

**AFFORDABLE
HOUSING
SUPPLEMENTARY
PLANNING
DOCUMENT
UPDATE**

2022

Approval & Publication:

Approving Body	Approval route requirement	Publication Type	Publication requirement	Review frequency	Document owner	Next Review Date
Executive, Council		Internal/ external	There are no legal or constitutional requirements for publication	As required, according to national and local policy changes	AS	NA

Version Control Information:

Version	Version Status (Draft, Approved /Published Internally or Externally)	Date	Version Comment	Version Author
V1	Published	April 2021	Approved by Full Council/ 1 st Publication	AL & EL
V2.1	Draft Update	06.09.22	Executive approve for consultation	AL & EL
V2.2	Draft Update – amended	30.09.2022	Amendments (typos) for consultation	AL & EL
V3	Draft Update following consultation	Est 07.03.23	Executive approve amended draft	AL & EL
V4	Final Approval	Est 31.03.23	Approved by Full Council/ update	AL & EL

Impact Assessments and Consideration:

Impact Assessment Type	Required / Not Required	Date Completed	Impact Assessments and Considerations Comment	Assessment Owner
Equality Impact Assessment	Required	04.08.22	See separate EqIA document	AL & EL
Data Protection Impact Assessment	Not required			
Climate Change	Not required			

Document Statement

Waverley is committed to homes to buy or rent for households from all income levels. The strategy sets out our priorities and objectives for the development of new affordable homes by the Council and our partners for the next 3 years.

Scope and Purpose

This update reflects changing policy and practice since the Affordable Housing Supplementary Planning Document was published in April 2021, including the introduction of First Homes. Amendments are highlighted for ease of reference but will be removed when the final document is adopted and published.

Document Improvement

The Council welcomes comments and feedback on its policies and procedures. Please contact alice.lean@waverley.gov.uk and esther.lyons@waverley.gov.uk of the Housing Strategy and Enabling Team if you have any comments.

Related information

5.1 Other Related Council Policies / Information/ Evidence Base Documents

Waverley Borough Council Affordable Homes Delivery Strategy 2022-25

Waverley Borough Council Affordable Housing Supplementary Planning Document

Waverley Borough Council Quality and Design Standards Update

Draft Waverley Borough Council Climate Change and Sustainability Supplementary Planning Document

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CONSULTATION

This Affordable Housing Supplementary Planning Document will be amended to include comments made following public consultation, which is scheduled to take place between **17.10.22 – 28.11.22**

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EXECUTIVE SUMMARY

Our vision is that Waverley will be environmentally, economically and financially sustainable with healthy, inclusive communities and housing available for all who need it. Our vision is that Waverley Borough Council is an authority which promotes and sustains housing to buy and rent, for those at all income levels

(WBC Corporate Strategy 2020-25)

We are committed to achieving our vision of homes to buy and rent for households from all income levels. *House prices in the borough are nearly 13 times average incomes, well beyond the reach of the average family. As at 1 October 2017, there were 1,500 households waiting on Waverley's Housing Register for affordable or social rented housing.* (Build More, Build Better, Build for Life; Waverley Housing Strategy 2022-2025)

1. This Affordable Housing Supplementary Planning Document (SPD) **Update** sets out the Council's guidance on the securing of planning obligations and affordable housing from new development within the Borough.
2. It has been prepared to support the new Waverley Borough Local Plan Part 1; Strategic Policies and Sites (LPP1) which was adopted by the Council on 20 February 2018.
3. LPP1 is supported by the National Planning Policy Framework (NPPF), which was published in March 2012 and last updated in February 2019. The NPPF sets out the Government's planning policies and how these are expected to be applied. This SPD is subject to change, in light of any consultation responses or changes to Government legislation and policy.
4. This SPD sets out the Council's approach to securing planning obligations in respect of affordable housing from new development across the Borough.
5. Its purpose is to provide all parties with clarity and guidance on when, how and what affordable housing the Council expects on new developments and to assist the Council in achieving the goals set out in our Housing Strategy.

6. An important role of the Council is to enable and coordinate the provision of housing to meet local need. This includes affordable housing, which is provided for eligible households, whose needs are not met by the market.
7. The Council, through the targets set out in LPP1 will seek to match the supply of new homes with the needs of local people, ensuring that all new residential development contributes appropriate new homes in terms of size, type and tenure.

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PART ONE: BACKGROUND

Policy Context

8. The Waverley Borough Council Local Plan Part 1; Strategic Policies and Sites (LPP1) was adopted by the Council on 20 February 2018.
9. LPP1 sets out the strategy for development and growth in the Borough to 2032 and includes policies to secure affordable housing.
10. Chapter 9 ('Affordable Housing and Other Housing Needs') includes Policy AHN1; Affordable Housing on Development Sites and Policy AHN2: Rural Exception Sites.
11. Paragraph 9.27 states that 'more detail on the application of Policy AHN1 and Policy AHN2 will be developed through supplementary planning documents which will include details on:
 - ✓ The approach to calculating financial contributions
 - ✓ Up to date information on the type and size of affordable housing required
 - ✓ The cascade mechanism to be applied to cases where viability is an issue
 - ✓ Other matters of detailed interpretation/ application of the policies'

The Council's affordable housing policies

AHN1- Affordable Housing on Development Sites (extract from Local Plan Part 1)

Policy AHN1: Affordable Housing on Development Sites

The Council will require 30% affordable housing on all housing developments where at least one of the following applies:

- In designated rural areas¹ developments providing a net increase of 6 dwellings or more
- In non designated rural areas developments providing a net increase of 11 dwellings or more
- Developments that have a maximum gross internal floor area² of more than 1,000 sqm.

12. Policy AHN1; Affordable Housing on Development Sites 'will apply to single use or mixed use schemes, and to all types of residential development including private retirement homes, sheltered accommodation, extra care schemes and other housing for older people where these fall within Use Class C3³' (paragraph 9.16). Residential care homes and nursing homes (Use Class C2) are not required to provide affordable housing.
13. 'The policy will apply to development sites that exceed the thresholds set out. Where such sites are sub-divided, each sub-division or smaller development must contribute proportionally towards achieving the amount of affordable housing which would have been appropriate on the whole or larger site' (paragraph 9.17)
14. Policy AHN1 applies to all types of residential development sites including change of use, conversions and mixed use sites that incorporate an element of residential development and will be applied to the net increase in the number of units on the site.

¹ Rural Areas described under [Section 157 of the Housing Act 1985](#). In the Waverley context, this applies to Areas of Outstanding Natural Beauty (AONB).

² Gross Internal Area (GIA) is defined in the [RICS: Code of Measuring Practice 6th Edition \(2007\)](#) as the internal area of a building measured to the inside face of perimeter walls at each floor level

³ Town and Country Planning (Use Classes) Order 1987 (as amended)

15. The thresholds in Policy AHN1 of Local Plan Part 1 were set in accordance with, and to reflect, previous national planning practice guidance. Since the adoption of Policy AHN1 in February 2018, the Government has revised the National Planning Policy Framework, whereby affordable housing is required on major developments, which are defined as developments of 10 or more new homes or where the site has an area of 0.5 hectares or more. Therefore, the Council will be applying the thresholds set out in the revised National Planning Policy Framework.
16. In calculating the number of units to be provided on any qualifying site, the Council will normally round up to the nearest number of whole units. However, where this is not practical, a commuted sum can be offered in lieu of a proportion of a dwelling instead. The final decision as to whether to round up or provide a commuted sum for part of a unit will be dependent on the local housing need, nature of the scheme and the impact of rounding up or down on the design, layout and viability of the affordable units.
17. In all cases where on-site provision is being made, the mix of dwelling types, sizes and tenure split should reflect the type of housing identified as being required in the most up to date evidence of housing needs^{4,5} and the Strategic Housing Market Assessment (SHMA), having regard also to the form and type of development appropriate for the site. Any proposed departure from the mix recommended will require justification and supporting evidence to be provided by the applicant.
18. Contributions towards the provision of affordable housing will be either through the on-site provision of affordable homes or by financial contribution or commuted sum⁶. The provision of affordable housing or financial contributions will be secured through an appropriate legal agreement or undertaking.
19. On developments in designated rural areas with a site area under 0.5 hectares but with a net gain of 6-9 dwellings, the contribution may be in the form of a cash payment equivalent to the cost of providing 30% on-site provision in line with the Council's Commuted Sum Formula. This is paid after the completion of all of the units within the development.

⁴ [Waverley Housing Affordability Study by Icen Projects/ Justin Gardner \(December 2021\)](#)

⁵ [Waverley First Homes Viability Update by Three Dragons \(December 2021\)](#)

⁶ See Part 3

20. In all other cases, on-site provision of affordable housing will be required and only in exceptional circumstances will an alternative to on-site provision be considered.

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AHN2-Rural Exception Sites (extract from Local Plan Part 1)

AHN2: Rural Exception Sites

Where there is a genuine local need for affordable housing which cannot be met in some other way, small scale developments of affordable housing may be permitted on land that is within, adjoins or is closely related to the existing rural settlement, provided that:

- The development is small in scale, taking account of the size of the village and respects the setting, form and character of the village and surrounding landscape and
- Management arrangements exist to ensure that all of the affordable dwellings remain available on this basis to local people in perpetuity

Where it can be clearly demonstrated that it is required to ensure the viability of the scheme, the Council will consider a limited element of open market housing, provided that;

- The requirements set out under (i) and (ii) or of this policy and be satisfactorily met
- The new development physically integrates the open market and affordable housing and makes the best use of the land; and
- The number of open market dwellings included in the scheme is the minimum required to provide the necessary number of affordable dwellings

21. 'The NPPF states that in rural areas, local planning authorities should be responsive to local circumstances and plan housing development to reflect local requirements, particularly for affordable housing, including through rural exception sites where appropriate. Local Planning Authorities are also expected to consider whether allowing some market housing would facilitate the provision of significant additional affordable housing' (Paragraph 9.21).

22. 'In the past, the Council has successfully applied a rural exception site policy, which allows for small scale developments of affordable housing within or adjoining rural settlements where there is a clear need. This policy has helped to facilitate the development of a number of such schemes in Waverley' (Paragraph 9.22).
23. 'The identification and development of these sites is usually driven by evidence of local need and potential sites, following the carrying out of a local housing needs survey. Recommendations from the survey will propose the number, type, tenure and mix of affordable homes in line with community need' (Paragraph 9.23).
24. 'Proposals for rural exception sites will need to be accompanied by evidence that clearly identifies and quantifies the need for affordable housing in that settlement. Any development proposals must be small in scale, having regard to the size of the settlement itself. The Council will need to be satisfied that:
 - There is local support for the scheme, including adequate consultation with the appropriate Parish Council;
 - The scheme meets a demonstrated housing need identified in a Parish Council Needs survey' (Paragraph 9.24).
25. 'Depending on the circumstances and the proposed site, it will be necessary to demonstrate why the site has been selected and why other sites have been discounted. Any planning permission that is granted must be subject to an appropriate legal agreement to ensure that new dwellings remain affordable housing in perpetuity' (Paragraph 9.25).
26. 'It is expected that the land provided for affordable housing will be provided at low or nil cost. However, if it can be demonstrated that it is necessary to create additional funds over and above those available from free and low-cost land, to overcome specific constraints, or that the provision of low cost dwellings for local needs is not realistic or practicable without extra subsidy, an element of open market housing may be permitted within an overall scheme. This will be in the form of carefully prescribed cross-subsidy schemes, in order to meet the objective of developing rural affordable housing to meet local needs. The Council will need to be satisfied that the number of open market dwellings is the minimum necessary to ensure delivery of the scheme' (Paragraph 9.26).

Legal Agreements

27. Planning obligations are used to make a development acceptable in planning terms. Legal agreements are the tool to secure planning obligations and are negotiated between local planning authorities and those with an interest in a piece of land (e.g. developers). Planning obligations can be secured either through a bilateral Section 106 Agreement or through a 'Unilateral Undertaking' from a developer. Unilateral Undertakings are only signed by the land owner(s) and any other parties with an interest in the land, and not by the Council. These unilateral obligations are most frequently used in planning appeal situations, but can also be used in other circumstances.
28. The statutory basis for allowing anyone interested in land in the area of a local planning authority to enter into planning obligations is Section 106 of The Town and Country Planning Act (TCPA) 1990 (as amended).
29. The Council will expect developers to enter into an appropriate Section 106 Agreement covering all aspects of the delivery of affordable housing on the application site. An estimate of the fee payable for this can be obtained from the Council's Policy and Governance Team. The fee will depend on the complexity of the agreement.
30. The Section 106 agreement will include requirements relating to:
 - Definition of affordable housing and affordable tenures
 - The bed size, tenure mix and location of affordable housing
 - Any local connection criteria (if appropriate)
 - Agreement with the Council on the Affordable Housing Plan
 - Safeguarding use of homes as affordable dwellings for future eligible households⁷
 - The retention of obligations relating to the affordable dwellings

⁷ Subject to exclusions, such as Right to Buy/ Right to Acquire

- Expectation to recycle any receipts or grant arising from the disposal of all or part of an affordable dwelling⁸
- Mortgagee in Possession clauses and limitations on the occupation of the affordable housing.

Waverley's Template Section 106 Agreement is attached as Appendix 3 to this document.

A model S106 agreement for First Homes is available at www.gov.uk:

31. The Section 106 Agreement should be finalised and ready for completion prior to the determination of the application. There may be circumstances, particularly with Outline applications, where the details of affordable housing provision have not been finalised. The Section 106 Agreement will contain a requirement for the submission and approval of an Affordable Housing Plan. The Affordable Housing Plan would need to be submitted and approved prior to the commencement of the development. In the case of Outline applications, we recommend this should be submitted as part of the Reserved Matters application, when known.
32. The details to be provided in the Affordable Housing Plan are⁹:
 - a. Total number and % of affordable homes
 - b. Anticipated tenure/ bed size/ type/ gross internal floor areas
 - c. Site layout showing location of affordable homes
 - d. Affordable housing provider
 - e. Nomination and management arrangements
 - f. Affordability
33. Planning obligations secured by way of a Section 106 agreement or Unilateral Undertaking are binding on the land and are therefore, enforceable against all successors in title. They are registered as a local land charge and will remain on the register.

⁸ Subject to current Homes England policies or requirements, and amended as appropriate to reflect any changes arising from Homes England

⁹ See Appendix 1

They will therefore, be revealed on local searches until the planning obligation has been fully complied with or the planning permission to which the Section 106 agreement or Unilateral Undertaking relates has expired.

34. If the Council has evidence that a planning obligation is not being complied with, the Council will consider all options including enforcement to remedy the solution.

Scheduling affordable housing delivery

35. The Council will normally include triggers in the legal agreement to ensure that the affordable housing is not delivered significantly in advance or later than the market housing. These may vary from site to site, but a guide would be:

- Not to allow the commencement of development until a contract has been entered into with an Affordable Housing Provider to deliver the affordable housing in accordance with an approved Affordable Housing Plan.
- Not to permit nor enable more than 50% of the Open Market Units (or as otherwise agreed in writing between the Borough Council and the Parties) to be in occupation until the date upon which the Parties or their successors in title have transferred the freehold interest in the Affordable Housing Land to the agreed Affordable Housing Provider.
- Not to permit nor enable more than 75% of the Open Market Units to be in occupation until the date upon which the Parties or their successors in title have completed the affordable housing units.
- Unless otherwise agreed in writing with the Borough Council, the Affordable Housing Units shall be occupied pursuant to the provisions of the Nomination Agreement.

Maintaining accommodation as affordable housing

36. In order to ensure that the need for affordable housing in Waverley Borough continues to be met in the future, it is considered that there should be provisions that either preserve the status of the affordable housing, replace it, or, if it is no longer used for affordable housing, that resources derived from it are recycled to replace the dwelling(s) that have been lost.¹⁰

¹⁰ see para 011 Reference ID: 70-011-20210524 of the NPPG

37. The Council will therefore, require provisions in the Section 106 agreement that:
- Keep the units within the definition of affordable housing; and
 - Require any purchaser (other than an occupier) to preserve the accommodation as affordable housing, or replace it within the Borough, like for like; and
 - Require any purchaser to take on the obligations in the Nomination Agreement or enter into a replacement Nomination Agreement.

Recycling of receipts

38. There are a number of reasons why affordable housing dwellings may be lost, for example: a tenant's statutory acquisition of a rented dwelling, shared ownership staircasing to 100%, discharge of the charge on a shared-equity dwelling. In all cases the Council expects the dwelling to be replaced within the Borough, or any receipts arising from the disposal of the dwelling to be recycled to provide further affordable housing in the Borough, whenever possible.

Nomination Agreements

39. Providers of affordable housing will be required to enter into a Nomination Agreement with the Council. The Council will normally require 100% of nomination rights on all initial lettings/shared ownership sales and 75% of nomination rights thereafter.
40. Policy AHN1 is intended to meet identified local housing need. It is therefore important that households with an established local connection with the Borough as defined in the Council's Housing Allocation Scheme are nominated to social and affordable rented housing provided through the Waverley Borough Council Local Plan. Rented vacancies will be advertised through the Council's Choice Based Lettings system.
41. The Government appointed Help to Buy Agent is responsible for managing shared ownership applications on the Council's behalf. Priority will be given to nominations from households with a local connection on shared ownership schemes, except where units are funded by Homes England grant.

PART TWO: DELIVERY

Planning application process

42. All applicants are strongly encouraged to make use of the Council's pre-application advice service before making a planning application.
43. Pre-application dialogue is particularly important where the proposed development may give rise to an affordable housing requirement. This will allow issues such as local housing need and demand to be considered in addition to the form of any affordable housing contribution.
44. The discussions will need to include the following, as appropriate:
 - Clarify the amount, type, size, and tenure of affordable housing to be provided;
 - Identify the affordable housing provider and contact to discuss the delivery of the affordable housing element of the development;
 - Reach agreement with the chosen affordable housing provider in respect of the design and specification of the affordable housing units;
 - Agree the arrangements for the provision of affordable housing with the affordable housing provider prior to the submission of a planning application;
 - Whether specialist providers (such as Adult Social Care) will need to be engaged in relation to the proposed development, in order to gain a better understanding of any requirements they might make in relation to the proposed development; and
 - Agree with Council Officers the Terms of the Section 106 Agreement that will be required to ensure the delivery of the affordable housing.

45. The applicant should outline the proposed methods of meeting the affordable housing requirements of the scheme which need to be submitted as part of any subsequent planning application. If an application (for 6 units or more or site size over 0.5 hectares) does not set out how the affordable housing requirement will be provided, the application may not be validated and will be returned to the applicant. Once the affordable housing provision has been agreed, the Council will draft an appropriate Section 106 agreement.

Negotiations

46. Where a Section 106 Agreement is required, planning permission cannot be issued until affordable housing Heads of Terms have been agreed. It is the Council's aim to carry out negotiations on planning obligations and to agree Section 106 agreements prior to the issuing of the planning permission to which the agreement is linked. The aim is to ensure that developers and landowners are informed of the likely works or contributions required for a proposed development at the earliest opportunity. Ideally, this should be through pre-application discussions, which developers are encouraged to undertake as soon as possible.

Affordable housing providers

47. The Council's preference is for affordable housing to be provided and managed by established affordable housing providers or by the Council. The Council works with a number of affordable housing providers that meet the following criteria:
- Own and manage stock in the Borough;
 - Commitment to developing in the Borough;
 - Commitment to Council housing policies; or
 - Ability to fund and deliver affordable housing.

A list of [affordable housing providers](#) and their specialisms is available on the Council's website.

48. The Council expects that affordable housing will usually be provided by housing providers registered with Homes England. However, in exceptional circumstances, the Council may use its discretion to allow other affordable housing providers approved by the Council to deliver affordable housing units, subject to affordability and satisfactory management and allocations arrangements being in place. This will, at all times, be strictly in line with the Homes England guidance and the Council's Allocations Scheme.
49. The Council will encourage developers to work in partnership with preferred affordable housing providers. However, if a developer proposes to provide affordable housing other than through a preferred provider, the Council will consider this, taking account of the following:
- Whether the organisation has any other affordable housing in the Borough or in neighbouring local authority areas;
 - Past commitment and performance in the Borough;
 - Local management base and arrangements for interaction with tenants;
 - Management arrangements for external amenity space;
 - Affordable Rent levels set within Local Housing Allowance levels;
 - Nomination arrangements;
 - Track record in delivering and funding affordable housing;
 - Participation in community initiatives; and
 - Genuine community led development, via a Community Land Trust.
50. In all cases the provider of on-site affordable housing will need to meet the requirements of this document.

Funding of affordable housing

51. In formulating proposals for affordable housing, applicants and developers should be aware of the limitations on funding of affordable housing and the price that providers can typically pay for affordable housing dwellings. This is a direct consequence of ensuring affordability to the occupants. It will need to be explored with reference to the location and scheme proposals.
52. The Council's latest assessment indicates that providers should pay developers in the range of approximately 30 to 70% market value for affordable homes. The level is dependent on the type(s) and mix of tenure appropriate as affordable housing on a particular site. Very broadly, in the case of a mixed tenure scheme (i.e. including both rented and affordable homeownership tenures) a developer may expect to receive around 50 to 60% market value for the affordable element overall. This point needs to be taken into account in the very early consideration of development proposals.

Size, mix and tenure split

53. The affordable housing mix shown in the table below reflects the affordable housing size requirements and waiting list demands from local households. Overall, there is an increasing need for smaller homes, particularly 1 and 2 bed properties.

	1 bed	2 bed	3 bed	4+ bed	Total
Affordable home ownership (First Homes, shared ownership and shared equity)	20%	50%	25%	5%	100%
Affordable housing (for social and affordable rent)	40%	30%	25%	5%	100%

Suggested Mix of Affordable Housing by Size and Tenure – Waverley Housing Affordability Study 2021

54. The overall housing target is to provide 60% of the total as social rents or affordable rents. 25% of affordable homes need to be First Homes, in line with the revised National Planning Policy Framework. The remaining 15% are recommended as shared ownership. This recommended mix also meets the national requirement for at least 10% of the homes overall on each site to be available for affordable home ownership. However, it is recognised that the tenure split on each site may vary, having regard to the specific circumstances of the site. All affordable tenures must meet the definitions set out in Annex 2 of the revised National Planning Policy Framework.
55. The Council intends that part of a dwelling may be either rounded up or down, as illustrated in the example below. Applicants are encouraged to discuss schemes at the early stages of preparation with the Council to enable a workable outcome. The greater need for affordable homes to rent and shared ownership should result in this tenure being rounded up in preference to providing other forms of affordable housing in the Borough, such as First Homes which will be rounded down.

56. Example: A scheme for 100 dwellings

Method	Result
30% affordable housing requirement from Policy AHN1 – 100 x 30%	30 affordable dwellings
Social/ affordable rented = 60% of the 30 affordable housing requirement	18 dwellings
Shared Ownership= 15% of the dwellings	4.5 (rounded up to 5 dwellings) *
First Homes = 25% of the 30 dwellings	7.5 (rounded down to 7 dwellings)

* Tenures for which there is a greater need are rounded up; see para 55.

57. The bed size and tenure split for the affordable homes will need to be determined in the light of up-to-date information. This will include the SHMA and local need and supply, having regard also to the form and type of development appropriate for the

site. Any proposed departure from the mix recommended ~~in the SHMA~~ will require justification and supporting evidence from the applicant.

Homes for Social or Affordable Rents

58. The Council is committed to delivering Locally Affordable Homes that local workers and households on low incomes can afford. Social rents for households on the lowest incomes remain a priority for the Council and should be provided on new developments whenever possible. However, where this is not viable, affordable rents should be capped at 70% for 1 and 2 beds and 65% for 3 and 4 bed homes (including service charges) or the current Local Housing Allowance rate for the area; whichever is lower, in order to be affordable to local households.
59. Affordable housing is provided for eligible households whose needs are not met by the market. Affordable housing providers should consider the impact of different rent levels on different household types, and ensure that all household types in need of affordable housing can be catered for, including larger families requiring three or four bedroom accommodation.
60. Tenures and rents levels will need to be agreed with the Council and the affordable housing provider taking on the units. Both rented tenures will be defined in the Section 106 Agreement, to allow providers to deliver social rent instead of affordable rent if funding becomes available at a later date.
61. Local market rent should be calculated using the Royal Institute of Chartered Surveyors' approved valuation methods. Affordable rents must be affordable for local households in housing need.
62. The Council will not support providers seeking upfront payments from tenants in the form of deposits, rent in advance or administration costs in relation to social or affordable rented properties.
63. ~~The Council will need to ensure rents will be affordable to potential occupiers.~~ The Welfare Reform and Work Act 2016 reduced the upper cap on the total amount of benefit an individual household can receive. Where total benefit entitlement is higher than the cap, entitlement will be reduced to the cap. This is likely to present particular challenges for setting rent levels for family sized homes of three or more bedrooms. In these cases, a high Affordable Rent level would cause the total benefit needed by the household to exceed the cap.

Affordable Home Ownership

64. Affordable home ownership includes **First Homes**, starter homes, discounted market sale housing, and other affordable routes to home ownership (including shared ownership and shared equity), as set out in Annex 2 of the NPPF. **10% of all homes on site should be affordable home ownership products, unless one of the exemptions applies¹¹.**
65. Affordable home ownership in Waverley must be:
- For eligible households whose needs are not met by the market. Eligibility for grant funded schemes is set out in the Homes England Capital Funding Guide.
 - Significantly more affordable than existing similar second-hand market properties in the same area of the Borough.
 - Affordable to the majority of applicants on the Help to Buy Register¹² living or working in the Borough.
 - Secured at a discount for future eligible households.
 - Provided in accordance with the definitions set out in Annex 2 of the NPPF.
66. Traditionally, affordable home ownership in Waverley has been delivered as shared ownership (or “part-rent part-buy”). To be eligible for shared ownership, applicants must be over 18, have a household income of less than £80,000, and be unable to purchase a property suitable to meet their needs on the open market. The applicant purchases a share in the equity of a property. A mortgage and savings are required for the equity share purchased and rent is paid on the remaining share. After the initial purchase, the owner can usually buy extra shares in the property (known as “staircasing”) until eventually the property is 100% owned. However, staircasing may be capped in certain areas, such as rural exception sites or within Designated Protected Areas. In order to retain affordable housing in these rural areas, the maximum equity share that can be purchased is typically 80%.

¹¹ Paragraph 65, NPPF

¹² Shared ownership housing is allocated through Radian as the Help to Buy Agent for Waverley.

67. The Council will work with affordable housing providers to ensure that shared ownership on new schemes remains affordable for local households on low incomes. In order to achieve this, the Council will discuss and agree with the provider the equity share which can be purchased, the rent level on the remainder, and ways in which service charges can be kept to a minimum.
68. Due to the very high open market values in the Borough, affordable housing providers generally offer initial shares in the 25%-40% range. The Council's expectation is for initial shares to be offered at 25% and rents at 2.5% of the value of the unsold share. These shared ownership terms must be agreed in writing with the Council. Service and management charges must be kept to a minimum, without additional enhancements for non housing related services, and should be agreed with the Council in writing. No ground rent will be payable whilst the accommodation remains as affordable housing.
69. Demand for shared ownership homes in Waverley exceeds supply. The Council will seek to work in partnership with affordable housing providers to market shared ownership to households living or working in Waverley. Where possible, the Council will seek to prioritise Waverley households for new build and resale shared ownership properties.

First Homes

70. First Homes are discounted market sale homes that for planning purposes meet the definition of 'affordable housing' stated in the National Planning Policy Framework (see Glossary)
71. 25% of affordable homes need to be First Homes, in line with the revised National Planning Policy Framework.
72. The Waverley Local Plan Part 1; Strategic Policies and Sites (LPP1) was adopted in February 2018. Policy AHN1: 'Affordable Housing on Development Sites' requires that development proposals of 10 or more (net) additional dwellings or sites over 0.5 hectares provide 30% of dwellings as affordable units, with the 'mix of dwelling types, sizes and tenure split should reflect the type of housing identified as being required in the most up to date evidence of housing needs and the Strategic Housing Market Assessment, having regard also to the form and type of development appropriate for the site'. The most up to date evidence of need is the Waverley Housing Affordability Study by Icen Projects/ Justin Gardner (December 2021) and the Waverley First Homes Viability Update by Three Dragons (December 2021).

73. To qualify as a First Home, a section 106 agreement will be required to secure the necessary restrictions on the use and sale of the property, and a legal restriction on the title of the property to ensure that these restrictions are applied to the property at each future sale, guaranteeing perpetuity.¹³
74. Waverley has set the following local criteria for First Homes:
- a) retaining the national guidance of 30% discount for First Homes,
 - b) retaining the national guidance of £80k income threshold
 - c) Applying additional local eligibility criteria to ensure local residents can access the scheme, as set out in the Housing Allocation Policy, to ensure First Homes are available to local residents and workers.
 - d) Will not apply additional priority for local essential workers, as the proposed 'working locally' eligibility criteria include all essential workers earning under £80k pa.

Quality and Design Standards

75. The Council's expectation for new developments is that the affordable homes should be indistinguishable from, and well-integrated within, the market housing on the site. In other words, the design quality of the affordable housing should be as good, if not better, than the private market housing. The Council has developed Design Standards and Specifications¹⁴ for its own new build developments which set out best practice for design and quality of affordable housing.
76. The Council expects the affordable homes to be distributed throughout the site in small clusters appropriate for the scale and design of the development ~~of approximately 10 units, dependent on the scale and design of the development~~. Locating affordable housing at the end of a cul-de-sac should be avoided where possible. Affordable homes should face private market units as neighbours, in order to promote an inclusive, sustainable community.

¹³ See model s.106 clauses in appendix

¹⁴ [WBC Design Standards](#)

77. Existing design policies need to be taken into account when considering affordable housing. Affordable homes in Waverley should comply with the Building regulations M4 (2) Category 2 Standard: “Accessible and Adaptable Dwellings” to meet the needs of older people and people with disabilities¹⁵.
78. To make best use of affordable housing stock in the context of recent welfare reforms, the Council’s expectation is that 2-bed homes should accommodate 4 people, and 3-bed homes should accommodate 6 people (where these are proposed as rented accommodation). For affordable home ownership, 3-bed 5-person units may be acceptable. Affordable homes should meet the Nationally Described Space Standards set out below,

Unit type proposed	Minimum floor area to meet NDSS	Minimum bedroom size requirement
1-bed flat	50sqm (1b2p)	11.5sqm (double or twin room)
2 bed flat	70sqm (2b4p)	11.5sqm (double or twin room)
2-bed house	79sqm (2b4p)	11.5sqm (double or twin room)
3-bed house	102sqm (3b6p) if rented 93sqm (3b5p) is acceptable if shared ownership	11.5sqm (double or twin room) Single bedspace must be at least 7.5sqm and at least 2.15m wide
4-bed house	115sqm (4b7p)	11.5sqm (double or twin room) Single bedspace must be at least 7.5sqm and at least 2.15m wide

¹⁵ As required under Policy AHN3, Waverley Design Standards and secured in s.106 agreements

79. The Affordable Housing Units shall be constructed in accordance with the requirements imposed by Homes England's Design and Quality Standards (mandatory items) current at the time of construction.
80. The majority of residents of affordable housing are car users. Parking for affordable housing should meet the Council's existing Residential Parking Guidelines. New council homes will also need to meet the parking standards set out in the WBC Design Standards and Specifications. The Council expects the same parking provision to be made available for affordable and market housing of the same size, including a preference for in-curtilage parking. Tenure neutrality is also required in the design of car parking for affordable housing. Parking courts are discouraged for design reasons and in line with 'Secured by Design¹⁶' guidance.

Building Regulations

81. Your project will need to meet building regulations.
82. Where the Council is the applicant for development led by the Housing Development Team, the Waverley Borough Council Building Control service will be appointed to support compliance within the Building Regulations.
83. Where the application is for a mixed tenure scheme and affordable housing is provided by another affordable housing provider, they will be encouraged to use Waverley Building Control. This will enable an end to end, one team approach for the efficient delivery of the development, subject to compliance with policy and regulations.

¹⁶ www.securedbydesign.com

PART THREE: VIABILITY

Development Viability

84. On sites in designated rural areas providing a net increase of 6 dwellings or more, or in non-designated rural areas development providing 10 or more (net) new dwellings or having a site area of 0.5 hectares, the presumption is that 30% affordable housing will be provided on-site, in line with the NPPF and Policy AHN1. However, the Council recognises that there may be exceptional situations where the specific circumstances of the site, or other matters, could mean that achieving the required level of affordable housing would compromise development viability. This must be demonstrated through a viability submission, which should adopt an ‘open book’ approach in line with Government guidance¹⁷.
85. Where a prospective developer considers viability to be an issue, the onus will be on the developer to provide appropriate financial evidence with any planning application in line with national guidance. The Council’s strong preference is for the required delivery of affordable homes on the development site. If the Council is satisfied that the financial appraisal confirms that affordable housing cannot be provided in accordance with the policy, then negotiations will take place to secure the highest level of affordable housing that is viable. **All applications which seek to amend or reduce the affordable housing requirement on the basis of viability will be taken to Planning Committee.**
86. When assessing the overall viability of a scheme, developers should take full account of the scale of planning obligations that are likely to be required, in addition to any Community Infrastructure Levy¹⁸ liability that may arise. Where a developer raises viability concerns in relation to contributions for an application, the Council will expect a full “open-book” viability assessment for the scheme to be submitted to support the viability case being made¹⁹.

¹⁷ www.gov.uk/guidance/viability

¹⁸ The Community Infrastructure Levy Regulations 2010 (as amended) http://www.legislation.gov.uk/uksi/2010/948/pdfs/uksi_20100948_en.pdf

¹⁹As per Appendix 2

87. Affordable housing is a corporate priority for the Council. Therefore, if a viability issue arises, consideration is expected to be given to a range of alternative options before a reduction or removal of affordable housing will be considered. This will include prioritising the provision of affordable housing over other less critical infrastructure contributions to ensure viability.
88. The Council reserves the right to have all viability assessments checked by an independent RICS-qualified surveyor/valuer to ensure the robustness and validity of the assumptions and methods used. In these circumstances, the Council will appoint the surveyor/valuer, but the viability assessment costs incurred by the Council will need to be paid by the applicant. The applicant will also be required to provide a written undertaking to cover the costs before the surveyor/valuer is appointed. Viability reports resulting from this process will be shared and discussed with the applicant.
89. Where, following the above process, conflicts of opinion about scheme viability remain, additional viability work may be necessary. If this is the case, the applicant must first undertake to reimburse the Council in respect of additional costs incurred. Any remaining disputes between the Council and the applicant will be referred to an independent arbitrator (in accordance with RICS guidance).
90. To ensure open and transparent decision making, the Council expects all viability assessments to be publicly available unless the applicant can clearly demonstrate why parts must be redacted, in line with Government guidance on viability. The applicant must highlight the scope of this prior to submission in order for the Council to make a judgment as to what information is released for public view. The weight to be given to a viability assessment will take into account the transparency of the applicant's approach.
91. Affordable housing on s.106 sites may be funded by a combination of private subsidy (in the form of nil cost land) and public subsidy (grant funding). The Homes England funding prospectus states that, "If grant is requested for affordable homes provided under a Section 106 agreement, on a larger site developed as market housing, these homes will need to be additional to those that would be delivered under the Section 106 agreement alone, without grant." Negotiations with landowners should therefore start on the assumption that grant funding from Homes England for affordable homes will not be available.

92. In brief, the viability submission should include as the key elements:
- A summary clearly stating the request to vary the usual affordable housing requirements and setting out (with explanation) the reasons why, in the applicant's view, the development is unviable when policy compliant affordable housing provision is included; and
 - Detailed Financial Viability Appraisal(s) with supporting information, and all sources stated, demonstrating how the applicant's assumptions come together to inform the submitted viability view. Part 2 and Appendix 2 refer to the Council's specific expectations in these respects.
93. If an applicant wishes to make a viability submission, this should be included as part of the planning application, alongside the Affordable Housing Statement. A draft Unilateral Undertaking may also be included at the applicant's discretion. It should be noted that planning applications without the required information or documentation are unlikely to be validated.
94. A Financial Viability Appraisal, including an explanation, conclusion, information and sources is only current at the time it is prepared. Financial viability will vary over time with the changing economic and property markets. On large sites that are expected to build or sell over a number of years, and particularly where the planning application is in Outline, viability may need to be assessed at multiple/varying points. It will likely need to be considered at pre-application/initial application stage, then subsequently for each phase, and updated when the Reserved Matters application is made or prior to the commencement of each phase.

Basis of the Financial Viability Appraisal

95. The minimum requirements to be provided by the applicant are outlined in Appendix 2. Each assumption relating to the proposed scheme revenue (values), costs, land value and profit must be supported with component figures, including sources made clear. The submitted approach, assumptions and reasoning will need to be clearly explained in detail.
96. The Council will assume that: the cost of meeting the affordable housing requirements in Policy AHN1 should be reflected in the price paid, or price to be paid, for the land, and should be based on:

- No public subsidy or grant;
- Payment by the provider of the affordable housing should be based on the provision meeting current Homes England Guidance;
- Any site constraints and the development scope (including as influenced by planning policies) including abnormalities should be reflected in the price paid, or to be paid, for the land; and

In accordance with the relevant viability guidance, the land value to be used in the calculation or as a land value benchmark should be the current existing use land value, not necessarily the amount paid for the land.

97. As set out in Paragraph 81 above, in order to assess the applicant's financial viability appraisal, the Council may need to seek advice. It is reasonable for the applicant to bear the costs in these circumstances, as per Paragraph 9.20 in the Local Plan Part 1.

Outcome of the assessment of scheme viability

98. Where the Council is satisfied that the usual policy requirements for affordable housing cannot be met in full due to viability issues, the Council will decide on the appropriate level of reduction or other revision to the affordable housing requirement to enable the scheme to remain financially viable.
99. Where the level of affordable housing provision is reduced, due to an accepted viability submission position, clawback or top-up by way of an affordable housing financial contribution may be pursued by the Council. If the development of the site proves to be significantly more financially viable as it progresses than the initial position suggested would be the case, subject to further viability assessment, clawback or top-ups may be considered by the Council.
100. If the Council decides that a clawback or similar arrangement is required this will be incorporated into a Section 106 Agreement or Deed of Variation. This will usually be based on the actual costs, values, revenues etc. of the completed development compared with the viability submission made with the application or agreed subsequently.

Indexation of Financial Contributions

101. Financial contributions will be subject to indexation by the Council in order to ensure that their value does not decline in the period between the signing of the agreement and the date on which the contributions are paid.
102. The method of indexation will be negotiated with the applicant and once agreed, will be specified within the Section 106 agreement. The method will generally be based on the published Retail Price Index (RPI) or an appropriate index published by the Build Cost Information Service (BCIS), which is the responsibility of the RICS. In the event that there is a decrease in the relevant agreed index, the financial contribution payable shall not fall below the figure originally set out within the Section 106 agreement.

DRAFT

Commuted sums or payments in lieu of affordable housing on site

What is a commuted sum?

103. A commuted sum (or payment in lieu) is an amount of money, paid by a developer to the Council. Paragraph 63 of the revised National Planning Policy Framework enables the Council to accept a commuted sum, towards the provision of affordable housing on an alternative site where it is not possible to incorporate affordable housing within a scheme. Policy AHN1 enables the Council to require commuted sums in the following cases:

- a. in designated rural areas on developments with a net gain of 6-9 dwellings but where the site area is below 0.5 hectares
 - b. in exceptional circumstances where the size or scale of a development triggers a requirement for affordable housing, but it is not possible to achieve appropriate affordable housing on site. This route will be followed only where more direct provision of affordable homes has been explored and the Council is satisfied that is not workable given the particular circumstances, subject to the provision of robust and evidenced reasons
104. The money will be used to provide affordable housing on an alternative site. It is therefore, appropriate that the level of the payment in lieu should relate to how much it will cost an affordable housing provider to buy land on the open market.
105. The principles applied in the collection and use of these payments are very similar to those for other planning obligations. They will generally be dealt with through a legal agreement (under Section 106) related to the land, which triggers obligations once the specific planning permission is implemented.

What is the Council's approach to the use of 'commuted sums'?

106. The revised National Planning Policy Framework²⁰ states that where a need for affordable housing is identified, "planning policies should... expect it to be met on-site."²¹
107. However, where 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 and meeting local housing need, a commuted sum may be considered²².
108. Off-site delivery via the provision of land may apply where the Council considers that such a contribution, either on the proposed development site or on an alternative site, would meet the identified housing needs of the Borough more effectively. Land should be serviced to its boundaries and be of sufficient area to provide the equivalent on-site provision. An appropriate timescale will be applied. Financial contributions may also be sought in addition to land where the site area is insufficient to provide the equivalent on-site provision.
109. Where a commuted sum is proposed, the onus will be placed on the applicant to demonstrate why it will not be possible to provide the affordable housing on site. The applicant will also need to show that other options – for example cross-subsidy between rented and shared ownership units/other affordable tenures, or providing the affordable housing on another site – have been considered, and why they were not viable.
110. It must be stressed that commuted sum payments are exceptions, and in all cases the decision on whether to accept a financial contribution rather than on-site provision will be the Council's. This is consistent with Policy AHN1 which states "On-site provision of affordable housing will be required and only in exception circumstances will an alternative to on-site provision be considered."

²⁰ NPPF 2021 Paragraph 63

²¹ Unless the site meets criteria set out in Paragraph 107.a.above

²² Unless the site meets criteria set out in Paragraph 96.a.above

How will the money be used?

111. The Council will use financial commuted sums in a number of ways and will require the flexibility to do so to be reflected in the Section 106 Agreement or Unilateral Undertaking.
112. Affordable housing providers can apply to the Council for commuted sum funding for their schemes; these funds can also be spent on Council new build developments.
113. Commuted sums will be earmarked to enable the provision of affordable housing through a variety of means, for example:
 - a. To support the new build development of affordable housing or create additional, larger or a different tenure mix within the existing stock.
 - b. To provide 'top up' subsidy on schemes in order to make it possible for a higher proportion of affordable homes or to make those homes more affordable.
 - c. To fund extra units of affordable housing on alternative sites.
 - d. To contribute to forward-funding/kick-starting of schemes or to reduce funding gaps within pipeline/current affordable housing schemes or other similar initiatives according to scheme circumstances and the funding climate.
 - e. To convert, refurbish, redevelop or make improvements to existing affordable housing where the accommodation no longer meets an identified need.
 - f. To aggregate financial contributions from different sites and spend contributions in the way that best achieves the Council's and the local community's priorities for affordable housing. The number of units resulting from expenditure may be greater or fewer than the number of units used to calculate the contribution, because dwelling types, tenure, specifications and other aspects will vary from scheme to scheme. Financial contributions may be used to fully fund a project or to top up funding from other sources.

- g. To spend on alternatives sites in Waverley before consideration is given to schemes in the wider area (beyond Waverley), to which the Council receives nomination rights or which benefit Waverley residents.
- h. Other innovative methods of providing affordable housing.

114. Decisions on the expenditure of financial contributions will be made in accordance with the Council's Scheme of Delegation to Officers, details of which are available on the Council's website.

How is a commuted sum calculated?

- 115. On sites where a financial contribution is being made, the Council will calculate the payment which seeks to equate to the land value of the relevant dwelling plots (those that would have been made available for on-site affordable housing). In essence the thinking involves calculating how much it would cost to go elsewhere and replace the land on which the affordable housing would have been provided on-site.
- 116. This approach assumes a straightforward payment made by the landowner (who may also be the developer) under the terms of a Section 106 agreement in much the same way as occurs with planning obligations for aspects such as highways/transport, open space, education etc.
- 117. The methodology assumes an additional planning obligations payment being made by the developer, albeit from the increased Gross Development Value sales receipts which results from having no affordable housing on-site.
- 118. The final sum agreed will be at the Council's discretion.

What are the steps in calculating the payment?

- i. Applicant to provide an independent valuation of the Open Market Value of all units on the site, along with the Gross Internal Floor Area²³ in order to calculate the sales rate (£ per sqm). The Open Market Values and Gross Internal Floor Areas must be signed off by a RICS Chartered Surveyor or RIBA member architect.
- ii. Council to agree the type and floor area of a suitable relevant affordable housing dwelling which would otherwise have been provided on site for use in the calculation.
- iii. Multiply by the Residual land value percentage (38.1%) to provide a base land value²⁴.
- iv. Add 15% of the result to reflect site acquisition and servicing costs.
- v. This gives the sum(s) equivalent to the land cost per whole affordable dwelling type(s) or may be more than one level of sum if there are multiple dwelling types being factored into the affordable housing calculation).
- vi. Apply that (or those) to the relevant total scheme numbers and the Council’s 30% affordable housing requirement. In this way, the calculation can deal with part dwelling equivalents. The outcome need not be affected where this end stage does not produce round (whole) dwelling number dwellings.

Table 1 below provides a worked example. The Council will calculate Commuted Sums using the following steps, on receipt of the required valuations.

Table 1: Worked example of commuted sum	e.g.
Scenario= Development of 10 x three bed houses	
Average open market sales value, for a comparable size and type of dwelling in the local area which would otherwise have been provided on site	Open market value of £344,000 for a 3 bed house with a Gross Internal Floor Area of 110m2
Work out Open Market Value per M2	£3,127 per m2 (3,127.273)
Multiply cost per m2 by 102 for floor area of affordable home with 3 bedrooms	X 102=£318,982

²³ Gross Internal Area (GIA) is defined in the RICS: [Code of Measuring Practice 6th Edition \(2007\)](#) as the internal area of a building measured to the inside face of perimeter walls at each floor level, as defined on page 12

²⁴ [Affordable Housing Viability Study, Para 3.9.22](#)

Table 1: Worked example of commuted sum	e.g.
Multiplied by residual land value (38.1%)	X 38.1%= £121,532
Plus 15% of the result (of affordable market value x 38.1%)	+18,230
= payment in lieu per three bed house	=£139,762
Multiplied by 3 (to represent the units/ parts of units which would otherwise have been provided on site) =	
TOTAL PAYMENT IN LIEU OF £419,286	

How will this be monitored?

- 119. The Council will keep and monitor a record of all sums agreed and received and how they have been spent.
- 120. Generally, the Council will expect the following to be incorporated in the S.106 agreement or Unilateral Undertaking:
 - a. The agreed sum to be index linked on an annual basis from the date of the Committee resolution on the planning permission until the date of actual payment. S.106 agreements can take time to complete so it will be important for applicants to consider the requirements at an early stage, working closely with the Council. Indexation will be on an annual basis in accordance with the Retail Price Index. This will be by an amount equal to the proportionate upward only change in the All in Tender Price Index of the Building Costs Information Service (BCIS) of the Royal Institution of Chartered Surveyors.
 - b. A milestone that triggers the payment of the contribution will need to be agreed between the Council and the Applicant. Usually this will be the carrying out of any Material Operation or on the commencement of development. Alternatively, it may be 50% on commencement and 50% when 50% of those units have been sold / occupied.
 - c. Applicant to notify the Council when payment trigger is reached.
 - d. On receipt of the notification, the Council will issue an invoice for the amount payable including any indexation.
 - e. Penalty interest will be payable on late payments.

f. The Council will specify in the Section 106 agreement the time period in which to spend the contribution.

121. All commuted sums received are added to the available resources in the Council's Housing Grant Budget. The 1988 Local Government Act s.25 allows Local Authorities to use grant to fund the provision of affordable housing on new development sites, subject to the appropriate Homes England guidelines in respect of maximum public subsidy.

How will this be managed?

122. The Council will use commuted sums to develop affordable housing within 10 years from the date a sum was received. The Council will return un-spent commuted sums, with accrued interest, to the developer, if they are not spent for the purposes for which they were sought within a ten-year period from the date the money is paid to the Council.

123. The approach and assumptions will be monitored and reviewed if necessary, depending on delivery experiences. In any event, the approach is intended to cope with an element of flexibility in its application.

Vacant Building Credit

124. A 'Vacant Building Credit' is available to developers to incentivise them to bring vacant dwellings back into use. Where a vacant building is reused or redeveloped, the affordable housing contribution will be reduced by a proportionate amount²⁵.

125. Affordable housing contributions may be required for any increase in floor space.' The Vacant Building Credit applies to on-site affordable housing as well as financial contributions to off-site provision.

²⁵ Equivalent to the existing gross floorspace of the existing buildings.

What is a Vacant Building?

126. A vacant building must be physically empty (i.e. not used for storage, excluding rubbish left after vacation of the buildings such as broken furniture/ papers etc.).
127. In coming to a view about whether the building is empty, Officers will need to:
- Consider whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development;
 - Consider the reason why the building became vacant and the last known use of the building;
 - Consider whether there is an extant planning permission for the development of the building; and
 - Establish current uses and extent of vacant areas through a site visit, speaking to Revenues Team and requesting a Statutory Declaration.
128. Vacant Building Credit does not apply where the building has been abandoned. 'Abandonment' in this context follows the interpretation in general planning law. The test is objective and is applied by consideration of the known circumstances. Factors such as the condition of the building, length of non-use, whether there has been an intervening use, and evidence of the owner's intentions, may determine whether a building has been abandoned. The Council may consider that the Vacant Building Credit is not appropriate for buildings which have become vacant solely to enable development to proceed.

How is the Vacant Building Credit calculated?

129. Applicants need to provide an independent valuation including the Gross Internal Floor Area²⁶ and Open Market Value of any vacant building for which they wish to claim Vacant Building Credit, and also for the proposed buildings. The Gross Internal Floor Areas and Open Market Values must be signed off by a RICS Chartered Surveyor or RIBA member architect. Please

²⁶ Gross Internal Area (GIA) is defined in the [RICS: Code of Measuring Practice 6th Edition \(2007\)](#) as the internal area of a building measured to the inside face of perimeter walls at each floor level

note that the onus will be on the Applicant to demonstrate to the satisfaction of the Local Planning Authority a building's vacancy and to provide accurate Gross Internal Floor Area measurements.

130. The following example shows how the methodology for calculating affordable housing contributions would be applied to a proposed development. This is for illustrative purposes only and should not be relied upon for calculation purposes.
131. The existing vacant Gross Internal Area of any buildings proposed to be brought back into lawful use or to be demolished and redeveloped will be calculated as a percentage of the proposed Gross Internal Area, leaving the net increase in floor space. The required percentage of affordable housing will then be applied only to the net increase in floor space.

Element	Represented by/ units	Worked Example
Existing vacant floor space	A sq m	300 sq m
Proposed total floor space of new development	B sq m	Mixed use development providing 40 units 2,400sq m
Net increase in floor space (B-A)	C sq m	2,400sq m- 300 sq m= 2,100sq m
30% affordable housing required under Policy AHN1	D affordable homes usually required under planning policy	30% of 40 units is 12 affordable homes usually required
Calculation for affordable housing after Vacant Building Credit	$\frac{C}{B} \times D = E$	$\frac{2,100}{2,400} \times 12 = 10.5$ affordable homes Required after VBC
Resulting Affordable Housing Requirement	E	10.5 affordable homes required ²⁷

²⁷ E.g. 10 affordable homes on site and 0.5 via commuted sum

Glossary

Affordable Housing (NPPF Definition): the Government's definitions of 'affordable housing, affordable housing for rent, First Homes, discounted market sales housing and other affordable routes to home ownership' are defined in Annex 2 of the revised National Planning Policy Framework (NPPF) or any future guidance that replaces it, meaning housing for sale or rent for those whose needs are not met by the market.

Affordable Housing Provider means a registered provider of social housing within the meaning of Section 80 (1) of the Housing and Regeneration Act 2008, or alternatively a body providing affordable housing.

Affordable Rent Affordable housing provided to households who are eligible for affordable rented housing and provided at a rent of no more than 80% of the local market rent (including service charges) and always below the Local Housing Allowance and where local market rents are calculated using the Royal Institution of Chartered Surveyors approved valuation methods.

AHN1 Affordable Housing on Development Sites [Waverley Local Plan Policy]

AHN2 Rural Exception Sites [Waverley Local Plan Policy]

AHN3 Housing Types and Size [Waverley Local Plan Policy]

~~**Affordable Housing:** For the purposes of this Supplementary Planning Document and in accordance with the Waverley Borough Council Local Plan Part 1, the Council's definitions of 'affordable housing, affordable housing for rent, starter homes, discounted market sales housing and other affordable routes to home ownership' are defined in Annex 2 of the revised National Planning Policy Framework (NPPF) or any future guidance that replaces it.~~

Amenity: A positive element or elements that contribute to the overall character or enjoyment of an area. For example, open land, trees, historic buildings and the inter-relationship between them, or less tangible factors such as tranquillity.

Area of Outstanding Natural Beauty (AONB): A statutory landscape designation, which recognises that a particular landscape is of national importance. The primary purpose of the designation is to conserve and enhance natural beauty of the landscape.

Development Plan: The adopted suite of documents, which set out the parameters for all development in the Borough.

Enabling Development: A development that would normally be rejected as contrary to established policy, but which may be permitted because the public benefits would demonstrably outweigh the harm to other material interests.

First Homes First Homes are a specific kind of discounted market sale housing which are classed as 'affordable housing' for planning purposes. First Homes:

a) must be discounted by a minimum of 30% against the market value;

b) are sold to a person or persons meeting the First Homes eligibility criteria;

c) on their first sale, will have a restriction registered on the title at HM Land Registry to ensure this discount (as a percentage of current market value) and certain other restrictions are passed on at each subsequent title transfer; and,

d) after the discount has been applied, the first sale must be at a price no higher than £250,000 (or £420,000 in Greater London).

Homes England: Homes England is the Government's national housing and regeneration agency for England. It provides investment for new affordable housing and to improve existing social housing, as well as for regenerating land. It is also the regulator for social housing providers in England.

Waverley Borough Council Local Plan Part 1: The new Local Plan is the overarching planning document for Waverley Borough and replaces the previous Local Plan and relevant Development Control Policies documents which were adopted in 2002. The new Local Plan sets out the planning strategy for the years up to 2032 to deliver the social, economic and environmental needs of the whole Borough, as well as looking beyond the Borough's boundaries.

Local Plan: A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law, this is described as the development plan document adopted under the Planning and Compulsory Purchase Act 2004. A local plan can consist of either strategic or non-strategic policies or a combination of the two.

Locally Affordable Homes: Homes which are affordable to Waverley workers or low-income households living in Waverley, according to the Council's latest evidence source.

M4 (1) Category 1: Visitable Dwellings, Schedule 1 to Building Regulations 2010

M4 (1) Category 2: Accessible and adaptable dwellings, Schedule 1 to Building Regulations 2010

M4 (1) Category 3: Wheelchair User Dwellings, Schedule 1 to Building Regulations 2010

Material consideration: A matter that should be taken into account in deciding a planning application or on an appeal against a planning decision.

National Planning Policy Framework (NPPF): The key document, introduced in March 2012 and last updated in 2021, setting out Government policy in relation to planning in England. The NPPF is part of the Government's reforms to make the planning system less complex, more accessible and to promote sustainable growth.

Open market value: The value a property might reasonably fetch if sold on the open market where there is a willing buyer and a willing seller.

Planning Obligation: A legal agreement entered into under section 106 of the town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

Rent Caps: setting overall maximum rent levels

Section 106 Agreement: See '*Planning Obligation*'

Shared Equity: The purchaser acquires the whole of the property but effectively only pays a proportion of the value; the remaining value is secured by an equity loan. There have been, and are a variety of schemes available, some with Government support.

Shared Ownership: Shared ownership is a mechanism for purchasing a property for those who cannot afford full home ownership. A percentage of the equity is purchased by means of deposit and mortgage. The retained equity is held by an Affordable Housing

Provider (or similar). The owner takes out a lease, and pays rent on the retained equity. Generally initial purchases are 25-40% of the equity. Owners can usually purchase further shares of the property over time – this is known as “staircasing”.

Social Rented Housing Affordable homes provided by Affordable Housing Providers to households who are eligible for social rented housing, and for which guideline target rents are determined through the national rent regime;

Supplementary Planning Documents (SPD): Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.

Viability: In planning terms relates to the assessment of a development scheme to establish that favourable conditions regarding the financial aspects will enable development to proceed.

Appendix 1- Affordable Housing Plan

The Affordable Housing Plan should generally meet the requirements outlined below. It is anticipated that the Developer and Affordable Housing Provider will submit the Affordable Housing Plan jointly. It is agreed by the parties that where any of the information required below is not available at the time of submitting the Affordable Housing Plan, such information shall be submitted or re-submitted (where an amendment is required) for approval prior to commencement of construction of any affordable housing unit within the relevant phase:

	INFORMATION/ DATA	PLEASE TICK IF INCLUDED
1.	The total number of affordable units in the phase as a percentage of the total units in the phase	
2.	The anticipated tenure, bed size, gross internal floor area and type of each of the affordable units	
3.	A site layout plan showing the location, tenure and bed size of the units	
4.	Plans showing the indicative internal layout of each type of unit	
5.	Confirmation that Affordable Housing Units shall be constructed in accordance with building regulations applicable at the time of registration of the Development with the relevant body	
6.	Name of Affordable Housing Provider that will deliver the affordable units with contact person	
7.	Confirmation that all of the units will be allocated either according to the draft Nomination Agreement set out in the Section 106 Agreement, or through the Home Buy Agent	
8.	Details of proposed shared ownership share % and service charge for each type of unit	
9.	Confirmation that rents will be set social rent or Affordable Rent set no higher than 70% for 1 and 2 beds or 65% for 3 and 4 beds. Rents (including service charges), should be no higher than current Local Housing Allowance rates in the Borough.	
10.	Details of management arrangements.	

Appendix 2- Financial Viability Appraisals

Any Development Viability Appraisal submitted in support of a developer’s case for reviewing or reducing planning obligations identified as necessary by the Council, should contain the following information and data as a minimum.

All information and data should be evidenced from an independent RICS-qualified expert or a reliable and reputable source in relation to secondary data.

Figures included within the appraisal should be benchmarked.

INFORMATION/ DATA	PLEASE TICK IF INCLUDED
1. Methodology used for the appraisal and details of any appraisal software or toolkits used.	
2. Land values, both current and at the time of purchase (if different)	
3. Price paid for the land; & costs taken into account when arriving at the price paid for the land (if the land is not owned by the applicant – details of any option agreements or agreements to purchase)	
4. Gross and net area of development	
5. Number size and type of units	
6. Build costs (per square metre)(and comparison with appropriate published RICS data)	
7. Abnormal or exceptional costs not reflected in the land value/price (Note: All abnormal and exceptional development costs should be supported by robust and costed specialist reports, including full technical data to support the stated costs)	

8. Costs associated with bringing a heritage asset back into beneficial use or enabling development and/or costs of repairs (Note: all such costs should be supported by robust and costed specialist reports, including full technical data to support the stated costs)	
9. Other costs (design, legal, consultants, planning etc.)	
10. Cost of any other planning obligations including infrastructure requirements and financial contributions	
11. Build programme and phasing	
12. Interest rates, cap rates, loan costs, cash flows	
13. Developer's profit and an explanation of its make up, and any company or financiers requirements	
14. Anticipated phasing	
15. Marketing and legal costs (and as a % of GDV)	
16. Anticipated sales price for each unit type, and current assumed value of each unit type	
17. Anticipated phasing of sales	
18. Ground rents and services changes payable	
19. Proposals for on-site affordable housing meeting the requirements of the Supplementary Planning Document, modelling a range of scenarios i.e. <ul style="list-style-type: none"> a. 20% and 30% affordable housing of which <ul style="list-style-type: none"> i. 60% 70% social and/or affordable rent/ 40% 30% affordable home ownership intermediate ii. 50% social and/or affordable rent/ 50% affordable home ownership -intermediate iii. 100% intermediate, including shared equity products. 	
20. Attach evidence of engagement with affordable housing providers	
21. Anticipated price to be paid by the affordable housing provider, and the assumption on which this is based.	

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Depending on individual site circumstances, further information may be required, including:

INFORMATION/ DATA	PLEASE TICK IF INCLUDED
22. Developer's Market Analysis Report	
23. Details of company overheads	
24. Copy of financing offer/letter	
25. Copy of cost plan	
26. Board Report on scheme	
27. Letter from Auditors re: land values and write offs	
28. Sensitivity analysis showing different assumption options (e.g. low, medium & high)	
29. For mixed use schemes similar information and data will be required on the non-residential uses.	

Appendix 3 – Standard Template Affordable Housing Schedule 106 Agreement (not part of consultation)

1. Definitions

It is hereby agreed between the parties to this Deed that the following expressions have the following meanings:

“Act”	means the Town and Country Planning Act 1990 as amended;
“Affordable Housing”	means housing for sale or rent for those whose needs are not met by the market and which complies with the definition of Affordable Housing in Annexe 2 of the National Planning Policy Framework as the same may be amended by time to time;
“Affordable Housing Plan”	means the Affordable Housing Plan showing the location, type, bed size and tenure mix of the Affordable Housing Units within the Development;
Affordable Housing Provider	means a registered provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008, or alternatively a body providing Affordable Housing, in both cases selected by the Owner and approved such consent not to be unreasonably withheld or delayed by the Borough Council;
“Affordable Housing Units”	means [] units being []% of the Dwellings to be provided as Affordable Housing in accordance with Part 1 of Schedule 1 to this Deed and Affordable Housing Unit shall be construed accordingly;
“Affordable Rented Units”	means the Affordable Housing Units provided to households who are eligible for affordable rented housing, and provided at a rent of no more than 70% for one and 2 bed units and 65% for 3 and 4 bed units of the local market rent (including service charges) and always below the Local Housing Allowance and

	where local market rents are calculated using the Royal Institution of Chartered Surveyors approved valuation methods;
“Application for Planning Permission”	means the [full/outline] application dated [] given planning reference number WA[] with a description of the Development for the erection of [];
“Application Site”	means the land at [] being all parts of the land as shown edged red on the Plan and registered at the Land Registry under Title Number(s) [];
“Borough Council Contributions”	means those contributions that are payable to the Borough Council namely the [Community Facilities Contribution, the Environmental Enhancement Contribution, the Leisure and Sports Contributions, the SAMM Contribution, the SPA Contribution and the Waste and Recycling Contribution]together;
“CIL Regulations”	means the Community Infrastructure Regulations 2010 as amended;
“Commencement Date”	means the date of Commencement of Development;
“Commencement of Development”	means the carrying out of a Material Operation in respect of the Development and the words "Commence Development" and "Development Commences" shall be construed accordingly and in accordance with Section 56 (1) of the Act where the development consists of:- <ul style="list-style-type: none"> a. the carrying out of operations the commencement will be when those operations are begun b. a change of use the commencement will be when the new use is implemented c. both carrying out of operations and change of use the commencement will be the earlier of the times in paragraphs (a) and (b) above;

“Community Facilities Contribution”	means a sum of £[] ([]) to be paid to the Borough Council as a contribution towards [];
“County Council Contributions”	means those contributions that are payable to the County Council namely [the Early Years Education Contribution, the Highways Improvements Contribution, the Primary Education Contribution, the Secondary Education Contribution and the Transport Contribution] together;
“Cycle and Public Transport Vouchers”	[];
“Cycleway”	[];
“Deed”	means this document when it is duly executed, dated and delivered;
“Default Interest Rate”	means eight per centum (8%) per annum above the Bank of England Base Rate;
“Development”	means the development of the Application Site pursuant to the Planning Permission;
“Disposal”	means a disposal of the Affordable Housing Units to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years and “Dispose” shall be construed accordingly;
“Dwelling”	means a residential unit to be constructed on the Application Site pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;
“Early Years Education Contribution”	means the sum of £[] ([]) to be paid to the County Council as a contribution towards the provision of [];
“Environmental Enhancement Contribution”	means the sum of £[] ([]) to be paid to the Borough Council as a contribution towards the provision of [];
“Estate Roads and Footpaths”	means the roads, footways, footpaths, car parking spaces and cycle ways that are provided on the Application Site and which fall outside the boundaries of Dwellings and which are not intended to be adopted by the Highway Authority as a highway maintainable at the public expense as shown [indicatively] on the Site Allocation Plan;

“First Occupation”	means the beneficial occupation of any Dwelling for any use for which the proposed Development was designed other than occupation for the purposes of construction or fitting out marketing or security;
“Highways Agreement”	means an agreement under section 278 of the Highways Act 1980 as amended;
“Highways Improvement Contribution”	means the sum of £[] ([]) to be paid to the County Council as a contribution towards the provision of the Highway Works;
“Highway Works”	means [];
“Index”	means All Items Index of Retail Prices issued by the Office for National Statistics;
“Index-Linked”	means that with reference to the Borough Council Contributions and the County Council Contributions the payment of such sums shall be uplifted to the extent of being Index-Linked by reference to the Index in accordance with the formula set out at Schedule 4 of this Deed;
“Inspector”	means a person appointed by the Secretary of State or PINS by virtue of the Act to hear and/or determine the Planning Appeal;
“Landscape Ecological Management Plan (LEMP)”	means a written scheme setting out the method for the ongoing management of [];
“LAP”	means the local area play as defined by the National Playing Fields Association as shown [indicatively] on the Site Allocation Plan;
“LEAP”	means the locally equipped area of play as defined by the National Playing Fields Association as shown [indicatively] on the Site Allocation Plan;;
“Leisure and Sports Contribution”	means a sum of £[] ([]) to be paid to the Borough Council of as a contribution towards the provision of [];
“Local Housing Allowance”	means the housing benefit scheme based on private market rents being paid by tenants in the broad rental market area (the area within which a person might reasonably be expected to move by the Borough Council) and which do not exceed the

	maximum local housing allowance (or whatever benefit scheme is in place from time to time) and as set by the Valuation Office Agency for the area of the Borough Council;
“Managed Land”	means the Estate Roads, the LAP, the LEAP, the Open Space and the SUDS;
“Management Company”	means a limited company set up amongst other things for the purpose of securing the future management and finance for such management of the Managed Land in perpetuity through adherence to a Management Plan;
“Management Plan”	<p>means a written scheme submitted to the Borough Council which demonstrates the method by which the Managed Land will be managed maintained and financed so as to fulfil the following objectives:</p> <ul style="list-style-type: none"> a. to ensure that each lessee/owner of the Dwellings pays a reasonable service charge for the maintenance and management of the Managed Land in accordance with the Management Plan; b. to ensure that sufficient funds are raised from time to time to ensure that the requirements of the Management Plan are fully funded and thereafter adhered to; and c. to provide a means by which the Borough Council may verify compliance with the Management Plan;
“Material Operation”	means a material operation pursuant to the Planning Permission on the Application Site pursuant to Section 56(4)(a)-(e) of the Act provided that for the avoidance of doubt a Material Operation shall be deemed not to have taken place for the purposes of this Deed by any surveying ground investigation archaeological investigations structural or advanced planting site clearance and decontamination works site preparation including earth moving

	laying and connection of sewers and services the formation of accesses the erection of fences and hoardings and the creation of a site compound. The undertaking of a Material Operation is considered to be the Commencement of Development pursuant to the Planning Permission;
“Nomination Agreement”	means an agreement between the Borough Council and the Affordable Housing Provider under which the Borough Council exercises its right to nominate prospective tenants or lessees for the Affordable Housing Units in accordance with Part VI of the Housing Act 1996 section 159 and the Homelessness Act 2002 the final form of which reflects the tenure and mix of Affordable Housing agreed pursuant to the Affordable Housing Plan;
“Occupation”	means in respect of each Dwelling its first occupation excluding occupation for the purposes of construction marketing or security and the words “Occupy” and “Occupied” shall be construed accordingly;
“Open Market Units”	means those Dwellings which are not Affordable Housing Units;
“Open Space”	means the areas of public open space to be provided on the Application Site as part of the Development as shown [indicatively] on the Site Allocation Plan and “Open Spaces” shall be construed accordingly;
“Open Space Specification”	means the full technical specification for the laying out of the Open Space including its location, size, materials and all other relevant details necessary for its provision;
“Planning Appeal”	means the appeal by the [] under section 78 of the Act from the refusal of the Application for Planning Permission by the Borough Council with planning appeal reference [];
“Planning Permission”	means the planning permission granted pursuant to the Application for Planning Permission;
“PINS”	mean the Planning Inspectorate;
“Protected Tenant”	means any tenant who:

	<ul style="list-style-type: none"> 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; or b. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or c. has been granted a shared ownership lease by a Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;
<p>“SAMM”</p>	<p>means the sum of £[] ([]) to be paid to the Borough Council towards site access management and monitoring measures relating to the SPA in accordance with the SPA Avoidance Strategy;</p>
<p>“SANG”</p>	<p>means the existing suitable alternative natural green space at Farnham Park, Surrey;</p>
<p>“SANG Contribution”</p>	<p>means the sum of £[] ([]) to be paid to the Borough Council as a contribution in respect of the SANG;</p>
<p>“Secondary Education Contribution”</p>	<p>means the sum of £[] ([]) to be paid to the County Council as a contribution towards the provision of [];</p>
<p>“Shared Equity Units”</p>	<p>means the Affordable Housing Units to be provided by a Affordable Housing Provider where the Affordable Housing Provider disposes of the freehold or long leasehold interest in the relevant unit at a discounted price to the market value of the</p>

	Affordable Housing Unit and retains a legal charge to protect the discounted share;
“Shared Ownership Lease”	means a lease to be granted for each Shared Ownership Unit for a term of not less than 125 years which shall accord with the requirements of, and be consistent with any model shared ownership lease as approved from time to time by Homes England (or any statutory successor)
“Shared Ownership Lessee”	means the tenant of a Shared Ownership Lease;
“Shared Ownership Units”	means the Affordable Housing Units to be provided by a Affordable Housing Provider by way of a Shared Owner Lease granted to eligible households whose needs are not met by the market, where the percentage equity share to be marketed and the percentage rent payable under retained equity is agreed in writing between the Borough Council and the Affordable Housing Provider before the Affordable Housing Units are marketed to the public;
“Site Allocation Plan”	means the plan annexed to this Deed at Schedule 4 headed “Site Allocation Plan”;
“Site Layout Plan”	means the plan annexed to this Deed at Schedule 4 headed “Site Layout Plan” showing the Application Site edged red;
“Social Rented Housing”	means the Affordable Housing Units provided by Affordable Housing Providers to households who are eligible for social rented housing, and for which guideline target rents are determined through the national rent regime;
“SPA”	means the Thames Basin Heath’s Special Protection Area classified as a special protection area in accordance with Article 4 of the European Commission Directive on the conservation of wild birds (79/409/EEC) on 9 March 2005 and given site code: UK9012141;
“SPA Avoidance Strategy”	means the strategy jointly formulated by the Surrey Local Authorities and adopted by the Borough Council with regard to the SPA and as varied in August 2016;

<p>“Sustainable Drainage System (SUDs)”</p>	<p>means any drainage system, including ponds, cellular storage, swales and package waste water treatment plants, to be installed operated and maintained within the Application Site as part of the Managed Land which is not to be offered up for adoption as maintainable at the public expense and which conforms to national standards to be used partly to manage surface water runoff in accordance with Schedule 3 to the Flood and Water Management Act 2010 as amended as shown [indicatively] on the Site Allocation Plan;</p>
<p>“Travel Plan”</p>	<p>means [];</p>
<p>“Travel Plan Monitoring Contribution”</p>	<p>means the sum of £[] ([]) to be paid to the County Council as a contribution towards the future auditing monitoring and management of the Travel Plan;</p>
<p>“Waste and Recycling Contribution”</p>	<p>means a sum of £[] ([]) to be paid to the Borough Council as a contribution towards the provision of waste and recycling containers for the Application Site.</p>

COVENANTS WITH THE BOROUGH COUNCIL

Part 1: Affordable Housing

The Owner covenants with the Borough Council:

1. Timetable

- 1.1. To submit the Affordable Housing Plan to the Borough Council for its agreement prior to the Commencement of Development.
- 1.2. To carry out the Development and provide the Affordable Housing Units in accordance with the Affordable Housing Plan and the following tenure mix:

S.106 AFFORDABLE HOUSING REQUIREMENT				
	FIRST HOMES	Affordable Rented at 70% for 1 and 2 beds and 65% for 3 and 4 beds	Social Rented	Shared Ownership/Shared Equity
1 bed flat				
2 bed flat				
2 bed house				
3 bed house				
4 bed house				
Total				

2. Use of Affordable Housing Units

2.1. Unless otherwise agreed with the Borough Council and subject to Schedule 1 Paragraph 4 the Affordable Housing Units shall not be used other than for Affordable Housing.

3. Standard of the Affordable Housing Units

3.1. The Affordable Housing Units shall be built in accordance with the quality and design standards current at the time of construction.

4. Completion of the Affordable Housing Units

4.1. Unless otherwise agreed in writing with the Borough Council, the Affordable Housing Units shall be Occupied pursuant to the provisions of the Nomination Agreement.

4.2. None of the Affordable Housing Units shall be occupied until an Affordable Housing Provider has entered into the Nominations Agreement with the Borough Council.

- 4.3. Not to permit nor enable more than 50% of the Open Market Units to be in Occupation until the date upon which the Owner or their successors in title have transferred (or entered into an unconditional contract for the transfer) the Affordable Housing Units (either a freehold or leasehold interest for a term of not less than 125 years) to the Affordable Housing Provider.
- 4.4. Not to permit nor enable more than 75% of the Open Market Units to be occupied until the Affordable Housing Units have been practically completed in accordance with the Planning Permission and made ready for residential Occupation.
- 4.5. Subject to the provisions of this paragraph the Affordable Housing Units shall remain as Affordable Housing save that the obligations in this Deed relating to the provision and/or use of the Affordable Housing Units (including but not limited to the obligations set out in this Schedule) shall cease to apply in respect of and not be binding or enforceable against:
- 4.5.1. any Protected Tenant or any mortgagee 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
- 4.5.2. any mortgagee or chargee or security trustee of the Affordable Housing Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or its successors in title or any person deriving title from therefrom ("**Chargee of a Affordable Housing Provider**") who has first complied with its duty under paragraph 4.6 below.
- 4.6. Any Chargee of a Affordable Housing Provider shall prior to seeking to dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgagee or charge give not less than 1 month prior to the Borough Council of its intention to dispose and:
- 4.6.1. shall prior to seeking to dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgage of charge shall give not less than four weeks prior notice to the Borough Council of its intention to dispose and;

- 4.6.2. in the event that the Borough Council responds within four weeks from receipt of the notice served under paragraph 4.6.1 indicating that arrangement for the transfer of the relevant Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee of an Affordable Housing Provider shall co-operate with such arrangements and use reasonable endeavours to secure such transfer PROVIDED THAT such arrangements shall not require the Chargee of an Affordable Housing Provider to dispose of its interest in the relevant Affordable Housing for a sum less than the total of all accrued principal monies interest and costs;
- 4.6.3. If the Borough Council does not serve it response to the notice served under paragraph 4.6.1 within four weeks then the Chargee of an Affordable Housing Provider shall be entitled to dispose free of the restrictions set out in this Schedule which shall cease to apply and determine absolutely
- 4.6.4. If the Borough Council or any other person cannot within eight weeks from the date of service of its response to the notice served under paragraph 4.6.1 complete such transfer then provided that the Chargee of an Affordable Housing Provider shall have complied with its obligations under this paragraph 4.6 the Chargee of an Affordable Housing Provider shall be entitled to dispose free of the restrictions set out in this Deed (including, but not by limitation of this Schedule) which shall from the time of completion of the transfer cease to apply and determine absolutely.

AND FURTHER PROVIDED THAT at the time the rights and obligations in this paragraph 4.6 shall not require the Chargee of an Affordable Housing Provider to act contrary to its duties under the charge or mortgage and the Borough Council must give full consideration to protecting the interest of the Chargee in respect of all monies and interest outstanding and relates costs under the charge or mortgage.