phases pursuant to this Deed the five years will commence from the date of the final payment.
- 3 The Council shall provide such documentation as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

#### **Discharge of Obligations**

- 4 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

Executed as a Deed by affixing  
THE COMMON SEAL of )  
**THE COUNCIL OF THE BOROUGH OF**  
**STOCKTON-ON-TEES** )  
in the presence of )

Authorised Signatory

EXECUTED AS A DEED by )  
[OWNER] )  
in the presence of )

EXECUTED AS A DEED BY )  
**[DEVELOPER]** )  
Acting by its Attorneys )

.....  
Attorney

.....  
Attorney