

# Affordable Housing

Practice Note

April 2018





## Foreword

Bristol City Council is committed to building a better Bristol where all citizens are able to access a wider choice of high quality homes. The Council has some ambitious housing targets and is implementing radical new approaches to increase the supply of much needed affordable housing through the Local Plan Review process.

Before the Local Plan is adopted, however, we have an opportunity to accelerate the supply of affordable homes through changes to existing guidance. The Affordable Housing Practice Note, first published in 2009, and revised in 2014, explains how the Council's affordable housing policies are to be implemented. Some key changes have been made to this guidance to increase levels of affordable housing in developments and to ensure that the Council's procedures for securing affordable homes are as effective as possible. I am therefore launching a new Affordable Housing Practice Note 2018 which provides interim measures until the review of the Bristol Local Plan is completed and a revised plan is adopted.



*Councillor Paul Smith*

This new guidance 2018 introduces a 'threshold' approach to provide developers with a fast track route for processing of planning applications if they are prepared to offer at least 20% on-site affordable housing on sites located in Bristol's inner west and inner east zones. To take advantage of this, developers must start work on schemes within 18 months of planning consent being granted. The Council will still be encouraging developers to deliver policy compliant 40% affordable housing provision by considering grant applications from registered providers to make up any shortfall on the Council's planning policy requirement.

The new guidance introduces greater flexibility in applying the Council's tenure requirements for affordable housing provided that certain conditions are met. In certain circumstances the Council will accept 100% Affordable Rent (set below local housing allowance limits), as an alternative to 77% Social Rented and 23% Intermediate affordable housing.

The new guidance also sets out additional validation procedures for applications where affordable housing is required. This includes the full disclosure and publication of all viability assessments submitted by developers.

Whilst these measures do not represent new policy, the Council has discussed these measures with house builders, registered housing providers and community led housing organisations to inform our approaches.

I believe the changes made will help to speed up planning decisions, give greater certainty to developers in their negotiations with the Council, ensure processes are transparent and above all increase the amount and rate of delivery of affordable housing through the planning system.

**Councillor Paul Smith**  
**Cabinet Member for Housing**



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## 1. Overview of key changes

The Affordable Housing Practice Note (AHPN) was first published in 2009 (updated in 2014), and provides guidance on the implementation of Bristol City Council's affordable housing policies, as set out in the Bristol Local Plan.

Since publication, a number of changes have been made to National Planning Practice Guidance regarding affordable housing, including:

- A new threshold for affordable housing contributions related to the size of site/number of residential units proposed;
- Exemption from affordable housing contributions where vacant buildings are being brought back into use (vacant building credit).

Developments at the local level have also prompted a review of the Council's procedures for securing and delivering affordable housing, in particular:

- Publication of Bristol City Council's draft Corporate Strategy (2018-23) with Mayoral objective to build 800 affordable homes a year by 2020;
- Increasing public scrutiny of the level of affordable housing being offered and achieved as part of major planning applications;
- Full Council resolution on affordable housing in December 2016 to instruct Council planning officers to make all information used in the viability process publicly available and in good time, and to look for innovative ways to encourage and incentivise developers to include a mix of affordable homes in their development schemes.

### Council's 3-Route 'Threshold' Approach

To reflect the above national and local developments the Council's Affordable Housing Practice Note has been updated but does not seek to introduce new policy. The key changes are set out below and may be summarised as follows:

- **New validation requirements for planning applications;**
- **Publication of viability appraisals;**
- **A new interim 3-Route 'Threshold' approach to assessment of Affordable Housing offers;**
- **A revised definition for 'affordable homes to rent'; and**
- **A new approach to securing public funding for additional affordable homes.**

#### New application validation requirements

Where affordable housing is required the Council's Planning Application Requirements Local List now requires the submission of an Affordable Housing Statement. To validate the application the submitted statement must:

- clearly set out the 'affordable housing offer'; and
- include a full, unredacted viability appraisal of the submitted proposal where neither policy targets nor the new interim 'Threshold' (see below) have been met.

### Public availability of viability appraisals

Developers' viability appraisals submitted with planning applications in accordance with the Planning Application Requirements Local List are now published on the Bristol City Council public website.

### New interim 'Threshold' approach to viability assessments

For an interim period applications that meet a 'Threshold' of at least 20% affordable housing within Bristol City's Inner West and Inner East zones under policy BCS17 (normally a 40% policy target) will not be subject to viability testing. The applicant must agree to commence development of the scheme within 18 months of the planning permission being granted. If no confirmation of the start date of the development scheme is received within this period applicants must agree to viability testing.

### Revised definition for 'affordable homes to rent'

Greater flexibility in applying the Council's tenure requirements for affordable housing provided that certain conditions are met.

### Additional affordable homes - public subsidy

Where the applicant meets at least a 20% 'Threshold' (see above) and this has been agreed with the Council and secured through a S106 agreement the applicant will be encouraged to enter into a dialogue with Bristol City Council and Homes England to secure funds for additional affordable homes. The additional affordable homes will be secured through a separate funding agreement.

The purpose of these changes is to:

- Ensure the 'initial affordable housing offer' is clear and justified at the start of the statutory period for deciding applications to enable early and effective negotiations with the applicant where this is necessary and to better manage responses from interested parties;
- Make the viability appraisal process more transparent;
- Incentivise the provision of more affordable housing to deliver affordable homes at a level that (alongside other Council initiatives) achieves the Corporate Strategy objective of 800 affordable homes by 2020;
- Speed up the planning process for developers who commit to a minimum delivery of affordable homes; and
- Provide developers with greater flexibility in the type and mix of affordable homes delivered.

The overall aim is to increase the number and accelerate the delivery of affordable homes through the planning system.



## 2. Policy Background

### 2.1 National Policy

The National Planning Policy Framework (NPPF), supported by National Planning Practice Guidance, makes provision for the delivery of affordable housing through a Local Plan. In particular, the NPPF states that local planning authorities should:

- *'use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area'* (para. 47);
- *'Prepare a Strategic Housing Market Assessment to assess their full housing needs...The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which... addresses the need for all types of housing, including affordable housing...'* (para. 159);
- *where a need for affordable housing has been identified 'set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified....and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.'* (para. 50).

The definition of 'Affordable Housing' is set out in the Glossary at Annex 2 to the NPPF and is reproduced at Appendix 1 of the Affordable Housing Practice Note (AHPN).

The NPPF is supported by National Planning Practice Guidance (NPPG). In relation to planning obligations and affordable housing NPPG states the following:

- *'contributions should not be sought from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area)'* (para. 031 Ref. ID: 23b-031-20161116).
- *'Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought.'* (para. 031 021 Ref. ID: 23b-021-20160519).

### 2.2 Local Plan Policy

The Council's affordable housing policies, set out in the Bristol Local Plan, are consistent with National Planning Policy. The policies identify when affordable housing provision will be required and indicate the percentages that will be sought. This includes either 30% or 40% based on location for schemes of 15 dwellings and over; and 10% or 20% based on location for schemes of 10 to 14 dwellings<sup>1</sup>. The relevant policies are set out below. The locations where differing percentages are sought are shown in Fig. 1 below.

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<sup>1</sup> Subject to National Planning Practice Guidance.

**Local Plan - Core Strategy (Adopted June 2011)**

**Policy BCS17: Affordable Housing Provision**

Affordable housing will be required in residential developments of 15 dwellings or more. The following percentage targets will be sought: through negotiation:

- 40% in North West, Inner West and Inner East Bristol;
- 30% in all other locations.

In residential developments below 15 dwellings an appropriate contribution towards the provision of affordable housing may be sought (either as a financial contribution or as on site provision) in accordance with any relevant policy in the Site Allocations and Development Management Development Plan Document.

Residential developments should provide a mix of affordable housing units and contribute to the creation of mixed, balanced and inclusive communities. The tenure, size and type of affordable units will reflect identified needs, site suitability and economic viability.

All units provided should remain at an affordable price for future eligible households or, if this restriction is lifted, for the subsidy to be recycled for alternative affordable housing provision.

Where scheme viability may be affected, developers will be expected to provide full development appraisals to demonstrate an alternative affordable housing provision.

**Local Plan - Site Allocations and Development Management Policies (Adopted July 2014)**

**Policy DM3: Affordable Housing Provision: Smaller Sites**

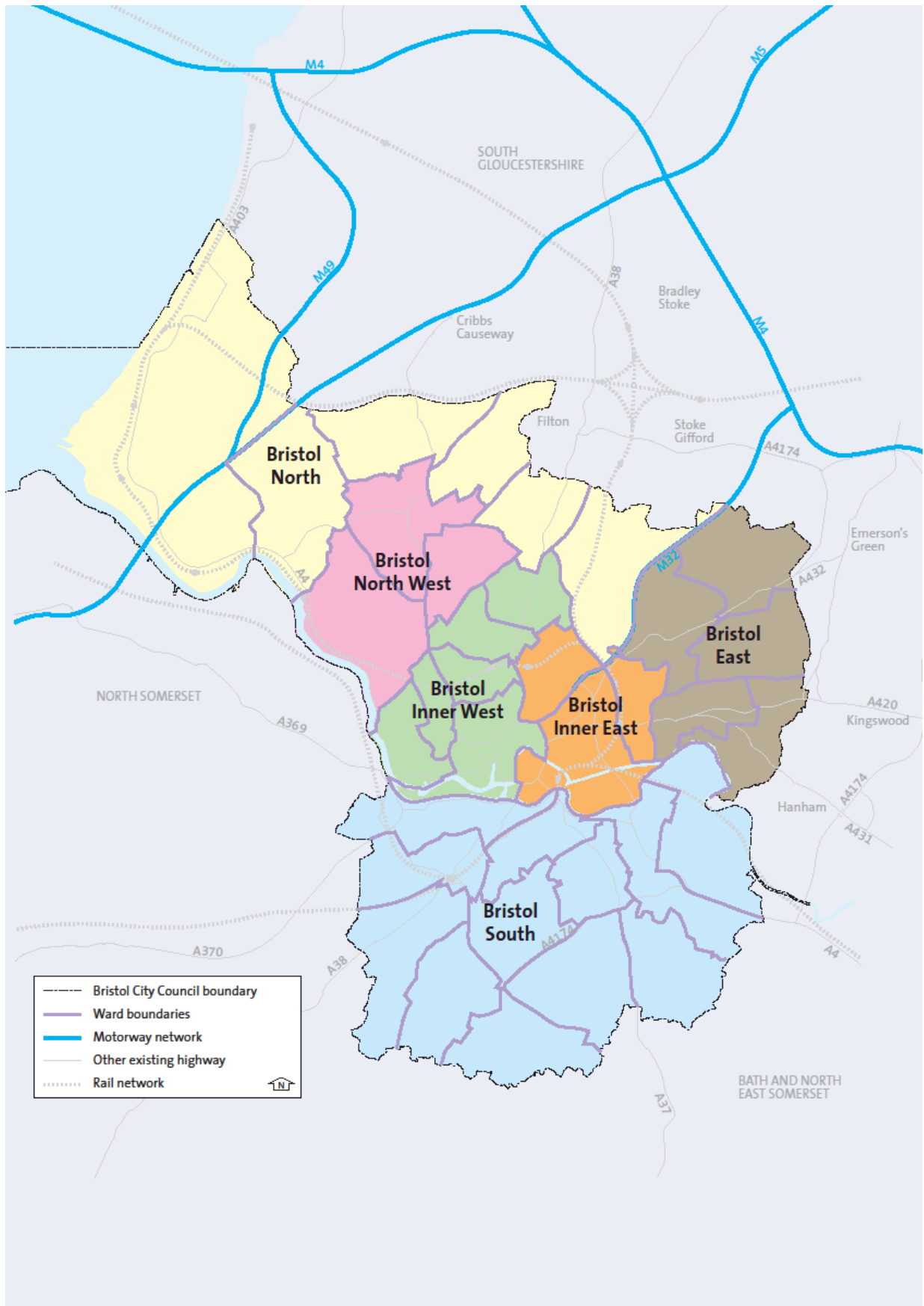
Residential developments comprising 10 to 14 dwellings should make an appropriate contribution towards the provision of affordable housing on-site or, where on-site provision cannot be practicably achieved, as an equivalent financial contribution. The following percentage targets will be sought through negotiation:

- 20% in Inner West, Inner East and South Bristol;
- 10% in North West, East and North Bristol.

Where units are provided on-site these should remain at an affordable price for future eligible households or, if this restriction is lifted, for the subsidy to be recycled for alternative affordable housing provision.

Where scheme viability may be affected, developers will be expected to provide full development appraisals to demonstrate an alternative affordable housing provision.

Fig. 1: Affordable Housing Zones



In addition to the Local Plan, policy in the Lawrence Weston Neighbourhood Development Plan identifies affordable housing tenure types and percentages that will be sought within the Lawrence Weston Neighbourhood Planning Area. The policy is set out below.

**Lawrence Weston Neighbourhood Development Plan (Made March 2017)**

**Policy H2: Affordable Housing Types and Tenures**

Proposals for new housing development should aim to provide a variety of affordable housing types and tenures, including shared ownership. Development on allocated sites will be supported if:

- (i) either affordable housing would be provided in accordance with the figures in Appendix 1, or the developer can show by means of a full development appraisal why the identified levels cannot be achieved; and
- (ii) affordable housing would be integrated with open market housing.

**Appendix 1: Suggested split of tenure types for residential sites**

Site description	S&DMP Local Plan ref	Homes estimate	% Affordable	Affordable homes
Henacre site	BSA0101	50	20% - 30%	10 - 15
College site	BSA0102	93	20% - 30%	18 - 28
Deering Close	BSA0103	20	20% - 30%	4 - 6
Deansmead (PRC)		18	20% - 30%	4 - 5
Astry Close (PRC)		38	70%	27
Oakhanger/Littlemead (PRC)		28	20% - 30%	6 - 8
Capel Road (PRC)		48	20% - 30%	10 - 14
Awdelett Close/Commonfield Rd		12	10%	1

Astry Close affordable housing allocation is higher than the 30% because the community have an aspiration to deliver a community land trust development on the site that will deliver affordable homes in perpetuity.

The AHPN has been prepared to provide guidance on the implementation of these policies but does not introduce new policy. It explains the mechanism for the delivery of affordable homes in Bristol setting out the key **principles** and **processes**.

The AHPN is intended to inform and guide applicants and their agents, landowners, developers, Homes England, Registered Providers and Bristol City Council’s Development Management Officers (DMO’s) and Housing Delivery Team (HDT).

The AHPN supersedes Affordable Housing Practice Note 2014.

## 3. Principles for delivering affordable housing in Bristol

### 3.1 Understanding affordable housing need

#### West of England Strategic Housing Market Assessment 2009

In accordance with national policy, Bristol City Council and other West of England authorities commissioned a Strategic Housing Market Assessment (SHMA) in 2007 to understand the workings of housing markets both at the West of England and local level. The West of England SHMA, published in 2009, demonstrated a high level of need for affordable housing within Bristol and estimated a net annual requirement for the city of approximately 1,500 new affordable homes up to 2021. The West of England SHMA also provided estimated tenure requirements. For Bristol this was a 77% requirement for social rented affordable housing and a 23% requirement for intermediate affordable housing. The 2009 assessment provides the needs based evidence to support the Council's affordable housing policies. A summary of outputs is set out at Appendix 2.

#### Wider Bristol Strategic Housing Market Assessment 2015

A new SHMA was commissioned by Bristol City Council and other West of England authorities in 2014 to establish the 'Objectively Assessed Need' for housing across the wider Bristol housing market area. The Wider Bristol SHMA published in 2015, also demonstrates a high level of need for affordable housing across the region and within Bristol, and estimates a requirement for the city of some 18,800 new affordable homes between 2016 and 2036. This equates to 940 affordable homes per annum. The Wider Bristol SHMA also provides estimated tenure requirements. For Bristol this is an 80% requirement for social rented affordable housing and a 20% requirement for affordable rent and shared ownership affordable housing. The 2015 assessment will provide the needs based evidence to support policies in the emerging West of England Joint Spatial Plan.

**Based on the findings of the 2009 and 2015 SHMA's the Council expects all eligible residential developments to contribute towards an evidenced city-wide need for affordable housing.**

### 3.2 Approach to affordable housing percentages

**On submission of the application the applicant will be expected to meet the affordable housing target percentages set out in relevant Local Plan policies without public subsidy.**

It is accepted that, in some circumstances, due to financial viability, it may not be possible to meet the full policy requirement. In such cases the percentage offered must either meet a 'Threshold' level, available for an interim period (see below), or else be justified by a full unredacted viability appraisal to be submitted with the planning application. The appraisal will be subject to a validation process where agreement will be sought between the applicant and the Council on the maximum level of affordable housing that can be delivered without affecting scheme viability. Further viability testing will also be carried out over the period of the development.

**‘Threshold’ approach to viability**

Since adoption of the Council’s affordable housing policies, monitoring of percentages of affordable housing secured through section 106 agreements and subsequent completions has shown that the Council’s higher policy targets have not been met consistently.

To encourage the provision of affordable housing, above the level currently being delivered, the Council has introduced for an interim period a ‘Threshold’ approach to policy BCS17 that will apply in Bristol Inner West and Inner East zones. In these zones applications meeting or exceeding 20% affordable housing could follow a ‘Fast Track’ route.

The following general terms will apply to these applications.

The applicant will agree to:

- commence the development of the scheme within 18 months of the permission being granted;
- a viability testing process if no confirmation of commencement of the development of the scheme has been received within 18 months of the date of grant of the planning permission.

The Council will:

- waive the requirement for a viability appraisal to be submitted with the application;
- consider greater flexibility regarding tenure requirements;
- provide an effective application process by encouraging the use of:
  - o enhanced Planning Performance Agreements (PPAs) - Premium service through dedicated staffing resource;
  - o Planning Performance Agreements (PPAs) to accelerate the discharge of planning conditions;
  - o model Section 106 agreements with standard affordable housing clauses to speed up the completion of s106 agreements.

The ‘Threshold’ approach can offer far greater certainty to developers. This will help to deliver more affordable housing through the planning system whilst also ensuring development comes forward at a faster rate. The ‘Threshold’ approach does not set a new target for affordable housing, instead it identifies the point at which the approach to the submission of viability information changes.

The ‘Threshold’ approach will not apply to the development of Bristol City Council owned land.

Further detail on all application processes is provided in section 4.

### 3.3 Approach to private (developer) subsidy

The developer is expected to provide affordable homes on site **without any public subsidy** in line with the Council’s affordable housing policy. Where the homes are to be transferred to a registered provider the developer subsidy will be equivalent to the funding gap between the total cost of providing the home and the amount paid by a registered provider to secure the unit.

### 3.4 Approach to public subsidy

The Council and Homes England require that all affordable housing secured from private development through Section 106 agreements be delivered without public subsidy. Where affordable housing has been maximised through private development the Council will consider the use of public subsidy as follows:

- Where the applicant has offered either the ‘fully compliant policy’ level or the ‘Threshold’ level of at least 20% affordable housing within relevant zones under policy BCS17 and this has been agreed by the Council and secured through a Section 106 agreement, the applicant’s selected registered provider will be eligible to seek funds for additional affordable rent homes from Bristol City Council and Homes England. Such additional affordable homes will be secured through a separate funding agreement.
- In all other cases where the applicant has offered a level of affordable housing below the policy target percentage and this has been validated, agreed by the Council and secured through a Section 106 agreement the use of public subsidy will be considered to address any shortfall against policy targets. Such additional affordable homes will be secured through a separate funding agreement.

### 3.5 Approach to affordable housing tenure

The Council’s approach to seeking particular affordable housing tenure types is determined by local housing needs evidence (see section 3.1) and by the National Planning Policy definition of ‘Affordable Housing’ (see Appendix 1). The indicative citywide tenure requirements for Bristol are 77% Social Rented affordable housing and 23% Intermediate affordable housing. The Council will therefore seek the following affordable housing products prioritised as follows:

1. **Social Rent:** Affordable homes as defined in Annex 2 of the NPPF with guideline target rents.
2. **Shared Ownership:** Affordable homes as defined in Annex 2 of the NPPF as ‘Intermediate’ affordable housing. Homes to be sold at an average of 40% equity sale and up to 1.5% rental on retained equity.

The Council may consider adjusting the balance between tenures to meet particular local needs or other housing requirements of a locality or neighbourhood in order to promote balanced and sustainable communities. For example, where a scheme is being developed in a neighbourhood where local residents are specifically seeking Shared Ownership or shared equity options, or neighbourhoods with existing high concentrations of Social Rented homes or low income households, it may be appropriate to change the balance in favour of a higher proportion of Shared Ownership or shared equity affordable homes.

### Flexibility on tenure requirements

Where the applicant has agreed to meet the ‘Threshold’ of at least 20% affordable housing under policy BCS17 within Bristol Inner West and Inner East zones, the Council may consider alternative forms of affordable housing tenure to those normally prioritised above. Such tenures must be demonstrated as affordable. Acceptable alternative tenures can include the following:

*Where 20% affordable housing has been agreed:*

- Affordable Rent (up to 100% of the affordable housing requirement): homes to rent let by local authorities or private registered providers of social housing at an agreed percentage (with the Council) of open market rent (inclusive of service charges, rent charges and estate charges) which is below the prevailing Local Housing Allowance limits<sup>2</sup> for different property types in the Bristol Area.

*Where 25% affordable housing has been agreed:*

- 50% Social Rented affordable housing and 50% Intermediate affordable housing as defined in the National Planning Policy Framework.

### **3.6 Approach to service charges**

The service charge is the amount payable on an affordable home in addition to rent/mortgage which includes all estate management charges, ground rents, services, repairs, maintenance and improvements of a communal nature and the insurance of the building. The level of service charge can be a material planning consideration as this affects the relative affordability of the unit. The Council will seek to ensure via the s106 agreement that the total occupation costs to affordable housing occupiers remain affordable in the long term. The Council would not expect a service charge to exceed £250 per annum in respect of a house and £650 per annum in respect of a flat (Index linked (CPI) respectively). Early consultation is recommended as good design can overcome the need for high service charges.

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<sup>2</sup> The limit on benefit paid to tenants who rent from private landlords based on property type. Determined by the Valuation Office for the Bristol area.



## 4. Process for delivering affordable housing in Bristol

In all schemes for residential development that are subject to affordable housing policies set out in the Local Plan the applicant should follow the relevant application processes set out below. A summary of all the processes is provided at Fig. 5 at the end of this section.

### 4.1 National policy requirements

#### National affordable housing threshold

Under policy **DM3: Affordable Housing Provision Smaller Sites** affordable housing contributions will only be sought from schemes of 11 to 14 units. Contributions from schemes of 10 units will only be sought where the maximum combined gross floorspace is above 1,000 square metres (gross internal area).

#### Vacant building credit

A building will need to meet various criteria and tests to be considered for Vacant Building Credit. Further advice should be sought from the council's *Planning Obligations Manager*.

### 4.2 Pre-application process

**Applicants are encouraged to seek advice on the affordable housing requirement at the pre-application stage.** Advice should be sought prior to any design work being undertaken on a scheme. This enables applicants to better accommodate the percentage and mix of affordable housing required and to make proper financial provision for its delivery before entering into financial or legal commitments for the site.

Advice should be sought from the council's *Housing Delivery Team (HDT)* at the same time as submitting a pre-application enquiry. The HDT will provide guidance to the applicant on the tenure mix, type, size and standards of affordable housing required. A *Summary of Affordable Housing Requirements* relating to the site will be provided once contact has been made. Sample documents are set out at Appendices 3a, b and c.

### 4.3 Planning application process

#### Application validation

To make a 'valid' planning application developers have to comply with the Council's published Planning Application Requirements Local List. Any submitted application that is not considered to be valid does not commence its statutory period for a decision, until the outstanding information is supplied.

In line with the Planning Application Requirements Local List 1<sup>st</sup> December 2017, applications for residential or mixed use development providing 10 or more dwellings that are subject to the Council's affordable housing policy will require the submission of an 'Affordable Housing Statement'. The content of the Statement is set out in Part 2 of the Local List and is reproduced at Fig. 2 below.

**Fig. 2: Content of Affordable Housing Statement****Affordable Housing Statement**

All proposals for 10 or more dwellings require an element of affordable housing to be provided. If policy compliant affordable housing is not being proposed this needs to be clearly identified at the outset of the planning application process. The justification for below-policy provision of affordable housing needs to be provided before a planning application is validated and this information will be uploaded to the BCC website, along with the other documents submitted in support of an application. The Affordable Housing Statement shall include the following:

Affordable Housing

- The number of proposed units that fall into the council's definition of Affordable Housing.
- The type of affordable housing being proposed (social rent, shared ownership etc.).
- **Plans showing the location of affordable housing units**, the type of affordable housing, and the number of bedrooms for each unit.
- Where **below-policy** affordable housing is being proposed, the Affordable Housing Statement shall be accompanied by a **full, unredacted viability appraisal** of the proposed development.

All Types of Housing

- The total number of residential units.
- The mix of units, with numbers of habitable rooms and/or bedrooms, or the floor space of habitable areas of residential units.

**Plans showing the location of affordable housing units** should identify open market homes on the layout for the scheme which would be 'switched' to affordable housing should additional units be deliverable as a result of any improvement in viability demonstrated by further viability testing (see section 4.4 below).

A **below-policy** affordable housing offer is defined as:

- Schemes of 11 to 14 units where:
  - (i) the affordable housing offer is below 10% within Bristol North, Bristol North West and Bristol East; and
  - (ii) below 20% within Bristol Inner West, Inner East and South zones;
- Schemes of 15 units and above where the affordable housing offer is below 30% within Bristol North, East and South zones; and
- Schemes of 15 units and above where the affordable housing offer is below the 20% 'Threshold' level within Bristol Inner West and Inner East zones.

Where a **full, unredacted viability appraisal** is needed, the form and content of the appraisal should meet the requirements set out in section 4.4 and Fig. 3 below.

## Application process: (3) routes

The application process will depend on the affordable housing offer proposed. The three routes available to applicants are set out as follows:

### **Route 1: Fully policy compliant scheme (Policies BCS17 and DM3)**

Where the applicant's affordable housing offer meets policy requirements in full and the affordable housing tenure mix proposed is consistent with the Council's approach to tenure (as set out in section 3.5) the applicant will not be required to submit a viability appraisal. The Council requires the applicant to enter into a Section 106 legal agreement and expects the affordable housing to be delivered without public subsidy and provided on site.

The Council will provide an effective application process by encouraging the use of Planning Performance Agreements (PPA's) and a model Section 106 agreement (a model Section 106 agreement is set out at Appendix 4).

In some circumstances, the affordable housing requirement can be met through a financial contribution either fully or in part. Further detail on financial contributions is set out in section 4.5.

### **Route 2: 'Threshold' compliant scheme - 'Fast-track' (Policy BCS17)**

Where the applicant's affordable housing offer meets a 'Threshold' of at least 20% affordable housing within the city's Inner West and Inner East zones the offer will not be subject to viability testing at the application stage provided that:

- The offer is made without public subsidy;
- The affordable housing tenure mix is consistent with the Council's approach to tenure (as set out in section 3.5);
- The proposals meet other obligations and requirements set out in the Local Plan to the satisfaction of the Council:
- The applicant agrees at an early stage in the application process to commence the development within 18 months of the permission being granted.

If no confirmation of commencement of the development of the scheme has been received within 18 months of the date of planning permission then viability testing will be undertaken in accordance with the approach set out at section 4.4 below.

The Council requires the applicant to enter into a Section 106 legal agreement to secure the above provisions and expects the affordable housing to be delivered without public subsidy and provided on site.

The Council will provide an effective application process by encouraging the use of Planning Performance Agreements (PPA's) and a model Section 106 agreement (a model Section 106 agreement is set out at Appendix 4).

In some circumstances, the affordable housing requirement can be met through a financial contribution either fully or in part. Further detail on financial contributions is set out in section 4.5.

**Route 3: Non-compliant scheme (Policies BCS17 and DM3)**

Where the applicant's affordable housing offer does not meet policy requirements or does not meet the 'Threshold' of at least 20% affordable housing within relevant zones under policy BCS17 then a viability appraisal will need to be submitted with the application. Viability testing will be undertaken in accordance with the approach set out at section 4.4 below.

Following testing if the applicant's affordable housing offer is validated and agreed with the Council, the Council will require the applicant to enter into a Section 106 legal agreement and expects the affordable housing to be delivered without public subsidy and provided on site. The legal agreement will also include the following provisions:

- The applicant agrees at an early stage in the application process to commence the scheme within 18 months of the permission being granted. If no confirmation of the start date has been received within 18 months of the date of planning permission then viability testing will be undertaken in accordance with the approach set out at section 4.4 below.
- Further viability testing will be undertaken when 75% of the open market units are occupied or otherwise agreed with the Council in accordance with the approach set out at section 4.4 below.

A model Section 106 agreement is set out at Appendix 4.

If the applicant reduces the affordable housing offer following the grant of planning permission then a new viability appraisal will need to be submitted and viability testing undertaken in accordance with the process set out at section 4.4 below. Where necessary a new planning application may be required.

#### 4.4 Viability testing process

The Council expects affordable housing delivery to be maximised through private development. To support this aim viability testing, where required, will be undertaken at the application stage and over the period of the development. This continuous testing can address the economic uncertainties which may arise over the lifetime of a development proposal and can incentivise the prompt implementation of schemes. The approach ensures that the level of affordable housing secured from private development properly reflects increases in the value of a development from the date of planning permission to specific stages of the development programme. Affordable housing contributions will be increased if viability improves over time.

Where testing is required the applicant must agree to a process of validation to determine the viability of the proposed scheme and must be willing to make a binding agreement with the Council to meet all the Council's and the Council's Valuer's reasonable costs for assessing the viability of the development and validating the applicant's position.

Table 1 below identifies for each of the application routes the trigger mechanism for viability testing, the viability test type and the time limits for the validation process. A full unredacted viability appraisal must be submitted in all cases which will be made publicly available on the Council's website. The detail on relevant triggers will be clearly set out in the Section 106 agreement.

**Table 1: Viability test triggers**

Application Route	Trigger for viability test	Test Types	Validation process Completion time limits
<b>Route 1</b> Fully policy compliant scheme	N/A	No viability test required	No viability test required
<b>Route 2</b> 'Threshold' compliant scheme - Fast-Track	No confirmation of development start date within 18 months of permission granted	'Early stage' viability testing Viability appraisal submitted within 4 weeks following expiry of 18 month period	Stage 1: Within 30 working days of appraisal submission Stage 2: Within 20 working days of completion of stage 1 Stage 3: Within 20 working days of completion of stage 2
<b>Route 3</b> Non-compliant scheme	Below policy offer made at application stage	'Advance' viability testing Viability appraisal submitted at application submission stage	Stage 1: Within 30 working days of application validation Stage 2: Within 20 working days of completion of stage 1 Stage 3: Within 20 working days of completion of stage 2
	No confirmation of development start date within 18 months of permission granted	'Early stage' viability testing Viability appraisal submitted within 4 weeks following expiry of 18 month period	To be set out in the Section 106 Agreement
	Scheme implemented and 75% of units occupied or otherwise agreed with the council	'Late stage' viability testing Viability appraisal submitted when 75% of units occupied or other agreed trigger point	To be set out in the Section 106 Agreement

The form and content of viability appraisals, further detail on the viability test types, and the council's approach to the validation of the viability appraisal are set out as follows:

### Viability appraisal form and content

The basis of the testing process will be an open book appraisal, which will be carried out in accordance with the principles set out in the Royal Institute of Chartered Surveyors (RICS) Professional Guidance Note *Financial viability in planning (GN 94/2012)*.

The Guidance Note defines financial viability as:

*"An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering that project."*

here 'Site Value' is defined as:

*"Market Value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan."*

and *Market Value* is defined as:

*“The estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”*

The open book appraisal should adopt the residual method of valuation, as is normally used for financial viability testing. The residual appraisal methodology seeks to obtain the undeveloped value of the property/site (*Residual Land Value*) by assessing the final value of the finished product (*Gross Development Value*) and deducting the relevant costs of development (*Gross Development Cost*). The resultant sum is the amount a developer would bid for the site to achieve a reasonable return under current market conditions.

The viability appraisal should include the inputs set out in Appendix C of the RICS Guidance Note; these are summarised at Fig.3 below.

In order for a site to be viable, two tests must be passed:

1. The residual appraisal must produce a positive *Residual Land Value*.
2. The Residual Land Value must be sufficiently in excess of the *Site Value* for the land owner to be a willing seller.

When assessing land value National Planning Practice Guidance identifies a number of common principles that should be reflected:

*In all cases, estimated land or site value should:*

- *reflect emerging policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;*
- *provide a competitive return to willing developers and land owners (including equity resulting from those building their own homes); and*
- *be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.*

(Paragraph: 014 Reference ID: 10-014-20140306)

All inputs to the viability appraisal should be based on the most robust data available. This generally will be evidenced build costs and the sale price or rental value of the completed units and other uses.

## Viability test types and process

### Advance viability testing

Route 3 applications will be subject to viability testing directly following validation of the planning application. The Gross Development Value and costs (see Fig. 3) must be current at the time of submission of the viability appraisal.

### Early-stage testing

Route 2 and 3 applications will be subject to viability testing if a Community Infrastructure Levy (CIL) Commencement Notice has not been submitted to the Council within 18 months of the date of planning permission being granted. The purpose of the commencement notice is to inform the Council about the start date of the development. The Council must receive this notice at least one day before development is due to commence. The viability appraisal must be submitted within 4 weeks from the date of expiry of the 18 month period.

For route 2 applications the Gross Development Value and costs (see Fig. 3) must be current at the time of submission of the viability appraisal.

For route 3 applications the Gross Development Value and costs (see Fig. 3) submitted as part of the original viability appraisal ('Advance' viability testing) will be compared against inputs in the updated viability appraisal ('Early stage' viability testing). All inputs must be current at the time of submission.

The Council expects that in most cases any uplift in affordable housing identified through early stage testing will be accommodated on site. Plans submitted with the application should identify which homes would switch to affordable housing should additional units be deliverable as a result of an improvement in viability.

The minimum level of affordable housing should be that offered and agreed as part of the original planning permission.

### Late-stage testing

Route 3 applications will also be subject to viability testing when 75% of the open market units are occupied, or, as otherwise agreed with the council. Any alternative trigger point for testing must be set at a point prior to the sale of the entire development. The viability appraisal must be submitted before any further units are occupied.

The Gross Development Value and costs (see Fig. 3) will be based on actual values achieved and costs incurred in the development. Gross Development Value and costs submitted as part of the original viability appraisal ('Advance' viability testing) will be compared against inputs in the updated viability appraisal.

The Council expects that in most cases any uplift in affordable housing identified through late-stage testing will take the form of a financial contribution towards off-site affordable housing provision.

The minimum level of affordable housing should be that offered and agreed as part of the original planning permission.

## Viability appraisal validation process

Where a viability appraisal is submitted the validation process set out below will be followed. The time period identified for each stage will only apply to Route 2 'Early stage' viability testing and Route 3 'Advance' viability testing. The time periods in Stage 1 and Stage 2 will not apply in cases where the application is revised following validation of the application and before determination of the application and the revisions result in a change to the viability of the proposed scheme.

**Stage 1:**

To be completed within 30 days of validation of the application or viability appraisal submission. The Council will appoint consultant(s) from its approved list to examine the submitted viability appraisal and advise the Council on whether it accurately reflects the viability position. This advice would be based solely on the information provided (which should include the inputs summarised at Fig. 3 below) and identify areas of dispute and areas where further information is required. At this stage the Council's consultant(s) would not have entered into any discussions or negotiations with the applicant, or consultants acting for the applicant. The applicant will be liable to meet the Council's reasonable costs for this stage.

**Stage 2:**

If further information is required, or there are areas of dispute, the consultant(s) acting for the Council will be instructed to liaise and negotiate with the applicant or consultant acting on their behalf to see if agreement can be reached. A limited timescale of 20 working days is allowed to reach agreement. The Council's consultant role is not to negotiate the level, type or tenure of affordable housing but to try to reach agreement as to the sum available for affordable housing and/or other planning obligations/sustainability measures. The applicant will be liable to meet the Council's reasonable costs for this stage.

**Stage 3:**

If agreement cannot be reached within the timescales detailed above, the areas of dispute will be referred to a third party (i.e. a RICS practitioner, who is independent of both the consultants used by the council and the applicant), who will make an independent assessment of the disputed matters, and produce a report that will determine the base viability position to be used and reported, where necessary, to the relevant Planning Development Control Committee. A time limit of up to 20 working days is envisaged for this final stage. The third party will be jointly commissioned by the Council and the applicant, and their costs will be apportioned equally for this element.



**Fig.3: Elements for inclusion in a viability assessment**

<p><b>Proposed scheme details</b></p> <ul style="list-style-type: none"> <li>• Floor areas: <ul style="list-style-type: none"> <li>- Commercial: gross internal area (GIA) and net internal area (NIA).</li> <li>- Residential: GIA and net sales area (NSA).</li> </ul> </li> <li>• Residential unit numbers, including the split between private and affordable tenures.</li> </ul> <p><b>Gross development value</b></p> <ul style="list-style-type: none"> <li>• Any existing income that will continue to be received over the development period.</li> <li>• Anticipated residential sales values and ground rents (and supporting evidence including deductions for incentives).</li> <li>• Anticipated rental values and supporting evidence.</li> <li>• Yields for the commercial elements of the scheme and supporting evidence.</li> <li>• Details of likely incentives, rent-free periods, voids.</li> <li>• Anticipated value of affordable units (with supporting evidence/explanation of how these have been valued and assumptions).</li> <li>• Anticipated grant funding for additional affordable housing.</li> <li>• Deductions from commercial GDV to reach NDV (Stamp Duty Land Tax [SDLT], agents, legal + VAT).</li> </ul> <p><b>Development programme</b></p> <ul style="list-style-type: none"> <li>• Pre-construction.</li> <li>• Construction period.</li> <li>• Marketing period.</li> <li>• Viability cashflow.</li> <li>• Income/value/capital receipt.</li> <li>• Costs.</li> <li>• Phasing (where appropriate).</li> </ul>	<p><b>Costs</b></p> <ul style="list-style-type: none"> <li>• Expected build cost, including a full QS report showing how costs have been estimated.</li> <li>• Demolition costs.</li> <li>• Reasonable and appropriate historic costs.</li> <li>• Site preparation costs.</li> <li>• Vacant possession costs.</li> <li>• Planning costs.</li> <li>• Any anticipated abnormal costs (including contamination).</li> <li>• Rights of light payments/party walls/oversailing rights.</li> <li>• Details of expected finance rates.</li> <li>• Professional fees, including: <ul style="list-style-type: none"> <li>- Architect.</li> <li>- Planning consultant.</li> <li>- Quantity surveyor.</li> <li>- Structural engineer.</li> <li>- Project manager.</li> <li>- Letting agent fee.</li> <li>- Letting legal fee.</li> </ul> </li> <li>• Site Value.</li> <li>• Community Infrastructure Levy (CIL).</li> <li>• Planning obligations.</li> <li>• Other costs.</li> </ul> <p><b>Additional details for future phases</b></p> <ul style="list-style-type: none"> <li>• Expected sales growth.</li> <li>• Expected rental growth.</li> <li>• Expected cost inflation.</li> <li>• Credit rate.</li> </ul> <p><b>Benchmark viability proxies</b></p> <ul style="list-style-type: none"> <li>• Profit on cost.</li> <li>• Profit on value.</li> <li>• Development yield.</li> <li>• Internal rate of return (IRR).</li> </ul>
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**Notes to Fig 3:**

- The inputs used in the residual appraisal should be reasonable and appropriate to the scheme.
- The outputs of the residual appraisal should include a cash flow and a sensitivity analysis.
- The residual appraisal should be accompanied by a report setting out the adopted assumptions.
- Further guidance regarding the content of the report is set out in the RICS Guidance Note.

## 4.5 Financial Contributions

The circumstances where financial contributions will be accepted and how they are calculated are set out below.

### Financial contributions for smaller sites

Policy DM3: *Affordable Housing Provision: Smaller Sites* makes provision for a financial contribution towards affordable housing on smaller sites of 10 to 14 dwellings<sup>3</sup> where it is not practical to deliver affordable units on site. The financial contribution is calculated as if the unit is to be provided on site. The amount will equate to the difference between the market value of the unit and the amount a Registered Provider would pay for that unit based on the 'Summary of Requirements' for that site (see Appendices 3a, b and c). This amount is then multiplied by the number of units sought (whole or fraction) based on the policy target percentage. An example calculation is provided at Fig. 4 below.

**Fig. 4: Example calculation of financial contribution**

<b>Affordable Housing: Target Level</b>	14 unit scheme: Bristol Inner West (policy DM3 applies) 14 x 20% = 2.8 units
<b>Affordable Housing: Summary of Requirements</b>	Social Rent – Family units (3 bed 5 person House)
<b>Calculation</b>	= Market Value (minus) RP Payment (multiplied by) no. of units = £240,000 - £124,000 x 2.8 = <b>£324,800</b>
Market Value:	As identified in the viability appraisal or as agreed with the council.
RP Payment:	To be determined on a site by site basis. The council will expect payments to be based on 40% of market value in Inner East and Inner West Bristol and 50% of market value in all other areas of the city. Where a RP offer for affordable dwellings on the relevant site has been received the offer price will be the RP payment.

### Other off-site contributions (commuted sums)

Policy BCS17: *Affordable Housing Provision* expects affordable housing to be provided on site for developments of 15 dwellings or more. However, off-site contributions in a particular locality may be appropriate in exceptional circumstances, for example:

- Where a site is unable to offer housing that meets the requirements of a Neighbourhood Plan or Supplementary Planning Document.
- Where the council has an overriding need to safeguard or provide affordable housing elsewhere in the city to meet other strategic housing objectives or Neighbourhood Plans.

<sup>3</sup> Subject to National Planning Practice Guidance.

**The commuted sum is calculated in the same way as the financial contribution for smaller sites as set out in Fig.4 above.**

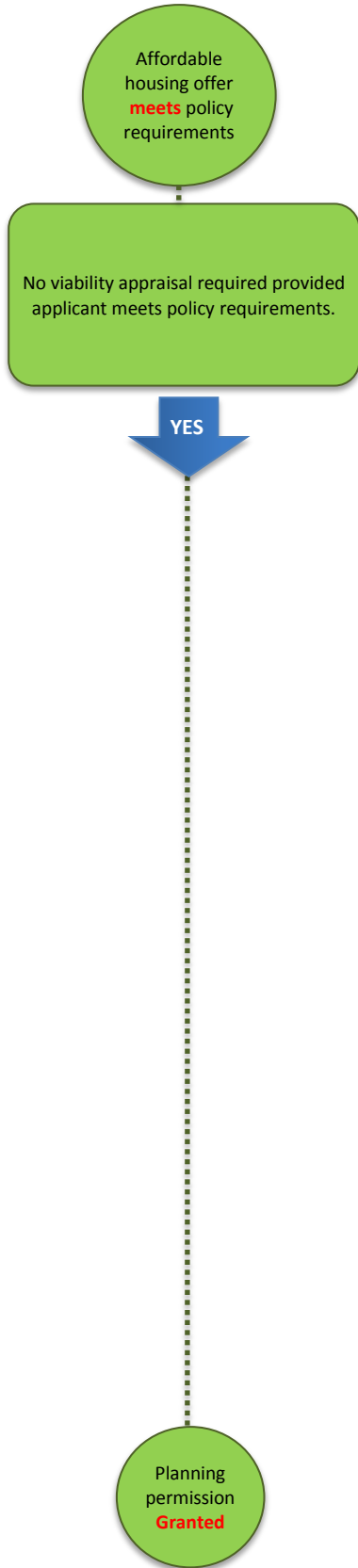
## **4.6 Enabling Fees**

An Enabling Fee (subject to review on 1<sup>st</sup> October each year) will be payable when each affordable home is substantially completed. These fees are designed to maximise affordable housing delivery in the city by assisting registered providers with support on planning, property and highway issues.

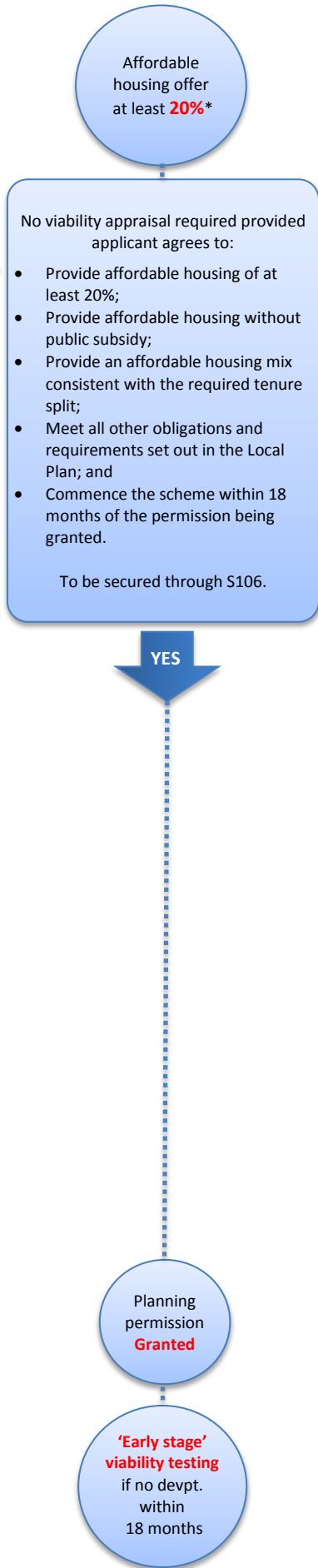
**A fee of £550 per affordable home index linked from 1 October 2017 will apply.**

The fee is paid to the Council on substantial completion of each of the affordable homes and applies to Social Rent, Affordable Rent, Intermediate Rent and other Intermediate affordable housing tenures procured through s106 negotiations and delivered without public subsidy or through re-provision/remodelling, extra care housing and 100% affordable housing schemes.

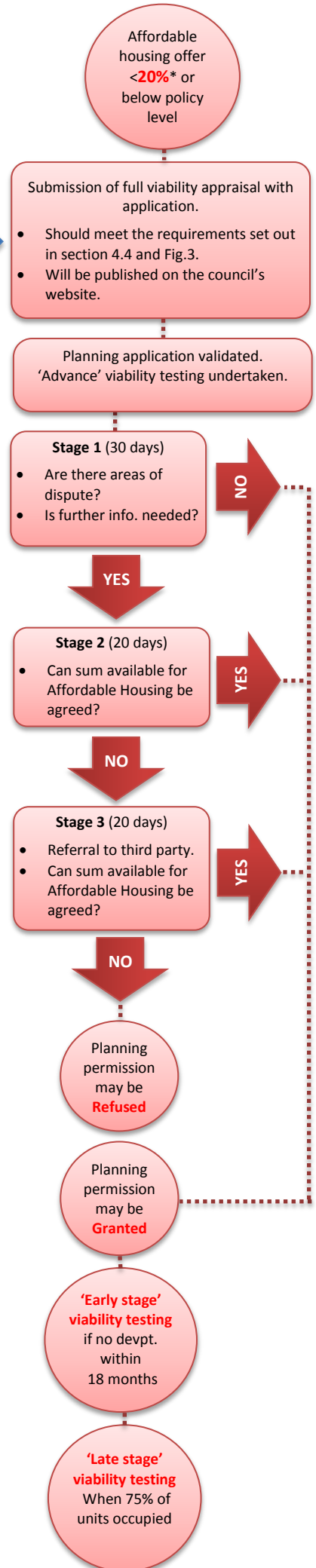
**Route 1: Fully policy compliant scheme**



**Route 2: 'Threshold' compliant scheme**



**Route 3: Non-compliant scheme**



\*under policy BCS17 and within the city's Inner West and Inner East zones (see Fig. 1)

**Fig. 5: Application process routes**

## Appendix 1: National Planning Policy Framework Definition(s) of 'Affordable Housing'

(see NPPF 'Annex 2: Glossary')

**'Affordable housing:** *Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.*

*Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.*

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

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

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

The Homes and Communities Agency was replaced by Homes England in January 2018.

## Appendix 2: West of England Strategic Housing Market Assessment 2009 Summary Tables

The full calculation for the following extract tables can be found in Chapter 4 of the West of England Strategic Housing Market Assessment 2009, and the Executive Summary.

There is an annual average shortfall of 1526 affordable homes to meet identified net affordable housing need in Bristol.

### Annual total housing requirements of households in need

Average 2009 – 2021	Bristol	WoE
1) Total annual net need Social Rented (Table 4.9)	1176	4014
2) Total annual net need Intermediate (Table 4.10)	351	879
3) Total annual net need	1526	4893
<b>4) Split Social Rented/Intermediate</b>	<b>77/23</b>	<b>82/18</b>

Size mix of new housing has also been examined. For affordable housing tenures the SHMA looks at projected need. The tables below show a high need in Bristol for smaller property sizes and family suitable larger homes.

### Size and type mix need (%) for new Social Rented housing 2009-2021

Size/Type	Bristol	WoE
1 bed	48.0*	41.5
2 bed flat	0.0	0.0
2 bed house	25.2	28.8
3 bed house	12.6	19.2
4 + bed house	14.2	10.5

\* It should be noted that this need may also be addressed by provision of two bedroom flats or houses

### Size and type mix need (%) for Intermediate housing 2009-2021

Size/Type	Bristol	WoE
1 bed flat	48.6*	41.9
2 bed flat	13.4	16.5
2 bed house	19.1	19.6
3 bed house	16.9	20.3
4 bed+ house	2.0	1.7

\* It should be noted that this need may also be addressed by provision of two bedroom flats or houses

The West of England Strategic Housing Market Assessment is available on the West of England Partnership website at:

<http://www.westofengland.org/planning--housing/housing-market-partnership/strategic-housing-market-assessment>

## Appendix 3a: Route 1: Summary of Affordable Housing Requirements

### Sample site in Bristol

#### Tenure *(site specific)*

Bristol City Council's *Core Strategy* Policy BCS17 and *Site Allocations and Development Management Policies* Policy DM3 seek affordable homes without public subsidy.

The following tenure proportions will be sought on the affordable housing contribution:

- 77% Social Rent;
- 23% Shared Ownership (at 40% equity and no more than 1.5% rental on the retained equity).

#### Percentage of total units

40%/30%/20%/10% of the total residential component (C3) will be sought for affordable housing. The following forms of housing are not considered appropriate for affordable housing:

- Micro-flats;
- Live/work units;
- Student accommodation where the accommodation is provided in the form of non self-contained/cluster units;
- Other accommodation which is provided in the form of non self-contained/cluster units.

#### Unit size & type

Bristol City Council's *Core Strategy* Policy BCS18 expects residential development to meet appropriate space standards. The policy is interpreted with reference to the [Nationally Described Space Standard](#).

It is expected that the affordable housing contribution will address identified housing needs and reflect the proportions of property types and sizes in the overall scheme, and contribute to balanced and sustainable communities in Bristol.

#### Service charges

The service charge is the amount payable on an affordable home in addition to rent/mortgage which includes all estate management charges, ground rents, services, repairs, maintenance and improvements of a communal nature and the insurance of the building. The level of service charge can be a material planning consideration as this affects the relative affordability of the unit. The council will seek to ensure via the s106 agreement that the total occupation costs to affordable housing occupiers remain affordable in the long term. The council would not expect a service charge to exceed £250 per annum in respect of a house and £650 per annum in respect of a flat. Early consultation is recommended, as good design can overcome the need for high service charges.

#### Distribution of units

The council seeks fully integrated mixed tenure housing schemes and will support a reasonable level of clustering, particularly for any proposed flatted units, to enable small self-contained blocks. The location of the units is to be agreed with the Housing Delivery Team.

#### Enabling Fees

An Enabling Fee (subject to review on 1<sup>st</sup> October each year) will be payable when each affordable home is substantially completed. These fees are designed to maximise affordable housing delivery in the city by assisting registered providers with support on planning, property and highway issues.

**A fee of £550 per affordable home will apply from 1 October 2017 and is index linked.**

The fee is paid to the council on substantial completion of each of the affordable homes and applies to Social Rent, Affordable Rent, Intermediate Rent and other intermediate affordable housing tenures procured through s106 negotiations and delivered without public subsidy or through re-provision/remodelling, extra care housing and 100% affordable housing schemes.

**Approved housing provider**

Our preferred approved Registered Provider for this scheme will be a member of Homes West who have agreed to comply with the Homes West Joint Working Agreement 2015.



## Appendix 3b: Route 2: Summary of Affordable Housing Requirements

### Sample site in Bristol

#### Tenure (*site specific*)

Bristol City Council's *Core Strategy* Policy BCS17 and *Site Allocations and Development Management Policies* Policy DM3 seek affordable homes without public subsidy.

The following tenure proportions will be sought on the affordable housing contribution:

- 77% Social Rent or Affordable Rent (including service charge and below Local Housing Allowance limits for specific property types in Bristol area).
- 23% Shared Ownership (at 40% equity and no more than 1.5% rental on the retained equity).

or as an alternative where 20% affordable housing has been agreed:

- Affordable Rent (up to 100%): Homes to rent let by local authorities or private registered providers of social housing at an agreed percentage of open market rent (inclusive of service charges) which is below the prevailing Local Housing Allowance limits for different property types in the Bristol Area.

Or as an alternative where 25% affordable housing has been agreed:

- 50% Social Rented affordable housing and 50% Intermediate affordable housing as defined in the National Planning Policy Framework.

#### Percentage of total units

At least 20% of the total residential component (C3) will be sought for affordable housing. The following forms of housing are not considered appropriate for affordable housing:

- Micro-flats;
- Live/work units;
- Student accommodation where the accommodation is provided in the form of non self-contained/cluster units;
- Other accommodation which is provided in the form of non self-contained/cluster units.

#### Unit size & type

Bristol City Council's *Core Strategy* Policy BCS18 expects residential development to meet appropriate space standards. The policy is interpreted with reference to the [Nationally Described Space Standard](#).

It is expected that the affordable housing contribution will address identified housing needs and reflect the proportions of property types and sizes in the overall scheme, and contribute to balanced and sustainable communities in Bristol.

#### Service charges

The service charge is the amount payable on an affordable home in addition to rent/mortgage which includes all estate management charges, ground rents, services, repairs, maintenance and improvements of a communal nature and the insurance of the building. The level of service charge can be a material planning consideration as this affects the relative affordability of the unit. The council will seek to ensure via the s106 agreement that the total occupation costs to affordable

housing occupiers remain affordable in the long term. The council would not expect a service charge to exceed £250 per annum in respect of a house and £650 per annum in respect of a flat. Early consultation is recommended, as good design can overcome the need for high service charges.

**Distribution of units**

The council seeks fully integrated mixed tenure housing schemes and will support a reasonable level of clustering, particularly for any proposed flatted units, to enable small self-contained blocks. The location of the units is to be agreed with the Housing Delivery Team.

**Enabling Fees**

An Enabling Fee (subject to review on 1<sup>st</sup> October each year) will be payable when each affordable home is substantially completed. These fees are designed to maximise affordable housing delivery in the city by assisting registered providers with support on planning, property and highway issues.

**A fee of £550 per affordable home will apply from 1 October 2017 and is index linked.**

The fee is paid to the council on substantial completion of each of the affordable homes and applies to Social Rent, Affordable Rent, Intermediate Rent and other intermediate affordable housing tenures procured through s106 negotiations and delivered without public subsidy or through re-provision/remodelling, extra care housing and 100% affordable housing schemes.

**Approved housing provider**

Our preferred approved Registered Provider for this scheme will be a member of Homes West who have agreed to comply with the Homes West Joint Working Agreement 2015.

## Appendix 3c: Route 3: Summary of Affordable Housing Requirements

### Sample site in Bristol

#### Tenure *(site specific)*

Bristol City Council's *Core Strategy Policy BCS17* and *Site Allocations and Development Management Policies Policy DM3* seek affordable homes without public subsidy.

The following tenure proportions will be sought on the affordable housing contribution:

- 77% Social Rent;
- 23% Shared Ownership (at 40% equity and no more than 1.5% rental on the retained equity).

#### Percentage of total units

40%/30%/20%/10% of the total residential component (C3) will be sought for affordable housing. The following forms of housing are not considered appropriate for affordable housing:

- Micro-flats;
- Live/work units;
- Student accommodation where the accommodation is provided in the form of non self-contained/cluster units;
- Other accommodation which is provided in the form of non self-contained/cluster units.

#### Unit size & type

Bristol City Council's *Core Strategy Policy BCS18* expects residential development to meet appropriate space standards. The policy is interpreted with reference to the [Nationally Described Space Standard](#).

It is expected that the affordable housing contribution will address identified housing needs and reflect the proportions of property types and sizes in the overall scheme, and contribute to balanced and sustainable communities in Bristol.

#### Service charges

The service charge is the amount payable on an affordable home in addition to rent/mortgage which includes all estate management charges, ground rents, services, repairs, maintenance and improvements of a communal nature and the insurance of the building. The level of service charge can be a material planning consideration as this affects the relative affordability of the unit. The council will seek to ensure via the s106 agreement that the total occupation costs to affordable housing occupiers remain affordable in the long term. The council would not expect a service charge to exceed £250 per annum in respect of a house and £650 per annum in respect of a flat. Early consultation is recommended, as good design can overcome the need for high service charges.

#### Distribution of units

The council seeks fully integrated mixed tenure housing schemes and will support a reasonable level of clustering, particularly for any proposed flatted units, to enable small self-contained blocks. The location of the units is to be agreed with the Housing Delivery Team.

#### Enabling Fees

An Enabling Fee (subject to review on 1<sup>st</sup> October each year) will be payable when each affordable home is substantially completed. These fees are designed to maximise affordable housing delivery in

the city by assisting registered providers with support on planning, property and highway issues.

**A fee of £550 per affordable home will apply from 1 October 2017 and is index linked.**

The fee is paid to the council on completion of each of the affordable homes and applies to Social Rent, Affordable Rent, Intermediate Rent and other intermediate affordable housing tenures procured through s106 negotiations and delivered without public subsidy or through reprovision/remodelling, extra care housing and 100% affordable housing schemes.

**Approved housing provider**

Our preferred approved Registered Provider for this scheme will be a member of Homes West who have agreed to comply with the Homes West Joint Working Agreement 2015.

## Appendix 4 Model Section 106 Agreement

Dated 201 [ ]

**THE CITY COUNCIL OF BRISTOL (1)**

and

[ Owner ] (2)

and

[ Developer ] (3)

and

[ Mortgagee ] (4)

---

### **A G R E E M E N T**

under Section 106 of the Town and Country Planning Act 1990  
Sections 111 and 120 of the Local Government Act 1972  
and other statutory provisions relating to land at

[ ]

---

Planning ref: [ ]

Shahzia Daya  
Service Director - Legal  
& Democratic Services City Hall  
College Green  
Bristol  
BS1 5TR  
Ref: IA2.[ ]

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2018

**BETWEEN :**

1. **THE CITY COUNCIL OF BRISTOL** of City Hall College Green Bristol BS1 5TR  
 (“**Council**”);
2. [ \_\_\_\_\_ ] (“**Developer**”);
3. [ \_\_\_\_\_ ] (“**Owner**”); and
4. [ \_\_\_\_\_ ] (“**Mortgagee**”)

### **BACKGROUND**

- 1) The Council is the local planning authority and the local highway authority for the area in which the Land (as hereinafter defined) is situated;
- 2) The Owner is registered at The Land Registry as proprietor with freehold title [XXX] in \_\_\_\_\_ respect of the Land (as defined below) as shown for identification purposes only edged red on the Plan free from encumbrances [subject to the charge made between the Owner and the Mortgagee (“**Charge**”)];
- 3) [The Council is registered at The Land Registry as proprietor (“**Second Owner**”) with freehold title [XXX] in respect of the Land (as defined below) as shown for identification purposes only edged red on the Plan free from encumbrances];
- 4) [The Developer has an interest in the Land by virtue of an agreement dated [XXX] made between (i) the Owner and (ii) the Developer (“**Purchase [Option][Agreement for Lease] Agreement**”) for the transfer of the freehold [leasehold] interest in the Land];
- 5) Application has been made to the Council pursuant to the Act for planning permission for the Development
- 6) The Council is satisfied that permission for the Development may be granted subject to the provisions hereof that are necessary to make the Development acceptable in planning terms and which it is agreed by the parties hereto are directly related to the Development and are fairly and reasonably related in scale and kind to the Development

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

In this Agreement unless the context indicates otherwise

#### 1.1 The words and expressions below shall mean as follows:

**"1990 Act"** the Town and Country Planning Act 1990 (as amended) and that and any other reference to the Act shall include any amending or replacing legislation for the time being in force

**"Carbon Offset Contribution"** the sum of [ ] hundred and [ ] thousand and [ ] hundred and [ ] pounds (£[XXX]) Index Linked to be spent by the Council on the reduction of carbon dioxide emissions from the existing building stock (other than the buildings comprising the Development) in the Council's administrative area such sum being equivalent to the shortfall required to meet the Development's target reduction of carbon dioxide emissions

**"Commencement"** the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and **"Commencement of Development"** or **"Commence Development"** shall be construed accordingly

<b>“Committed Expenditure”</b>	for the Council has identified a financial contribution for spending in its annual financial forward plan or otherwise allocated the contribution for spending in accordance with its legal duties pursuant to Section 151 of the Local Government Act 1972
<b>"Contributions"</b>	shall mean together the [ ] Contribution, [ ] Contribution, [ ] Contribution, [ ] Contribution
<b>“CPI Index”</b>	the Consumer Price Index or any such alternative index or comparable measure of price inflation as may be agreed in writing with the Council
<b>"Development"</b>	the development authorised or to be authorised by the Planning Permission
<b>"Director"</b>	the Council's Strategic Director of Growth and Regeneration for the time being or his duly appointed agent
<b>“Expert”</b>	The expert appointed pursuant to clause 18.1 or 18.2
<b>“Index Linked”</b>	shall be construed in accordance with Schedule 6
<b>“Fire Hydrant Contribution”</b>	the contribution in the total sum of [ ] pounds (£XX) (index Linked) payable to the Council by the Owner/Developer pursuant to Schedule 3
<b>"Land"</b>	the land situated at XXXXX Bristol in respect of which the Owner/Developer has made the Planning Application as shown edged red for the purposes of identification on the Plan and for the avoidance of doubt except where the context otherwise requires shall include each and every part of the land
<b>“Occupation”</b>	the first residential occupation of an individual residential unit [and/or commercial building] but not including occupation by personnel engaged in



construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “**Occupy**” and “**Occupied**” and “**Occupier**” shall be construed accordingly

<b>“Open Basis”</b>	<b>Book</b> means an open and transparent sharing by the Owner with the Council of all of the financial information relating to all Costs and Revenues of the Development as set out in a written schedule and supported by copies of all relevant invoices and receipts without any pre-selection or editing of the Costs actually incurred and Revenues actually received or projected
<b>“Perpetuity”</b>	A minimum term of 125 (one hundred and twenty five) years from the date of first Occupation of the first Affordable Housing Unit
<b>"Plan"</b>	the plan annexed to this Agreement at Annexure 1 and marked with drawing number [XXXX]
<b>"Planning Application"</b>	the application made by the Owner/Developer to the Council (reference number XXXXX) for planning permission to develop the Land for [insert description]
<b>"Planning Permission"</b>	any permission given in respect of the Planning Application or such other permission as may be granted by the Council in respect of the Land pursuant to an application for planning permission to amend such permission made pursuant to section 73 of the Act provided that such permission does not materially alter the obligations contained in this Agreement save that the Council reserves the right to require a supplemental deed pursuant to Section 106/Section 106A (as appropriate) of the Act at its sole election

<b>“Residential Properties”</b>	The [XX number] residential properties forming part of the Development which includes the Open Market Units and the Affordable Housing Units and <b>“Residential Property”</b> will be interpreted accordingly
<b>“Residential Travel Plan”</b>	the residential travel plan to be prepared by and provided to the Council for its approval by the Owner/Developer in accordance with Schedule [XX]
<b>“Residential Travel Plan Contribution”</b>	the sum of <b>£XXX</b> (Index Linked) payable by the Owner/Developer to the Council in accordance with Schedule 3
<b>“Tree Replacement Contribution”</b>	the sum of [ ] pounds ( £XXXX) (Index Linked) payable by the Owner/ Developer to the Council in accordance with Schedule 3
<b>“Transport Infrastructure Contribution”</b>	the sum of [ ] thousand pounds (Index Linked) to be spent by the Council on improvements to transport infrastructure in the vicinity of the Development and payable by the Owner/ Developer to the Council in accordance with Schedule 3
<b>“TRO Contribution”</b>	the sum of [ ] thousand pounds ( £XX )(Index Linked) payable to the Council by the Owner/Developer pursuant to Schedule 3
<b>“Working Day”</b>	A day other than a Saturday or Sunday or public holiday in England

- 1.2 any reference to the parties or any other legal or natural person shall include his her its or their heirs assigns and successors in title and in the case of any local authority shall also include any successor in function;
- 1.3 any covenants obligations or other commitments given by more than one party shall be joint and several;

- 1.4 where the Owner/Developer is not a body corporate then neuter words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers
- 1.5 the headings throughout this agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement

## **2. STATUTORY POWERS**

### **2.1 THIS Agreement**

- 2.1.1 will be registered as a Local Land Charge;
- 2.1.2 is entered into pursuant to Section 106 of the 1990 Act Sections 111 and 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other statutory and enabling powers;
- 2.1.3 to the extent that the obligations in this Agreement fall within the terms of Section 106 of the 1990 Act the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act;
- 2.1.4 to the extent that the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the power contained in Sections 111 and 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other statutory and enabling powers

## **3. ENFORCEMENT**

- 3.1 The covenants herein on behalf of the Owner/Developer are planning obligations (as defined in the 1990 Act) and they shall in accordance with Section 106 (3) of the 1990 Act be enforceable by the Council against all persons obtaining title to the Land (or any part thereof) through any of those parties
- 3.2 No person shall be bound by any covenant or obligation herein in respect of any period during which that person no longer has an interest in the Land or part thereof except in respect of any breach arising and subsisting prior to parting with such interest
- 3.3 Unless stated specifically herein to the contrary nothing herein shall bind

- 3.3.1 any person who is a residential owner and/or Occupier of any single dwelling forming part of the Land; or
- 3.3.2 any statutory undertaker whose interest in the Land is held as part of their undertaking

#### **4. THIRD PARTIES**

In accordance with Sections 1(2) and 2(3)(a) of the Contracts (Rights of Third Parties) Act 1999 no term of this Agreement shall be enforceable by a third party and any term may be rescinded or varied without the consent of any third party

#### **5. SUBSTANTIVE COVENANTS**

- 5.1 THE Owner/Developer for and on behalf of itself and its heirs assigns and successors in title to its interests in the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with the Council that it will comply with the covenants contained in the Schedules annexed to this Agreement;
- 5.2 The Council agrees and acknowledges that the covenant on the part of the Owner/Developer in clause 5.1 shall apply only in the event that the Owner/Developer or anyone on its behalf or with its consent Commences the Development save as provided under clause 12 below and any pre-commencement obligations and conditions required by this Agreement which shall have full force and effect from the date of this Agreement; and
- 5.3 [The Developer covenants with the Council not to Commence the Development until the Developer has acquired the freehold [leasehold] interest in the Land pursuant to the Purchase Agreement [Option Agreement] [Agreement for Lease]
- 5.4 SUBJECT TO the Developer acquiring such freehold [leasehold] interest in the Land the Developer hereby covenants with the Council to observe perform and be bound by all of the terms of this Agreement at the date of acquisition as if such freehold [leasehold] interest in the Land had been bound by this Agreement and the Developer had been party to this Agreement as freehold landowner ab initio

5.5 The Developer further agrees that it will enter into a further section 106 agreement substantially on the same terms as this Agreement and/or confirmatory deed if required by the Council at the Council's sole discretion and election subject to completion of the [Purchase Agreement] [Option Agreement] [Agreement for Lease] between the Council and the Developer

## **6. RIGHT OF ENTRY**

IF pursuant to a breach the Council requires to carry out all or any part of the works required under the terms of this Agreement the Owner/Developer (if in possession or if a receiver has been appointed) irrevocably authorises the Council and anyone appointed on its behalf (on giving reasonable notice except in the case of an emergency) to enter any part of the Land reasonably required for that purpose

## **7. CHANGE OF OWNERSHIP**

7.1 UNTIL such time as the provisions of this Agreement have been fully complied with the Owner/Developer will in relation to any freehold or leasehold transfer of all or any part of their respective interests in the Land save for the transfer of individual residential units which form part of the Development deliver to the Council notice in writing of the transfer including the following information namely

7.1.1 the name and address of the transferee; and

7.1.2 a description of the land subject of the transfer including a plan; and

7.1.3 the nature of the interest transferred

7.2 Where notice pursuant to clause 7.1 has been given and subsequently it is identified that the details provided require change (whether due to an error or to a change in the terms of the transfer or otherwise) the Owner/Developer shall serve a further notice in accordance with clause 7.1 save that in the case of a non-material change the Council may in writing and in its absolute discretion waive the need for such further notice

**8. WARRANTY**

THE Owner/Developer warrants that it is entitled to perform all of the obligations provided for in this Agreement in under or upon the Land and to carry out the Development

**9. NOTICES**

9.1 ANY notices to be served on or document to be submitted to any party to this Agreement:

9.1.1 In the case of the Owner/Developer shall be delivered or posted to that party at the following address: [ ] (or as may otherwise be advised by the Owner/Developer in writing to the Council; )

9.1.2 in the case of the Council addressed to the Planning Obligations Manager Strategic Planning Team and quoting the planning reference number the Council advises the other parties hereto of an alternative address for service; and

9.1.3 in the case of any other person the address for service notified by or on behalf of that person

**10. CONFIRMATION OF INTERESTS**

THE Owner/[Developer] confirms that to the best of its information apart from the parties to this Agreement there are no other persons with any interest (legal or equitable) in the Land or any part thereof

**11. LOCAL AUTHORITY'S STATUTORY POSITION**

NOTHING herein contained or implied shall limit prejudice or affect the rights duties and obligations of the Council under all statutes byelaws statutory instruments orders and regulations in the exercise of its function as a local authority

**12. OPERATIVE DATE**

SAVE in respect of obligations requiring compliance prior to Commencement of Development this Agreement shall not become operative until the Commencement of Development

**13. COMMENCEMENT OF DEVELOPMENT**

THE Owner/Developer shall give to the Council seven (7) days written notice of its intention to Commence Development and shall confirm in writing within seven (7) days following Commencement that Development has Commenced PROVIDED that failure to provide either of the said notifications shall not render this Agreement inoperative

**14. COSTS**

THE Owner/Developer shall pay to the Council on the date hereof its reasonable legal costs incurred in connection with this Agreement

**15. INDEMNITY**

The Owner/Developer will without prejudice to the Council's statutory and common law powers and rights hold the Council harmless and keep the Council indemnified from and against any claim in connection with or incidental to the carrying out of any works required by this Agreement or in respect of any other requirement or covenant with the Council contained in this Agreement

**16. INTEREST**

If any sum payable under this Agreement is not paid within fourteen (14) days of the date when it is due then save in the case of a manifest error by the Council in calculating the due sum the Owner/Developer shall in addition to any payment in respect of the sum due pay interest on the sum from the due date until actual payment at the rate of 3% above the base rate from time to time of National Westminster Bank Plc

**17. OBLIGATIONS OF THE COUNCIL**

17.1 THE Council agrees to issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter

17.2 THAT if any of the Contributions (or any part thereof) is not applied or committed by the Council for the purposes as specified in Schedule 3 (as the case may be) within five (5) years of the date of receipt of each payment Save in respect of the Affordable Housing Deferred Contribution (if any) in respect

of which the relevant spend period shall be ten (10) years to repay the relevant Contribution (or such part as has not been applied or committed) to the person who paid such Contribution(s) together with interest thereon at the annual average local authority seven day rate as published in The Financial Times calculated from the date of receipt of each payment (as applicable) until repayment

## **18. DISPUTE PROVISIONS**

- 18.1 In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert ("**Expert**") whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 18.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 18.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an Expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 18.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) working days after the conclusion of any hearing that takes place or twenty-eight (28) working days after he has received each party's file or written representation



save in respect of a Viability Review in respect of which the timetable under Schedule 2 shall apply.

18.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within ten (10) working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) working days save in respect of a Viability Review in respect of which the timetable under Schedule 2 shall apply.

18.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages or any other means of enforcing this Deed and consequential and interim orders and relief.

## **19. JURISDICTION**

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to exclusive jurisdiction of the courts of England and Wales.

## **[20. CONSENT OF THE MORTGAGEE**

Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner/Developer with its consent to the intent that the planning obligations shall be binding on the Land and that the security of the Charge over the Land shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall only be liable for any breach that itself caused whilst mortgagee in possession but shall not be liable for any pre-existing breach]

**EXECUTED** as a deed by the parties and delivered the day and year first before written

**ANNEXURE 1**

**(The “Land”)**

ALL THAT piece or parcel of land known as [            ] ALL OF WHICH said land is shown for identification purposes only edged with a red line on the Plan

**SCHEDULE 1**  
**AFFORDABLE HOUSING**

**(Part 1)**

**Definitions**

1. In this Schedule the words below shall mean as follows:-
  - 1.1 **“Access”** the provision of roads footpaths and cycleways together with all rights and easements over the said roads footpaths and cycleways as are necessary to provide access to the Affordable Housing Units or any one of them
  - 1.2 **“Affordable Housing”** affordable housing within the meaning of the National Planning Policy Framework 2012 (NPPF) Glossary (Annex 2) or any amendment thereto or any Planning Policy Statement Guidance Notes or Circulars which may supersede it
  - 1.3 **“Affordable Housing Units”** those residential units comprising a mix of [XX] Social Rented Units [XX] Affordable Rented Units and [XX] Shared Ownership Units (as each are defined below) comprised in the Development and referred to in Parts 7(a) and 7(b) and 7(c) of this Schedule 1 together with Access and such entrance ways corridors parking areas and other ancillary areas as are necessary for the enjoyment of such units and ‘Affordable Housing Unit’ shall mean any one of such units
  - 1.4 **“Affordable Mix”** the number size tenure and mix of Affordable Housing Units set out at Parts 7a 7B and 7c of this Schedule 1 or such other size tenure and mix as may be agreed in writing with the Council
  - 1.5 **“Affordable Rent”** a rent which (inclusive of any service charges ground rent and estate charges (if any)) for the relevant property type shall not at the time of each and every letting exceed the published Local Housing Allowance for the relevant property type and in the rental market area allowing for any modifications to the level of such allowance as published from time to time by the Government and current at the time of signing of a tenancy agreement for the specific property type provided that the rent may be increased by no more than the CPI Index plus 1% annually unless agreed otherwise with the Council (such approval not to be unreasonably withheld or delayed)

1.6 **“Affordable Rented Units”** affordable rented units within the meaning of the definition at Annex 2 (Glossary) of the National Planning Policy Framework 2012 or any successor document thereto for let at the Affordable Rent capped at the Local Housing Allowance

1.7 **“Category 2: Accessible and Adaptable Dwellings”** dwellings which are built to standards which require that

1. reasonable provision must be made for people to:
  - (a) gain access to; and
  - (b) use the dwellings and its facilities; and
2. The provisions must be sufficient to:
  - (a) meet the needs of occupiers with differing needs, including some older or disabled people; and
  - (b) to allow adaptation of the dwelling to meet the changing needs of occupants over time

As specified in the ‘Optional Requirement M4(2) Category 2: Accessible and adaptable dwellings’ section of the Building Regulations 2010 Approved Document M 2016 edition or such similar standards and regulations that may replace these

1.8 **“Category 3: Wheelchair User Dwellings”** dwellings which are built to standards which require that:

1. reasonable provision must be made for people to:
  - (a) gain access to; and
  - (b) use the dwellings and its facilities; and
2. The provisions must be sufficient to:
  - (a) allow simple adaptation of the dwelling to meet the needs of occupants who are wheelchair users; or
  - (b) meet the needs of occupants who use wheelchairs

As specified in the ‘Optional Requirement M4 (3) Category 3: Wheelchair User Dwellings’ section of the Building Regulations 2010 Approved Document M2016 edition or such similar standards and regulations that may replace these AND

AND

dwellings that comply with the requirements of the Council’s Local Plan Policy DM4 (Core Strategy BCS18) that two per cent (2%) of new housing

within a development scheme of fifty (50) units or more should be designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users

- 1.9 **“Council’s Approved Allocation Policy”** the Council’s approved allocation policy from time to time in force for the allocation of residential accommodation to persons in need of such accommodation
- 1.10 **“Development Standard”** a standard to meet or exceed the standards specified in the former Housing Corporation’s publication “Design and Quality Standards” (published April 2007) and adopted by the Homes and Communities Agency (“HCA”) and meet or exceed the Nationally Described Space Standard as published by the Department for Communities and Local Government (“DCLG”) (March 2015) or any such updated or replacement standards published by the HAC and/or the DCLG from time to time
- 1.11 **“Director”** the Strategic Director of Growth and Regeneration for the time being of the Council or such other officer of the Council as shall be substituted therefore and notified in writing to the Owners
- 1.12 **“Enabling Fee”** the fee of £550.00 (five hundred and fifty pounds) (index Linked) charged by the Council for each Affordable Housing Unit and payable on Practical Completion of each Affordable Housing Unit
- 1.13 **“Homes and Communities Agency”** the national housing and regeneration delivery agency for England established pursuant to the Housing and Regeneration Act 2008 (now known as **“Homes England”** (trading name)) which shall include any successor body in substitution for the Homes and Communities Agency and the terms **“Homes England”** and **“HCA”** shall mean the same for the purposes of this Agreement
- 1.14 **“Homes West”** the group of RPs chosen by the West of England (**“WOE”**) Local Authorities to develop and manage Affordable Housing within the West of England sub-region who have entered into a WOE Joint Working Agreement dated 2015 and agreed to comply with the group’s publication “West of England Standards Agreement” of October 2011 or any publication or document which may supersede it and which is current at the date of this Agreement
- 1.15 **“Initial Affordable Housing Offer”** the offer made in writing by the Owner/Developer at the date of submission of the Planning Application to the

Council with details of the Affordable Mix that is to form part of the Development

- 1.16 **“Layout Plan”** the plan numbered [drawing XXXX] illustrating the location and the size of (i) the Affordable Housing Units secured by this Agreement and (ii) potential Additional On-Site (Viability Review) Affordable Housing Units that may be secured by a Viability Review or such other layout plan(s) as the Director shall approve such approval not to be unreasonably delayed or withheld
- 1.17 **“Local Housing Allowance”** the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Work and pensions or such similar framework that may replace it
- 1.18 **“Long Lease”** shall mean a lease for a term of at least 125 (one hundred and twenty five) years
- 1.19 **“Mortgagee’s Duty”** the tasks and duties set out in paragraph 1.1 of Part 3 of Schedule 1 to this Agreement
- 1.20 **“National Rent Regime”** the rent policy set out in the social rent guidance section within the ‘Rent Standard Guidance’ published by the Department for Community and Local Government in 2015 (as updated by the Welfare Reform and Work Act 2016) or successor guidance or direction from time to time
- 1.21 **“Open Market Units”** those residential units for sale or rent on the Private Housing Market other than Affordable Housing Units
- 1.22 **“Open Market Rent”** a rent (including Service Charge) valued using the definition of the International Valuations Standard Committee as adopted by the Royal Institution of Chartered Surveyors and approved by the Council for the purposes of this Agreement
- 1.23 **“Phase”** each phase of construction of the Development identified in a phasing plan approved by the Council pursuant to the Planning Permission]
- 1.24 **“Practical Completion”** the practical completion of the Affordable Housing Unit(s) as evidenced by the issue of a certificate by an architect, surveyor or other suitably qualified professional person confirming that the construction of the Affordable Housing Units or any one of them is completed internally and

externally and further evidenced by Building Regulation Approval and **“Practically Completed”** shall have the same meaning

- 1.25 **“Private Housing Market”** the open market for the sale or letting of residential accommodation provided by a person or body other than
- 1.25.1 a local housing authority; or
  - 1.25.2 an RP; or
  - 1.25.3 any other person or body offering residential accommodation to the public at less than the prevailing market rent/sale price
- 1.26 **“Retained Equity”** the equity in a Shared Ownership Unit that is retained by the RP, i.e. the share of the property that the RP holds after selling the balance to the occupant
- 1.27 **“RP”** a provider of Affordable Housing registered with the Homes England or Homes West as shall be approved by the Council such approval not to be unreasonably withheld or delayed or such other body as may be proposed by the Owner/Developer and approved by the Council (such approval not to be unreasonably withheld or delayed)
- 1.28 **“Service Charge”** a sum that covers the contributions required from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with the Affordable Housing Unit such as maintaining repairing and keeping secure the relevant Affordable Housing Unit and its common parts the cleaning and lighting of common parts and the maintenance of any communal gardens or landscaping areas that directly benefit the Affordable Housing Unit
- 1.29 **“Service Installations”** (without prejudice to the generality of this expression) shall include sewers drains culverts channels outlets mains wires cables ducts flues soakaways and other conducting media for the supply of Services
- 1.30 **“Services”** (without prejudice to the generality of this expression) shall include electricity telephone gas water foul drainage surface water drainage cable television and other cable services
- 1.31 **“Social Rented Units”** social rented units owned and managed by local authorities or an RP for which guideline target rents are determined through the National Rent Regime and shall bear the same meaning as described in the NPPF and **“Social Rented Unit”** shall mean any one of such Units

- 1.32 **“Shared Ownership Units”** those Affordable Housing Units described in the table at Part 7 (c) of this Schedule in respect of which the occupier purchases up to forty per cent (40%) of the equity sale and pays a rent of up to one and half per cent (1.5%) of the Retained Equity value and is permitted to Staircase and **“Shared Ownership”** shall mean any one of such units
- 1.33 **“Staircase”** the method by which the occupier of a Shared Ownership unit pays a premium in order to acquire an equity (or a further equity) in such unit and **“Staircasing”** shall be construed accordingly
- 1.34 **“Staircasing Receipts”** payments made to the RP (less reasonable costs) of a shared ownership lessee tenant or any other person for the acquisition of equity in a Shared Ownership Unit pursuant to a Staircase event
- 1.35 **“West of England Local Authorities”** Bristol City Council, Bath and North East Somerset Council, North Somerset Council and South Gloucestershire Council and references to **“WOE”** shall mean the same

## (Part 2)

### Owner/Developer Covenants

The Owner/Developer hereby covenants with the Council as follows:

1. Not to Commence the Development until the Owner/Developer has submitted to and obtained the written approval of the Director to:
  - 1.1 a programme and timetable for the provision of the Affordable Housing Units; and
  - 1.2 the location cost standard and level of servicing of the Affordable Housing Units; and
  - 1.3 a rent and affordability scheme for the Affordable Housing Units demonstrating how the proposed rental structure and review mechanisms will (as applicable) do as follows:
    - (a) meet the Affordable Rent (as defined herein) requirements;
    - (c) accord with the National Rent Regime and Service Charge and all other estate and rent charges in respect of the Social Rented Units; and



(d) accord with the limit of up to 1.5% rent on Retained Equity in respect of the Shared Ownership Units as applicable; and

- 1.4 the number and location of Category 2 (M4(2)) (Accessible and Adaptable Dwellings) and Category 3 (M4(3)) (Wheelchair User Dwellings) in accordance with Buildings Regulations 2015 (as amended in 2016), the Council's Policy DM4 Development and Management Policy 2014 that 2% of new homes comprising a development of more than 50 residential units shall be wheel chair accessible) and the Council's Policy DM2 Development and Management Policy 2014 (Older Persons' Housing) criteria

such approval not to be unreasonably withheld or delayed

**AND FOR THE AVOIDANCE OF DOUBT** the details and information required to be provided under paragraphs 1.1 to 1.4 inclusive above shall apply to each and every Additional On-site (Viability Review) Affordable Housing Units (if any) to be provided pursuant to Schedule 2 following a Viability Review in which event the relevant express provisions of Schedule 2 (Viability Review) shall apply in respect of timings for provision of such information to the Council

**PROVIDED THAT** in respect of Viability Reviews carried out following Commencement of Development which do not require any Additional On-Site (Viability Review) Affordable Housing Units to be provided as part of the Development the above paragraphs 1.1 to 1.4 inclusive above shall not apply

2. To provide the Affordable Housing Units in accordance with the details shown in Parts 7a 7b and 7b of this Schedule and in accordance with the Layout Plan
3. Upon Commencement of the Development to construct the Affordable Housing Units together with the Services Service Installations and Access in accordance with:
  - 3.1 the Development Standard; and
  - 3.2 the approval of the Director issued pursuant to paragraph 1 above
4. To enter into a contract with an RP for either:
  - 4.1 the grant to such RP of a Long Lease of the Affordable Housing Units; or

4.2 the transfer to such RP of the freehold of the Affordable Housing Units (as appropriate) together with (in either case) all Services Service Installations and Access and provide evidence in writing to the Council of such contract

AND shall use reasonable endeavours to enter into such contract prior to Commencement of the Development or any part thereof

5. Not to Occupy nor permit to be Occupied more than 40% (forty per cent) of the Open Market Units until the Owner/Developer has either granted a Long Lease of the Affordable Housing Units or has transferred the freehold of the Affordable Housing Units (as appropriate) to an RP in accordance with the contract referred to in paragraph 3 above and has provided evidence in writing to the Council of such Long Lease or transfer
6. Not to Occupy nor permit to be Occupied more than 60% (sixty per cent) of the Open Market Units until the Owner/Developer has substantially completed 75% (seventy-five per cent) of the Affordable Housing Units
7. Not to Occupy nor permit to be Occupied more than 80% (eighty per cent) of the Open Market Units until the Owner/Developer has substantially completed 100% of the Affordable Housing Units
8. To notify the Director of the Practical Completion of all of the Affordable Housing Units
9. Subject to the right of any occupier of a Shared Ownership Unit to Staircase to 100% and any statutory right of any occupier of an Affordable Housing Unit to buy or acquire their Affordable Housing Unit to ensure and procure that the ([XX number]) Affordable Housing Units as a minimum shall be provided as such in Perpetuity
10. To observe the terms and requirements of Part 4, 5, 6 and 7 of this Schedule
11. That (unless otherwise permitted in writing by the Director) the Owner/Developer will not vary the Affordable Mix of Affordable Housing Units

**(Part 3)****Agreements between the Council and the Owner/Developer**

IT IS HEREBY AGREED between the parties to this Agreement as follows:-

1. that the obligations contained in Part 4 of this Schedule shall not bind:
  - 1.1 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT the mortgagee or chargee or Receiver has first complied with the provisions of paragraph 1.1.1 (**“Mortgagee’s Duty”**):
    - 1.1.1 before seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of the relevant mortgage or charge, the mortgagee or chargee or Receiver shall give not less than one (1) calendar month's prior written notice to the Council of its intention to dispose and:
      - (i) in the event that the Council responds within one (1) calendar month (or such other timescales as are agreed by the Council and the mortgagee or chargee or Receiver (as the case may be)) from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the mortgagee or chargee or Receiver shall co-operate with such arrangements and use all reasonable endeavours to secure such a transfer;
      - (ii) if the Council does not serve its response to the notice served under paragraph 1.1.1(i) within the one (1) calendar month period or such other time period as agreed pursuant to paragraph 1.1.1(i) above then the mortgagee or chargee or Receiver shall be entitled to

dispose free of the restrictions set out in this First Schedule which shall from the time of completion of the disposal cease to apply

- (iii) if the Council or any person cannot within two (2) calendar months of the date of service of its response under paragraph 1.1.1(i) secure such a transfer then provided that the mortgagee or chargee or Receiver shall have complied with its obligations under paragraph 1.1.1(i) (and for the avoidance of doubt such compliance shall take account of any extension of time for compliance agreed pursuant to paragraphs 1.1.1(i) and (ii) above) the mortgagee or chargee or Receiver shall be entitled to dispose free of the restrictions set out in this First Schedule which shall from the time of completion of the disposal cease to apply

provided that at all times the mortgagee or chargee or Receiver shall not be required to dispose of the affordable housing unit(s) for a consideration less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; or

- 1.2 any tenant of an Affordable Housing Unit who (notwithstanding the provision of paragraph 1.4 of Part 4 and paragraph 2.4 of Part 5 of this Schedule 1) acquires and exercises a right to acquire such Affordable Housing Unit or any successor in title of such tenant or any mortgagee or chargee of such tenant or successor in title or any receiver appointed by such mortgagee or chargee and the said obligations shall thereafter cease to have effect in relation to the Affordable Housing Units or such of them as may be affected; or
- 1.3 a leaseholder of a Shared Ownership Affordable Housing Unit who has exercised a right to Staircase up to 100% ownership or any successor in title of such leaseholder or any mortgagee or chargee of such leaseholder or successor in title or any receiver appointed by such mortgagee or chargee and the said obligations shall thereafter cease

to have effect in relation to the Affordable Housing Units or such of them as may be affected

2. that upon the Owner/Developer entering into a Long Lease of or transferring the freehold of the Affordable Housing Units to an RP the RP (or their successors or assigns) shall be held by the Council solely responsible for complying with the terms and requirements of Parts 4 and 5 and 6 and 7 of this Schedule

## **Part 4**

### **Owner obligations in relation to the Social Rented Units**

- 1 The Owner hereby covenants with the Council that the Owner shall include provisions in the Transfer/[Long Lease] of the Social Rent Units to the RP as follows:
  - 1.1. procure that the Social Rented Units shall at all times be occupied and managed in accordance with the objects of an RP and will procure that the Social Rented Units shall not be used otherwise than for the purpose of providing dwellings for rent to those persons referred to in sub paragraphs 1.2 and 1.3 below
  - 1.2. procure in respect of those Social Rented Units for which the Council is from time to time granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the Council and the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the Council's Approved Allocation Policy
  - 1.3. procure in respect of those Social Rented Units for which the Council has not been granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the RP's approved allocation policy

- 1.4. procure that the Social Rented Units shall be excluded (so far as legally possible) from:-
  - 1.4.1 any voluntary purchase grant scheme
  - 1.4.2 any right to acquire or right to buy schemes introduced in favour of the occupiers of the Social Rented Units
- 1.5. procure that:
  - 1.5.1 no occupier of a Social Rented Unit shall be charged a Service Charge (which expression shall include an estate rent charge and a ground rent) in excess of £650.00 (six hundred and fifty pounds) per annum index linked for a flatted unit or £250 (two hundred and fifty pounds) per annum index linked for a house; and
    - 1.1.1. no element of such Service Charge shall be included in any rent for such unit
- 1.6 not to charge the tenant of a Social Rented Unit a rent in excess of the target rent determined in accordance with the National Rent Regime
- 1.7 procure that the Enabling Fee is paid to the Council on Practical Completion of each Social Rented Unit in accordance with the Council's Affordable Housing Practice Note 2018 or such other document that may supersede it and which is current at the date of this Agreement
- 1.8 For the avoidance of doubt the provisions in this part 4 of this Schedule 1 shall not be binding on:
  - 1.8.1 a sale to a tenant exercising their right to acquire or purchase under a statutory power;
  - 1.8.2 the purchaser or successor in title to any person specified in 1.8.1 above

**(Part 5)****Owner/Developer obligations in relation to the Affordable Rented Units**

- 2 The Owner/Developer hereby covenants with the Council that the Owner/Developer shall include provisions in the Transfer/[Long Lease] of the Affordable Rented Units to the RP as follows:
  - 2.1 That the Affordable Rent Units shall at all times be occupied and managed in accordance with the objectives of an RP and will procure that the Affordable Rent Units shall not be used otherwise than for the purpose of providing units for rent to those persons referred to in paragraphs 2.2 and 2.3 below
  - 2.2 In respect of those Affordable Rented Units for which the Council is from time to time granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the Council and the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the Council's Approved Allocation Policy and Homes England's eligibility criteria
  - 2.3 In respect of those Affordable Rented Units for which the Council has not been granted nomination rights by the RP that such units shall not be occupied otherwise than by a person or persons who are considered by the RP to be in need of such accommodation and to whom such units shall have been allocated in accordance with the RP's approved allocation policy
  - 2.4 That the Affordable Rented Units shall be excluded (so far as legally possible) from:
    - 1.4.1 any voluntary purchase grant scheme;
    - 1.4.2 any right to acquire or right to buy scheme introduced in favour of the occupiers of the Affordable Rented Units; and/or
    - 1.4.3 any other mechanism that could result in any of the Affordable Rented Units becoming available for sale in the Private Housing Market

- 2.5 That no occupier of an Affordable Rented Unit shall be charged a rent higher than the Affordable Rent (which for the avoidance of doubt shall include any Service Charge estate rent charges and ground rent (if any))
- 2.6 Procure that the Enabling Fee is paid to the Council on Practical Completion of each Affordable Rented Unit in accordance with the Council's Affordable Housing Practice Note 2018 or such other document that may supersede it and which is current at the date of this Agreement

### **(Part 6)**

#### **Owner/Developer obligations in relation to Shared Ownership Units**

1. The Owner/Developer covenants with the Council that the Owner/Developer shall enter into an Agreement with an RP on terms which will procure that:
  - 1.1 the Shared Ownership Units shall be made available for shared equity leasing by an RP under HCA's standard form of shared ownership lease from time to time in force to persons who are considered by the RP to be in need of such accommodation;
  - 1.2 the RP will notify the Council in writing each time a purchaser of a Shared Ownership Unit acquires a further equity in such Shared Ownership Unit;
  - 1.3 no occupier of a Shared Ownership Unit shall be charged a Service Charge (which expression shall include an estate rent charge(s) and a ground rent (if any)) totalling in excess of £650.00 (Six Hundred and Fifty Pounds) per annum per unit Index Linked for a flatted unit or £250 (two hundred and fifty pounds per annum index linked for a house and no element of such service charge shall be included in any rent for such unit;
  - 1.4 no occupier of a Shared Ownership Unit shall be charged a rent on the Retained Equity in excess of up to one and half per cent (1.5%) of the Retained Equity value and such occupier shall not be required to make an initial purchase of equity of more than forty per cent (40%) unless otherwise agreed with the Council



- 1.5 the RP shall use all Staircasing Receipts received from the purchaser of a Shared Ownership Unit (as a result of the occupiers exercising the right to Staircase) to enable the provision of Affordable Housing within either:
- 1.5.1 the same electoral ward in which ward the Shared Ownership Units are situated; or
- 1.5.2 the City of Bristol generally; or
- 1.5.3 as previously agreed in writing with the Council
2. Procure that the Enabling Fee is paid to the Council on Practical Completion of each Shared Ownership Unit in accordance with the Council's Affordable Housing Practice Note 2018 or such other document that may supersede it and which is current at the date of this Agreement.

### Part 7(a)

#### Details of Social Rented Units

The Social Rented Units shall comprise the following:

Property Type	Plot Number s/Locati on	Minimum Size m2	Number of Units
[ ]- bed [house/flat]	[ ]	[ ]	[ ]

**Part 7(b)****Details of Affordable Rented Units**

The Affordable Rented Units shall comprise the following:-

<b>Property Type</b>	<b>Plot Numbers/Location</b>	<b>Minimum Size m2</b>	<b>Number of Units (A)</b>
<b>Total</b>			

**Part 7(c)****Details of Shared Ownership Units**

The Shared Ownership Units shall comprise the following:

<b>Property Type</b>	<b>Plot Numbers/Location</b>	<b>Minimum Size m2</b>	<b>Number of Units (A)</b>
<b>Total</b>			

**ANNEXURE 2**  
**LAYOUT PLAN FOR THE AFFORDABLE HOUSING UNITS**

**SCHEDULE 2****Affordable Housing - Viability Review****Definitions:**

<b>“Affordable Housing Review Date”</b>	The date which is the anniversary of and falling 18 (eighteen) calendar months after the date of grant of the Planning Permission
<b>“Additional On-Site (Viability Review) Affordable Housing”</b>	All additional Affordable Housing (if any) identified by a Viability Review as required to be provided on the Land in addition to the Affordable Housing Units described under Parts 7a 7b and 7c of Schedule 1 to this Agreement as shown on the Layout Plan and <b>“Additional On-Site (Viability Review) Affordable Housing Units”</b> shall mean the same
<b>“Additional On-Site (Viability Review) Affordable Housing Scheme”</b>	<p>A scheme to be prepared by the Owner/Developer and submitted to the Council in accordance with paragraph 3.7.2 of Schedule 2 with details of the Additional On-Site (Viability Review) Affordable Housing Units to be provided on-site as part of the Development of the Land and which scheme:</p> <p>(a) confirms which Open Market Units are to be converted into [type/tenure] Affordable Housing Units;</p> <p>(b) improves the tenure mix of any Additional On-Site (Viability Review) Affordable Housing as far as possible until a tenure split of [ X % ] per cent [Social</p>

	<p>Rented Units] and [ X %] per cent [Affordable Rented Units] and [ X %] per cent [Shared Ownership Units] taking account of relevant Local Plan policy is achieved across all units of Affordable Housing in the Development;</p> <p>(c) contains 1:50 plans showing the location, size and internal layout of each unit of Additional On-Site (Viability Review) Affordable Housing;</p> <p>(d) ensures that a minimum two per cent 2% of the Additional On-Site (Viability Review) Affordable Housing is accessible or easily adaptable for wheelchair users across all tenures and unit sizes;</p> <p>(e) provides details (including 1:50 floor plans) of the proposed wheelchair accessible Additional On-Site (Viability Review) Affordable Housing;</p> <p>(f) provides an indicative timetable for the construction and delivery of the Additional On-site (Viability Review) Affordable Housing; and</p> <p>(g) sets out the amount (if any) of any Affordable Housing Deferred Contribution which is payable towards enabling the provision of offsite Affordable Housing in the event that the Viability Review identifies that part of the Surplus cannot deliver one or more complete units of Additional On-Site (Viability Review) Affordable Housing as part of the Development</p>
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<b>“Affordable Housing Deferred Contribution”</b>	the financial contribution of up to the Affordable Housing Deferred Contribution Cap in lieu of provision of complete units of Additional On-Site (Viability Review) Affordable Housing on the Land and payable to the Council to enable the provision of Affordable Housing in the Council’s Area other than on the Land, the precise value of which Contribution will be calculated in accordance with paragraph 3.8 of Schedule 2
<b>“Affordable Housing Deferred Contribution Cap”</b>	The sum of [ ] pounds £[XXX]
<b>“Costs”</b>	all of the build costs of the Development which together comprise the total development costs as set out in the Viability Assessment Template at Annex 3 in Schedule 2 to this Agreement
<b>“Council’s Area”</b>	The administrative area of the City of Bristol Council
<b>“Council’s Portion”</b>	50% of any Surplus as calculated pursuant to paragraph 6 of Schedule 2
<b>“Council’s Valuer”</b>	The Council’s appointed valuer who is a suitably qualified and experienced valuer and a professional member of the Royal Institution of Chartered Surveyors ( <b>RICS</b> ) to review a Viability Assessment(s) submitted to the Council in respect of the Development
<b>“Development Viability Information”</b>	the information required by the Council relating to the Development as set out in the Viability Assessment Template at

	Annex 3 in Schedule 2 to this Agreement and comprising information (including supporting information) provided on an Open Book basis to the Council's and the Council's Valuer's satisfaction
<b>"Fully Policy Compliant Route No.1"</b>	The processing route applied by the Council to a scheme for development of land located in the Council's Area in respect of which the Affordable Housing Offer complies fully with the Council's Local Plan Policies BCS17 or DM3 (as appropriate) for Affordable Housing such that the Owner/Developer is not required to submit a Viability Assessment on submission of the Planning Application for the development scheme but such a scheme remains subject to Viability Review(s) in accordance with paragraph 1 of Schedule 2 in the event that a Further Affordable Housing Offer is submitted to the Council
<b>"Fully Policy Compliant"</b>	the Initial Affordable Housing Offer is fully compliant with the requirements for processing by the Council in accordance with Fully Policy Compliant Route No.1
<b>"Further Affordable Housing Offer"</b>	An offer made by the Owner to the Council subsequent to the grant of the Planning Permission to provide Affordable Housing as part of the Development and, if applicable, on each and every submission of a Viability Assessment to the Council in accordance with Schedule 2
<b>"Initial Affordable Housing Offer"</b>	the offer by the Owner to the Council to deliver a specified Affordable Housing Mix

	without public subsidy on submission of the Planning Application to the Council
<b>“Non-Compliant Route No.3”</b>	the Council’s processing route which applies to a scheme for a development of land in respect of which the Initial Affordable Housing Offer does not comply fully with the requirements of the Council’s Local Plan Policies BCS17 or DM3 (as appropriate) for Affordable Housing so that such development scheme remains subject to Viability Review(s) in accordance with Schedule 2
<b>“Open Book Basis”</b>	means an open and transparent sharing by the Owner with the Council of all of the financial information relating to all Costs of and Revenues arising from the Development, together with a written schedule of all such Costs and Revenues and supported by copies of all relevant invoices and receipts without any pre-selection or editing of the list of Costs items actually incurred and Revenues received or anticipated to be received
<b>“Revenues”</b>	All of the revenues which together comprise the total gross development value for a development as set out in the Viability Assessment Template at Annex 3 in Schedule 2 to this Agreement
<b>“Surplus”</b>	The profit sum resulting from a Viability Review, the value of which is calculated in accordance with paragraph 3.7 of Schedule 2 to this Agreement
<b>“Three Processing</b>	together the <b>‘Fully Compliant Route No.1’</b>



<p><b>Routes”</b></p>	<p>and the ‘<b>Threshold Compliant Route No.2</b> ‘ and the ‘<b>Non-Compliant Route No.3</b>’ which routes determine the relevant Viability Review process applied by the Council at its sole determination in respect of the <b>Initial Affordable Housing Offer</b> for the Development of the Land</p>
<p><b>“Threshold Compliant Route No.2”</b></p>	<p>The Council’s processing route which applies to a scheme for development of land located in Bristol Inner West or Bristol Inner East (<b>EXCLUDING</b> land owned by the Council) in respect of which the Initial Affordable Housing Offer does not comply fully with the Council’s Local Plan Policies BCS17 or DM3 (as appropriate) for Affordable Housing and the Initial Affordable Housing Offer comprises either :</p> <ul style="list-style-type: none"> <li>(i) a minimum of 20% Affordable Housing with a tenure mix that is Policy Compliant (77% Social Rented Units and 23% Shared Ownership Units) unless otherwise agreed by the Council; or</li> <li>(ii) a minimum of 25% Affordable Housing with a tenure mix comprised of 50% Social Rented Units and 50% Intermediate Affordable Housing</li> </ul> <p>AND the Initial Affordable Housing Offer in</p>

	respect of (i) and (ii) above will be subject to Viability Review(s) in accordance with paragraph 1.2 of Schedule 2
<b>Threshold Compliant”</b>	the Initial Affordable Housing Offer is compliant with the requirements for processing by the Council in accordance with Threshold Policy Route No.2
<b>[“Validation Viability Assessment ”]</b>	[the viability assessment dated [ ] (if any) prepared by/on behalf of the Owner/Developer in connection with the validation of the Planning Application and submitted by the Owner/Developer in support of the Initial Affordable Housing Offer]
<b>“Viability Assessment”</b>	A viability assessment prepared by or on behalf of the Owner/Developer in connection with a Viability Review pursuant to Schedule 2 and submitted to the Council in accordance with Schedule 2, which viability assessment takes into account changes in build Costs and Revenues since the date of submission of the Planning Application and/or since any prior Viability Assessment(s)
<b>“Viability Assessment Template”</b>	The template form showing the inputs and modelling assumptions required for the Viability Assessment as set out in Annex 3 at Schedule 2 to this Agreement
<b>“Viability Review”</b>	The upward-only review of the financial viability of the Development at the

	<p>Affordable Housing Review Date by the Council's Valuer and/or each and every other such Viability Review that may be triggered pursuant to paragraph [ ] part [ ] Schedule 2 with the purpose of determining the viability of the Development in order to calculate any Surplus and identify the Council's requirement for the provision of Additional On-Site (Viability Review Affordable Housing) or the quantum of the Affordable Housing Deferred Contribution as provided at paragraph [ ] of in this Schedule 2</p>
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## 1. Trigger Events

A Viability Review will be triggered and related Viability Assessments required to be submitted to the Council in accordance with the Three Processing Routes set out below (as applicable), in order to ascertain whether a Surplus has arisen; and if a Surplus is identified the Council's Portion shall be applied as follows:

(a) firstly to the provision of Additional On-Site (Viability Review) Affordable Housing by the Owner/Developer in accordance with paragraphs 3.7 of this Schedule 2: and

(b) only if less than a whole Additional On-Site (Viability Review) Affordable Housing Unit results once the Surplus has been determined then the Affordable Housing Deferred Contribution shall be paid to the Council in accordance with paragraphs 3.8 and 3.9 of this Schedule 2

## **1.1 Fully Policy Compliant Route No.1**

If the Council has confirmed in writing to the Owner/Developer prior to the date of this Agreement that the Council is satisfied:

1.1.1 that the Initial Affordable Housing Offer is Fully Policy Compliant; and

1.1.2 that the Fully Policy Compliant Route No.1 is applicable for the purposes of this Agreement

then the Viability Review provisions at paragraphs 2. to 4. inclusive of this Schedule 2 shall not apply

1.1.3 if the Owner/Developer submits a Further Affordable Housing Offer to the Council which represents a reduction of the Initial Affordable Housing Offer at any time subsequent to the grant of the Planning Permission then the Owner shall carry out and submit a Viability Assessment to the Council in accordance with the provisions of paragraphs 2. 3. and 4. of this Schedule 2 and such Further Affordable Housing Offer shall be processed by the Council as if either the Threshold Policy Route No.2 or the Non-Compliant Route No.3 applied to the Initial Affordable Housing Offer for the Fully Policy Compliant Route No.1 Development scheme

## **1.2 Threshold Compliant Route No.2**

If the Council has confirmed in writing to the Owner/Developer prior to the date of this Agreement that the Council is satisfied:

1.2.1 that the Initial Affordable Housing Offer is Threshold Compliant; and

1.2.2 that the Threshold Compliant Route No.2 is applicable for the purposes of this Agreement

then the Owner/Developer will carry out the Viability Assessment in accordance with paragraphs 2. to 4. inclusive of this Schedule 2 in the event

that Commencement of the Development has not occurred at the latest by the Affordable Housing Review Date

1.2.3 Paragraphs 2 to 4 inclusive of this Schedule 2 will cease to apply if Commencement of the Development has occurred by the Affordable Housing Review Date

1.2.4 If the Owner/Developer submits a reduced Initial Affordable Housing Offer to the Council at any time subsequent to the grant of the Planning Permission then the Owner/Developer shall carry out and submit a Viability Assessment to the Council in accordance with the provisions of paragraphs 2. to 4. inclusive of this Schedule 2 and such Further Affordable Housing Offer shall be processed by the Council as if the Non-Compliant Route No.3 applied from the outset to the Initial Affordable Housing Offer for the Development

### **1.3 Non-Policy Compliant Route No.3**

If the Council has confirmed in writing to the Owner/Developer prior to the date of this Agreement that:

- 1.3.1 the Initial Affordable Housing Offer is neither fully Policy Compliant or Threshold Compliant; and
- 1.3.2 that the Non-Policy Compliant Route No.3 is applicable for the purposes of this Agreement

then the Owner/Developer covenants as follows:

1.3.2.1. to observe and fully perform the obligations under Schedule 1 of this Agreement in respect of the provision of Affordable Housing on the Land in accordance with the Initial Affordable Housing Offer; and

1.3.2.2 to Commence the Development at the latest by the Affordable Housing Review Date

**PROVIDED THAT** If Commencement of the Development has not occurred at the latest by the Affordable Housing Review Date then the Owner/Developer shall carry out a Viability Assessment in accordance with paragraphs 2. to 4 inclusive of this Schedule 2;

1.3.2.3 not to Occupy or permit Occupation of more than 75% of the Open Market Units until and unless the Owner/ Developer has carried out and submitted a Viability Assessment (notwithstanding any Viability Assessment submitted previously to the Council) in accordance with paragraphs 2 to 4 inclusive of this Schedule 2; and

1.3.2.4 If the Owner/Developer submits a reduced Initial Affordable Housing Offer to the Council at any time subsequent to the grant of the Planning Permission then the Owner shall carry out and submit a Viability Review Assessment to the Council in accordance with the provisions of paragraphs 2. to 4. inclusive of this Schedule 2

## 2. **Notice of Commencement**

For the purposes of paragraph 1 above in particular and this Schedule 2:

- 2.1 The Developer/Owner shall notify the Council in writing of Commencement of the Development within seven (7) Working Days of such Commencement and such notice shall be accompanied by full documentary evidence on an Open Book Basis to enable the Council to independently assess whether Commencement of the Development has occurred and if so when;
- 2.2 The Owner/Developer shall afford the Council access to the Land to inspect and assess whether or not the work which has been undertaken amounts to Commencement of Development;
- 2.3 The Council (if it elects to do so) shall inspect the Land within 10 Working Days of receiving the notice pursuant to paragraph 2.1 unless otherwise agreed in writing and thereafter provide written confirmation to the

Developer/Owner as to whether or not the Council is satisfied that the works undertaken amount to Commencement of Development

### **3. Submission of Viability Assessment**

3.1 if a Viability Review is triggered pursuant to paragraph 1.1 or 1.2 or 1.3 of this Schedule 2 the Owner/Developer shall:

(a) give to the Council not less than fifteen (15) Working Days' advance written notice of the date on which any Viability Assessment Information is intended to be submitted to the Council; and

(b) submit to the Council within twenty (20) Working days of the Affordable Housing Review Date the Viability Assessment and supporting Development Viability Information on an Open Book Basis in accordance with the Viability Assessment Template at Annex 3 of this Schedule 2 below together with a written statement confirming:

3.1.1 whether a surplus has arisen;

3.1.2 the value of any Surplus;

3.1.3 the proposed number and location of Additional On-Site (Viability Review) Affordable Housing Units that in the opinion of the Owner/Developer can be provided as part of the Development; and

3.1.4 the value of the Affordable Housing Deferred Contribution

### **3.2 Form of the Viability Assessment**

3.2.1 The Viability Assessment will be prepared in the form of the Viability Assessment Template;

3.2.2 The Viability Assessment will include the inputs shown on the Viability Assessment Template unless otherwise agreed by the Owner/Developer and the Council;

- 3.2.3 The inputs shown on the Viability Assessment Template will be calculated in accordance with the methodology and notes included in the Viability Assessment Template unless otherwise agreed by the Owner/Developer and the Council; and
- 3.2.4 The documents submitted with the Viability Assessment will include all reasonably required financial information about sales and lettings (as applicable) of [Residential Properties], commercial units and car parking spaces, ground rent and estate charges income stream sales and all Costs and Revenues on an Open Book Basis.

### **3.3 Viability Review**

If a Viability Review is triggered pursuant to paragraph 1. of this Schedule 2 the Council will:

- 3.3.1 will commission an independent assessment of the Viability Assessment by the Council's Valuer within 30 (thirty) Working Days of receipt of the Viability Assessment;
- 3.3.2 assess the Viability Assessment and supporting Development Viability Information submitted under paragraph 3.2 above;
- 3.3.3 notify the Owner/Developer in writing when the Council's Valuer has completed the Viability Review, and provide a copy of the report of the Council's Valuer to the Owner/Developer within 30 Working Days of submission to the Council pursuant to paragraph 3.2 above; and
- 3.3.4 confirm whether in the opinion of the Council Additional On-Site (Viability Review) Affordable Housing Units are required to be delivered in accordance with paragraph 3.7 of this Schedule 2 below

### **3.4 Council's Valuer - Terms of Appointment**

- 3.4.1 The Council will not appoint any Council's Valuer for the purpose of paragraph 3.3 unless the terms of such appointment include a requirement for the Council's Valuer to issue his final report to the Council within 30 (thirty) Working Days of the date of his appointment



and 20 (twenty) Working Days following receipt of all such further information as has been requested pursuant to paragraph 3.5

3.4.2 The Owner/Developer will pay to the Council the costs of the Council and the Council's Valuer which are reasonably and properly incurred in carrying out the Viability Review within 20 (Working Days) of receipt of a written request for payment including a detailed breakdown of such costs and a supporting invoice] up to a maximum of £15,000 (fifteen thousand pounds)

### 3.5 Requests for further information

The Owner/Developer will provide to the Council such further information and evidence as is reasonably required by the Council to enable the Council's Valuer to carry out the Viability Review within 20 (twenty) Working Days of such request for further information being made and this process may be repeated until the Council's Valuer has all the information it reasonably requires

### 3.6 Calculation of the Surplus for Additional On-Site (Viability Review) Affordable Housing

3.6.1 The Surplus profit available for Additional On-Site (Viability Review) Affordable Housing will be calculated in accordance with the Viability Assessment Template at paragraph 7 of this Schedule 2 and the following formula:

$$A = B - C$$

Where:

**A** = the amount of the Surplus

**B** = the total value of all Revenues

**C** = the total value of all Costs

3.6.2 Insofar as it is determined that a Surplus has arisen the Council's Portion shall be 50% and the Owner's/Developer's Portion shall be 50% of the Surplus respectively.

3.6.3 the Owner/Developer hereby acknowledges and agrees that the Council's Portion is to take the form of Additional On-Site (Viability Review) Affordable Housing unless the exceptions provided under paragraph 3.8 of this Schedule 2 below apply when the Council may agree that the Council's Portion may be taken in the form of the Affordable Housing Deferred Contribution;

### **3.7 Proposals for the Surplus – Additional On-Site (Viability Review) Affordable Housing Units**

Where the Owner/Developer's written statement pursuant to paragraph 3.1 above confirms that Additional On-Site Affordable Housing can be provided as part of the Development the Owner/Developer covenants with the Council as follows:

3.7.1 to provide such Additional Affordable On-Site (Viability Review) Affordable Housing on the Land as follows:

- (a) on the same terms as and in accordance with the provisions of Schedule 1 of this Agreement; and
- (b) prior to the first letting of no more than [XXXX number] (XX) of the Open Market Units; and
- (c) in accordance with a timetable approved in advance in writing by the Council;

3.7.2 to submit an Additional On-Site (Viability Review) Affordable Housing Scheme to the Council for its written approval of the Council prior to [first Occupation of more than [XX] number/ [ ]% of the Open Market Units]; and

3.7.3 not Occupy or permit first Occupation of more than [XX] number/ [ ]% of the Open Market Units until:

3.7.3.1 any Additional On-Site (Viability Review) Affordable Housing Scheme has been agreed pursuant to paragraph 3.4.1 above; and

3.7.3.2 Practically Complete any Additional On-Site Affordable Housing Units in accordance with the Additional On-Site (Viability Review) Affordable Housing Scheme and make such units available for Occupation; and/or

3.7.3.3 pay the 'Affordable Housing Deferred Contribution to the Council to enable the delivery of off-site Affordable Housing within the Council's Area in accordance with paragraph 3.8 of this Schedule 2 below

### **3.8 Proposals for the Surplus – Affordable Housing Deferred Contribution**

3.8.1 In the event that the Viability Review concludes that a Surplus is available but: such Surplus is insufficient to deliver a complete number of Additional On-Site (Viability Review) Affordable Housing Units on the Land then any such Surplus attributable to any incomplete units of Additional On-Site Affordable Housing shall be payable to the Council as a financial contribution in the form of the Affordable Housing Deferred Contribution to enable the provision of Affordable Housing within the Council's Area (excluding the Land) prior to Occupation of not more than [XX] number/ [ ]% of the Open Market Units ; and

3.8.2 the Affordable Housing Deferred Contribution will be the sum remaining from the Surplus after ascertainment of the maximum number of Additional On-Site (Viability Review) Affordable Housing Units that can be accommodated as part of the Development pursuant to paragraphs 3.6 and 3.7 above; and

3.8.3 the Affordable Housing Deferred Contribution

shall be calculated in accordance with the following formula:

$$D = A \times E$$

Where:

**A=** the amount of the Surplus

**D=** the value of the On-Site Affordable Housing Deferred Contribution, which will not be less than £0 (zero pounds) and not more than the Affordable Housing Deferred Contribution Cap

**E=** the value of the Additional On-Site (Viability Review) Affordable Housing Units that can be accommodated as part of the Development

3.8.4 The Affordable Housing Deferred Contribution will be £0 (zero pounds) if the Viability Assessment demonstrates there is no Surplus or that the Development is in deficit

### 3.9. **Determination of the Affordable Housing Deferred Contribution**

3.9.1 The Council and the Owner/Developer will use reasonable endeavours to agree the value of the Affordable Housing Deferred Contribution as soon as reasonably practicable following the Owner/ Developer's submission of the Viability Assessment

3.9.2 The Council or the Owner/Developer may refer the matter to the Expert pursuant to clause 18 of this Agreement to determine the value of the Affordable Housing Deferred Contribution if no agreement has been reached within 40 (forty) Working Days of the date on which the Owner/Developer submitted the Viability Assessment to the Council pursuant to paragraph 3.1 above

3.9.3 The Owner/Developer will pay to the Council the value of the Affordable Housing Deferred Contribution which has been agreed pursuant to paragraph

3.9.1 or determined pursuant to paragraph 3.9.2 within [30] Working Days of agreement or determination of the value of the Affordable Housing Deferred Contribution (as appropriate) [and in any event no later than first Occupation of [XXXXXX number] of the Open Market Units]; and

3.9.4 The Owner/ Developer will not Occupy nor permit the first Occupation of more than [XXXXXX number] of the Open Market Units until it has paid to the Council the Affordable Housing Deferred Contribution

**3.10. Council's Use of the Affordable Housing Deferred Contribution**

3.10.1 If part of the Council's Portion of the Surplus is paid to the Council in the form of the Affordable Housing Deferred Contribution the Council covenants not to use the Affordable Housing Deferred Contribution for any purpose other than to enable the provision of Affordable Housing within the Council's Area (excluding the Land);

3.10.2 Where the Affordable Housing Deferred Contribution has been paid to the Council the Council covenants with the Owner/Developer that it will pay to the Owner/Developer such amount of any Affordable Housing Deferred Contribution paid by the Owner/ Developer to the Council under this Schedule 2 which has not been expended or Committed in accordance with the provisions of this Agreement within ten (10) years of the date of receipt by the Council of such payment together with interest accrued; and

3.10.3 The Council shall provide to the Owner/Developer such evidence as the Owner/Developer shall reasonably require in writing to the Council in order to confirm the expenditure of the Affordable Housing Deferred Contribution

## ANNEXURE 3

### Viability Assessment Template

The Council and the Owner/Developer hereby agree that the following modelling assumptions shall form the basis of the calculations for the purposes of the Viability Review:

<b>Proposed scheme details</b>	<b>Costs</b>
<ul style="list-style-type: none"> <li>• Floor areas:               <ul style="list-style-type: none"> <li>- Commercial: gross internal area (GIA) and net internal area (NIA).</li> <li>- Residential: GIA and net sales area (NSA).</li> </ul> </li> <li>• Residential unit numbers, including the split between private and affordable tenures.</li> </ul> <p style="text-align: center;"><b>Gross development value</b></p> <ul style="list-style-type: none"> <li>• Any existing income that will continue to be received over the development period.</li> <li>• Anticipated residential sales values and ground rents (and supporting evidence including deductions for incentives).</li> <li>• Anticipated rental values and supporting evidence.</li> <li>• Yields for the commercial elements of the scheme and supporting evidence.</li> <li>• Details of likely incentives, rent-free</li> </ul>	<ul style="list-style-type: none"> <li>• Expected build cost, including a full QS report showing how costs have been estimated.</li> <li>• Demolition costs.</li> <li>• Reasonable and appropriate historic costs.</li> <li>• Site preparation costs.</li> <li>• Vacant possession costs.</li> <li>• Planning costs.</li> <li>• Any anticipated abnormal costs (including contamination).</li> <li>• Rights of light payments/party walls/oversailing rights.</li> <li>• Details of expected finance rates.</li> <li>• Professional fees, including:               <ul style="list-style-type: none"> <li>- Architect.</li> <li>- Planning consultant.</li> <li>- Quantity surveyor.</li> <li>- Structural engineer.</li> <li>- Project manager.</li> <li>- Letting agent fee.</li> <li>- Letting legal fee.</li> </ul> </li> <li>• Site Value.</li> <li>• Community Infrastructure Levy (CIL).</li> </ul>

<p>periods, voids.</p> <ul style="list-style-type: none"> <li>• Anticipated value of affordable units (with supporting evidence/explanation of how these have been valued and assumptions).</li> <li>• Anticipated grant funding for additional affordable housing.</li> <li>• Deductions from commercial GDV to reach NDV (Stamp Duty Land Tax [SDLT], agents, legal + VAT).</li> </ul> <p style="text-align: center;"><b>Development programme</b></p> <ul style="list-style-type: none"> <li>• Pre-construction.</li> <li>• Construction period.</li> <li>• Marketing period.</li> <li>• Viability cashflow.</li> <li>• Income/value/capital receipt.</li> <li>• Costs.</li> <li>• Phasing (where appropriate).</li> </ul>	<ul style="list-style-type: none"> <li>• Planning obligations.</li> <li>• Other costs.</li> </ul> <p style="text-align: center;"><b>Additional details for future phases</b></p> <ul style="list-style-type: none"> <li>• Expected sales growth.</li> <li>• Expected rental growth.</li> <li>• Expected cost inflation.</li> <li>• Credit rate.</li> </ul> <p style="text-align: center;"><b>Benchmark viability proxies</b></p> <ul style="list-style-type: none"> <li>• Profit on cost.</li> <li>• Profit on value.</li> <li>• Development yield.</li> <li>• Internal rate of return (IRR).</li> </ul>
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**[Inputs:**

- (a) Land Value Benchmark Figure - £ [XXXXXX];
- (b) Net commercial yield – [ X]%
- (c) Net residential yield – [XX] %
- (d) Finance – [X]%
- (e) Profit on Gross Development Value (GDV) of Open Market Units – [XX]%
- (f) Profit on Gross Development Value (GDV) of DMR Units – [X]%

**ANNEXURE [X]**

**[AFFORDABLE HOUSING STATEMENT/INITIAL AFFORDABLE HOUSING  
OFFER/VIABILITY STATEMENT (SUBMITTED WITH THE PLANNING  
APPLICATION)]**



## SCHEDULE 3

### FINANCIAL CONTRIBUTIONS

#### Definitions:

1. In this Schedule [ ] the words below shall mean as follows:

1.1. **“Footpath Contribution”** shall mean the sum of £ [ ] to be spent on access improvements in the immediate vicinity of the Land;

1.2. **“Travel Plan Monitoring Fee”** shall mean the sum of £[ ] to be used by the Council towards the Council’s costs and expenses incurred by the Council in the [monitoring] [preparation and implementation] of the Residential Travel Plan;

1.3. **“Traffic Order Contribution”** shall mean the sum of £[ ] to be used by the Council for the making and implementation of traffic regulation orders for the Development comprised as follows:[ ];

1.4. **“Tree Contribution”** shall mean the sum of £ [ ] to be used by the Council towards the Council’s costs and expenses incurred by the Council in the planting off-site of replacement trees in mitigation of the loss of trees arising from the Development of the Land such Tree Replacement Contribution calculated in accordance with the tree replacement standards provided for in policies BCS9 and BCS11 of the Council’s Core Strategy (adopted June 2011);

1.5. **“Fire Hydrant Contribution”** shall mean the sum of £[ ][ at £1500 per hydrant] for expenditure by the Council on the provision installation and five (5) years maintenance of XX new fire hydrant(s) and related appropriately-sized water mains for fire-fighting purposes at a location within the vicinity of the Development to be agreed between the parties acting reasonably;

1.6 **Carbon Offset Contribution**; shall mean the sum of £ [ ] for expenditure by the Council on [ ];

1.7 **“Bus Stops Contribution”** shall mean the sum of £[ ] to be used by the Council towards the Council’s costs and expenses incurred by the Council in the

[upgrading/provision of [number XXXX] bus stops in the vicinity of the Development;

1.8 “**Transport Infrastructure Contribution**” for expenditure by the Council on [improvements to the local highways network including cycle paths in the vicinity of the Development]; and

1.9 “[ ]” **Contribution** [ ]

2. The Owner/Developer covenants to pay xxx Contribution within xxx of Implementation/Occupation/Completion

3. The Council covenants to apply the [Footpath Contribution the Travel Plan monitoring fee the Traffic Order Contribution the Tree Contribution the [ ] Contribution and the Fire Hydrant Contribution] only to the purposes identified in clause 1 above;

4. If any part of the [Footpath] Contribution the [Travel Plan Monitoring Fee] the [Traffic Order] Contribution the [Tree] Contribution and the [Fire Hydrant] Contribution, remains unspent within [5 (five)] years of the date that amount was paid the Council shall repay such amount of money to the Owner/Developer together with any Interest accrued.

## SCHEDULE 4

### BRISTOL HEAT NETWORK

#### Definitions:

#### 1. In this Schedule 4 the words below shall mean as follows:

<b>“Bristol Heat Network”</b>	the heat network comprised of: (a) the Energy Centres; (b) service and heat distribution pipes; and (c) the heat substations and located within the administrative boundaries of the City of Bristol
<b>“Contingency Heat Generation System”</b>	the heat generation system provided by the Owner as part of the Development in the event that the Bristol Heat Network is not available for connection to the Secondary Network for whatever reason by the Critical Date
<b>“Critical Date”</b>	a date 64 (sixty four) weeks from the date of Commencement of the Development unless otherwise agreed in writing by the Council pursuant to this Agreement or otherwise
<b>“Energy Centres”</b>	any facility for which the Council has responsibility and which is used to produce heat and/or electricity as part of the Bristol Heat Network
<b>“Heat Substation”</b>	the equipment to be installed by the Council within the Land and forming part of the Bristol Heat Network to transfer heat from the Energy Centres and the service and heat distribution pipes to the Secondary Network
<b>“Secondary Network”</b>	the network provided by the Owner as part of the Development within the Land to serve the Development and comprised of : (a) the network pipes and pipeline ancillaries (both including insulation) and controls; and (b) associated services and assets between the Heat Substation

	<p>and each Dwelling including but not limited to pumps speed controllers acoustic enclosures to plant pressurisation units and pressure vessels  including the heat interface units and associated metering and meter reading equipment</p>
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2. The Owner hereby covenants with the Council as follows:

2.1 not to Commence Development until full and complete written details and specifications of:

- 2. 1.1 the means of connecting the Development to the Bristol Heat Network;  
and
- 2. 1.2 the Secondary Network

have been submitted to and approved in writing by the Council such details to include details of their ownership management operation maintenance servicing and repair;

- 3.. to ensure and procure the readiness for the connection of the Secondary Network to the Heat Substation subject to the Bristol Heat Network and the Heat Substation being ready and available to connect to [on] the Critical Date in accordance with the details approved by the Council in accordance with paragraph 1 above
- 4. to ensure and procure the provision retention management and maintenance of the Secondary Network in accordance with the details approved by the Council under paragraph 1 above for the lifetime of the Development
- 5. to ensure and procure that should the Bristol Heat Network not be available to connect to on the Critical Date that the Secondary Network is capable of being

connected to the Contingency Heat Generation System provided by the Owner

6. to provide regular updates to the Council (which it is agreed between the Council and the Owner may be by way of email to the Director) at least once a month in respect of the installation and completion of the Secondary Network

**SCHEDULE 5**  
**Carbon Offset Contribution**

The Owner hereby covenants and agrees with the Council as follows:

1. to pay to the Council the Carbon Offset Contribution on or before [first Occupation of] [Commencement of] the Development for expenditure by the Council on the reduction of carbon dioxide emissions from the existing building stock (other than the buildings comprising the Development) in the Council's administrative area; and
2. not to Commence or permit the Development to be Occupied until the Owner has paid the Carbon Offset Contribution to the Council in full.

## SCHEDULE 6

### (Indexation)

#### 1. Definitions:

For the purposes of this Schedule 6:

“**Index**” means:

- 1.1 in relation to the Affordable Housing Units, the indices based on the Consumer Prices Index (“**CPI**”) – all items compiled and published by the Office for National Statistics in respect of the rent and service charge payable for the Affordable Housing Units under this Deed; and
- 1.2 in relation to the Contributions the indices means the (All items) Index of Retail Prices (“**RPI**”) contained in the Monthly Digest of Statistics published by the Office for National Statistics or any publication substituted therefor

#### Calculation of Indexation

##### 1. Contributions

All Contributions will be subject to indexation based on increases in the Index and calculated using the following formula:

$$C = \text{£}Y \times (B / A)$$

Where:

- A in respect of Contributions is the value of the Index for the month immediately preceding the date of this Deed in respect of the relevant Contribution
- B is the value of the Index for the month immediately preceding payment of a Contribution pursuant to the provisions of this Deed
- £Y is the Contribution
- C is the level of the Contribution after the application of the Indexation formula

## 2. Affordable Housing Units

The baseline Service Charge and the rent for the Affordable Housing Units will be subject to indexation based on increases in the Index and calculated using the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

- A is the value of the Index for the month immediately preceding the date of this Deed
- B is the value of the Index for the month of March each year
- £Y is the baseline Service Charges and rent payable in respect of the Affordable Rented Units
- C is the level of Service Charges and rent payable in respect of the Affordable Rented Units after application of the Indexation formula



**EXECUTED as a DEED** by affixing THE COMMON SEAL of **THE CITY COUNCIL OF BRISTOL** in the presence of:

Authorised signatory

**EXECUTED as a DEED** by [ ] acting by two Directors or one Director and its Company Secretary:

Director

Director/Company Secretary

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