

Hampshire Alliance for Rural Affordable Housing

Standard Heads of Terms for Rural Exceptions Site s106 agreements

Definitions

Affordable housing - includes social rented and intermediate housing provided to specified eligible households whose needs are not met by the market.

Affordable housing should:

- Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.
- Include provision for the home to remain at an affordable price for future eligible households.

Social rented housing - Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant.

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

Land – The land [details] and shown edged in red on the plan annexed hereto

The Act – The Town and Country Planning Act 1990 (as amended)

Permission – planning permission as defined by the Act

Parish – The area comprised in the Parish of [detail] (as defined in Section 1 and Schedule 1 of the Local Government Act 1972 and any statutory instruments made under the said 1972 Act)

Affordable Housing Dwellings - [number] Dwellings comprising [number] of [one][two][three][four] bedroom [houses] [bungalows] [flats] to be provided for Affordable Housing on the Land

Occupation - The completion of a tenancy agreement shared ownership or shared equity lease in respect of any one or more of the Affordable Housing Dwellings

Housing Need - persons eligible in accordance with the criteria for the local authority housing registers or anyone else that the Local Authority determines as being in need of such accommodation’.

Ordinarily resident – normal residency of choice which does not include persons residing through serving in the armed forces, detained under the authority of any Act of Parliament (e.g. prison, mental hospital), or placed in temporary accommodation

Employment – does not include serving in the regular armed forces of the Crown

Head of Housing – The Head of Housing or such other officers as may be responsible for the Local Authority’s functions duties and responsibilities in relation to Housing

Chargee - any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

Planning Obligations

This Agreement is made pursuant to Section 106 of the Act and the planning obligations entered into by way of the covenants in this Agreement are obligations under Section 106 of the Act to be discharged by the Owner and are enforceable by the Local Authority against the Owner and any person deriving title from it

No Restriction

Nothing in this Agreement shall be construed as restricting the exercise by the Local Authority of any powers exercisable by it under the Act or under any other Act PROVIDED ALWAYS that this Agreement shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been issued by the Local Authority or any other appropriate person or Authority pursuant to the provisions of that Act

Liability

No person shall be liable for any breach of this Agreement after he or it shall have parted with all interest in the Land SAVE for any subsisting breach of covenant prior to parting with such interest

Severability

If any part of this agreement be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the remainder of this Agreement shall continue in full force and effect

Warranty on title

The Owner hereby warrants to the Local Authority that the title detail in respect of the Land are complete and accurate in every respect

Operative Date

This Agreement shall take effect from and including the date on which Permission is granted save as to any provision as to costs which shall have immediate effect

Occupancy restriction Clause

No dwelling shall be occupied either on first occupation or any other subsequent occupation of such dwelling unless it is allocated to a person who

- a) demonstrates a housing need and is unable to afford suitable accommodation on the open market within the Parish of X; and
- b) has a strong local connection (as hereinafter defined) with the said Parish of X

If within two weeks of any dwelling becoming available for occupation (whether upon practical completion of the Development or any time thereafter) any such vacancy arising cannot be filled in accordance with the foregoing provisions hereof (consultation having first taken place with the Local Authority's Head of Housing) then any such vacant dwelling shall be allocated (but only with the prior written consent of the Head of Housing) to a person who

- a) demonstrates a housing need and is unable to afford suitable accommodation on the open market within the Parishes of Y, Z (to be agreed with X Parish Council & Ward Member) and
- b) has a strong local connection (as hereinafter defined) with any of those Parishes

If within one month of any dwelling becoming available for occupation (whether upon practical completion of the Development or any time thereafter) any such vacancy arising cannot be filled in accordance with the foregoing provisions hereof (consultation having first taken place with the Local Authority's Head of Housing) then any such vacant dwelling shall be allocated (but only with the prior written consent of the Head of Housing) to a person who demonstrates a housing need and is unable to afford suitable accommodation on the open market within the administrative area of the Local Authority and who is ordinarily resident within that area.

Local Connection Clause

For the purposes of this Agreement a person shall be taken to have a strong local connection if he or she satisfies any one or more of the following criteria:

- (i) he or she is ordinarily resident in the Parish at the date of allocation
- (ii) he or she was previously ordinarily resident in the Parish prior to the date of allocation and has family who ordinarily reside there
- (iii) he or she has a demonstrable need to live in the Parish by reason of:
 - a. his/her current employment in the Parish
 - b. his/her taking up permanent employment in the Parish
- (iv) he or she has a demonstrable need to reside in the Parish either to support or to be supported by another member of his/her family who ordinarily reside in the Parish at the date of allocation

A person shall be taken to be a member of another's family if he or she is the spouse civil partner mother father sister brother daughter son grandparent or grandchild of that other person or if he or she ordinarily resides with that other person as husband or wife or partner without being legally married to that person

NB Some local authorities within the HARAH partnership have more specific local connection criteria (see footnote for details)

Shared ownership staircasing restriction Clause

A shared ownership or shared equity lease of any of the Affordable Housing Dwellings shall not be granted on terms that allow the grantee to staircase to more than 80% of the equity of that Dwelling or that permits the grantee to dispose of that Dwelling to any person other than the Local Authority

Standards requirement

The Affordable Housing Dwellings shall be constructed (unless otherwise agreed by the Local Authority) to at least the minimum standard required by the Housing Corporation Scheme Development Standards published April 2003 (or as revised)

Mortgagee in Possession Clause

The Chargee shall prior to seeking to dispose of the Affordable Housing Dwellings pursuant to any default under the terms of its mortgage or charge shall give not less than three months prior notice to the Local Authority of its intention to dispose and

(a) in the event that the Local Authority responds within 2 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer

(b) if the Local Authority does not serve its response to the notice served within the 2 months then the Chargee shall be entitled to dispose free of the restrictions set out in paragraph [number]

(c) if the Local Authority or any other person cannot within 2 months from and including the date of service of its response secure such transfer then provided that the Chargee shall have complied with its obligations the Chargee shall be entitled to dispose free of the restrictions set out in paragraph [number]

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

Dispute Resolution

Without prejudice to the exercise by the Local Authority of its remedies by way of application for an injunction or otherwise for breach of the covenants in this Agreement if any dispute or question whatever arises between the parties as to the construction or effect of any provision in this Agreement the matter in dispute or question will be determined by a single arbitrator appointed by agreement between the Parties or in the absence of agreement within 14 days of one party giving notice to the other Parties of its nomination or nominations appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any party to this Agreement in accordance with the Arbitration Act 1996

Footnote

New Forest District Council & National Park Local Connection Criteria

The Affordable Housing Dwellings shall not be occupied or permitted to be occupied except by Eligible Persons nominated by the Council and selected in the following order of priority:-

- i) persons who live or have their workbase in the Parish of X and who have lived or had their workbase there for at least 10 years or who have lived in the Parish for at least 10 years previously or Key Workers who could perform or continue to perform an essential service for the people of the Parish if they were provided with an Affordable Housing Dwelling within the Parish
- ii) persons who live or have their workbase in the Parish and have lived or had their workbase there for at least 5 years or who have lived in the Parish for at

least 5 years within the previous 15 years or whose parents siblings or adult children live in the Parish and have done so for at least 10 years

iii) persons who live or have their workbase in the Parish and have lived or had their workbase there for at least 2 years or who have lived in the Parish for more than 2 years within the previous 15 years or whose parents siblings or adult children live in the Parish and have done so for at least 5 years

iv) persons who have lived in the Parishes of Y,Z and have done so for 2 years or more

v) persons who have lived in the Councils area and have done so for at least one year immediately prior to the nomination

vi) other Eligible Persons

Winchester City Council Local Connection Criteria

Eligible Persons nominated by the Council and selected in the following order of priority:-

- i) persons who meet the local connection criteria set out above with Parish X for at least 3 years
- ii) persons who meet the local connection criteria set out above with the Parish X without a time criteria
- iii) persons who meet the local connection criteria set out above with the Parishes of Y,Z for at least 3 years
- iv) persons who meet the local connection criteria set out above with the Parish of Y,Z
- v) persons who demonstrates a housing need and is unable to afford suitable accommodation on the open market within the administrative area of the Local Authority and who is ordinarily resident within that area.