

SOUTH TYNESIDE

local development

Final ADOPTED
Version

SPD 4: Affordable Housing

Supplementary Planning Document

August 2007

Final Version

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SPD4: Affordable Housing

1.3 This document has been prepared in accordance with part 5 of the Town and Country Planning (Local Development) (England) Regulations 2004. In particular its preparation has been informed by:

• The LDF's initial Issues and Options exercise in July and August of 2004;

Policy Context and Definition of Affordable Housing

- 2.1 Planning Policy Statement 3 (PPS3): Housing (November 2006) sets out the national planning policy framework for delivering the Government's housing objectives. The specific area of affordable housing is detailed in the accompanying guidance 'Delivering Affordable Housing' (November 2006).
- 2.2 In accordance with the definition of affordable housing set out in this guidance (see margin), the Council considers that affordable housing is either:
- Ã Social rented housing; or
 - Ã Shared ownership / shared equity intermediate affordable housing.
- A glossary of the terms used in this Supplementary Planning Document is included at Annex A.
- 2.3 Social rented accommodation is to be provided on an assured tenancy at a Target Rent level set in accordance with the Communities and Local Government (CLG) department's rent restructuring formula.

Housing Need in South Tyneside

- 3.1 Housing need is defined as households in inappropriate accommodation and unable to afford market costs for alternative accommodation or repairs. An update of the Council's 2002 Housing Needs Survey was undertaken in 2004¹ (a summary table is included at Annex B). The survey identifies an acute shortage of affordable homes in South Tyneside. An estimated 6,712 households were found to

- 3.2 The 2006 Annual Survey of Hours and Earnings³ stated that the median full-time gross earnings in South Tyneside were £20,997 per annum. Taking into account the level of benefit claimants the average income of households in South Tyneside is approximately £11,000 per annum.
- 3.3 This shows that the average house price in South Tyneside is over six times the average salary of people living in the Borough and at present many households are realistically only able to consider renting as a choice of tenure (as demonstrated by the high demand for social rented accommodation in the Borough).

³ www.statistics.gov.uk

Site Threshold

- 4.1 The Local Development Framework Core Strategy Policy SC4 states that the Council will seek to secure at least 25% of dwellings as affordable units on any development of 15 units or more or 0.5 hectares or more (whichever gives the greater number of dwellings). This has replaced the 25 units / hectare threshold previously set out in Unitary Development Plan (UDP) Policy H7. This new threshold is in-line with PPS3. Policy SC4 also sets a lower threshold for providing affordable housing in the urban fringe villages (Whitburn, Cleadon, East Boldon, West Boldon and Boldon Colliery) at developments of 5 units or more.
- 4.2 The 25% target will apply to all developments above these thresholds. However, the following will also be material considerations in determining planning applications for residential development:
- Ã The need to ensure genuine affordability; and
 - Ã Local housing need for affordable housing (this can include special needs housing).
- 4.3 The Council will seek to ensure that development sites are not sub-divided or cumulatively developed where this would result in the thresholds set for provision of affordable housing being circumvented.

Provision of Affordable Housing

SPD 5 Planning Obligations and Agreements

- 5.1 All affordable housing is to be provided by a Development Partner approved by the Council⁴. An indicative guide to the amount that Development Partners can reasonably be expected to pay for social rented and intermediate housing (the 'Affordable Value') on specific schemes will be provided to developers on request.
- 5.2 The landowner/developer contribution will therefore be the difference between the 'Open Market Value' and the 'Affordable Value' and should be reflected in the price that is paid for the land. This contribution will be secured through the planning process by use of a Section 106 Legal Agreement. Further guidance on this appears in the emerging LDF Supplementary Planning Document 5 "Planning Obligations", the draft version of which was published for consultation in April 2007. This Agreement is the means by which the dwellings can be provided at a cost that brings them within the definition of affordability. In the absence of such an agreement, planning permission may be refused.
- 5.3 Excessive service charges are not expected to be passed on to tenants of social rented housing and should be taken into account when dwellings are transferred to a Development Partner.
- 5.4 The Council is keen to ensure that new developments cater for a range of housing needs, including special housing needs (for example, housing for older and disabled persons) so as to encourage the development of mixed and balanced communities.
- 5.5 In line with PPS 3 (Paragraph 29), the expectation is that affordable housing will be provided on site so that it contributes towards creating a mix of housing.
- 5.6 Developers are expected to 'pepper pot' the affordable housing element throughout the development, and not concentrate affordable housing within a cluster. The Council will expect designers to ensure that the affordable housing is integrated into the overall development, in terms of their built form and external appearance, such that affordable homes are indistinguishable from those intended for sale. Less desirable positions within a site should not be used for locating any particular tenure.

⁴ A Registered Social Landlord (RSL) or approved private developer

5.7 Where parking is provided for open market housing then this should also be provided for affordable

Contributions in Lieu

SPD5 Planning Obligations and Agreements

- 6.1 The Council considers that on-site provision of affordable housing is the preferred way to meet affordable housing needs. However, on certain sites where a requirement for an element of affordable housing would be inappropriate, the Council may find it preferable that a payment in lieu (known as a commuted sum) should be made. For example, the Council may decide that, whilst a need exists, provision of affordable housing on a particular site may be inappropriate. This could, for example, be where the cost of remediation measures would make the scheme unviable, or where affordable housing elsewhere in the housing market area is more likely to widen and encourage better social mix. Commuted sums are to be used to provide affordable housing elsewhere in the Borough, or may also be used for the purchase and rehabilitation of empty private sector properties where this would add to the Borough's stock of affordable housing.

Annex A: Glossary

DCLG	Department of Communities and Local Government (formerly the Office of the Deputy Prime Minister)
ha	Hectare
LASHG	Local Authority Social Housing Grant
LCHQ	Local Housing Quality

Annex B: Housing Market Areas Needs Summary 2004-2009

Hebburn Sub-Area	Jarrow Sub-Area	Hebburn / Jarrow	South Shields Sub-Area	Urban Fringe Sub-Area	South Shields / Urban Fringe	
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Annex C: Organisations and Individuals consulted with and results of consultation exercise

- Government Office North East
- Home Builders Federation
- Housing Corporation
- Developers local to South Tyneside:
 - Atisreal Limited
 - AJ Flatlinon s Lt

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- Haslam Homes Ltd
- Henry Robinson-Moore
- ISOF Housing Group
- James Ingleford Ltd
- JAK Properties
- JW Wood Commercial
- Lancing Homes
- Meadowcroft Homes
- McCartnery & Stone
- Miller Homes North East Ltd
- Moody & Co.
- NJW Developments (c/o Signet Planning)
- North East Properties
- Parian Development Limited
- Pentagon Properties
- Persimmon Homes
- Ravensworth Homes
- Sandbroke Homes
- Sanderson Weatherall
- Snugfit Windows
- Surgo Construction Limited
- Sycamore Properties
- Three Rivers Housing Association
- Tynebridge Investments
- Vardy Group
- Vigilant Homes UK Ltd
- Waring and Netts Architects
- Wilcomm Homes
- And individual developers working in the Borough

National Housing Federation

**South Tyneside Local Development Framework, SPD (4): Affordable Housing
– Public Consultation General Responses/Representations with Council Response –**

Reference #	Name / Organisation	Policy / Paragraph	Support / Objection	Details of Response/Representation	Council Response
	Mark Ellis / Newcastle City Council		Comment / Objection	PPG3 and Circular 6/98 will be superseded by PPS3 1 April 2007: change policy to reflect this? (see example: <i>SPD: Affordable Housing, Working Draft January 2007, Newcastle City Council</i>)	SPD has been updated to reflect these changes in National Planning Policy
	Simon Smith / Parian Developments Limited		Comment / Objection	Proposed thresholds of 25% affordable housing provision for urban and urban fringe too low; small scale housing sites (size and/or density) likely to be most affected, rendering them unviable and negating any affordable provision Larger scale housing sites (size and/or density) more likely to be able to bear the cost of a reasonable affordable housing provision Amount of affordable housing provision should relate both to the identified need in that area and more specifically the ability of sites to bear the cost of such provision, largely reflecting larger size and/or higher density than the thresholds proposed	Site thresholds were established in LDF Core Strategy and has been accepted by an Independent Inspector. Core Strategy to be Adopted June 2007. The threshold was brought down due to small number and small size of development sites in urban fringe in order to ensure that the large shortage of affordable housing in the urban fringe wards could be addressed, as was clearly shown through the housing needs study No change required in response. Respondent would need to object to review of Core Strategy at the appropriate time.

				objection carries through to the further references in para 6.2 and 8.1 Signet Planning reserves position to make further comments when SPD is revised/re-published following completion of Sub-regional Housing market assessment and consideration of PPS3: Housing	
	Liam Currie / Levvel Ltd on behalf of McCarthy				

				Must give only minimal weight to Housing Market Review, published in 2004, and based on 2002 findings. Revised Housing Needs Survey needed for local consultation and consultation within the building industry HNS should not be principle source to recommend quantum or types of affordable housing Lacking robust and credible evidence base: recommend that a comprehensive evidence base is developed in collaboration with the Development Industry in order that the SPD meets the requirements of test vii of the tests of soundness contained within PPS12 The SPD's purpose should be to provide details of the delivery mechanisms such as tenure, mix, the availability of grant funding, area specific need which is likely to be subject to change and would therefore be best served in a flexible document that can react effectively to variations in local house prices, salaries and other socio-economic factors. SPD should include reference to taking account of economic site constraints, as well as proportion of affordable housing to be required Percentage affordable housing sought by Council needs to be justified in terms of development economics Criticism: the policy is not locally distinctive; it rests on an emerging policy. Council has not presented sufficient evidence to support any variation to its current adopted position. It has not been scrutinised in the light of detailed evidence of local circumstances (see SPD4 para 5.1, 29). Reduction in site size threshold needs to be more justified in terms of	included in the policy. Percentages are already established in the Core Strategy and this SPD does not need to justify these further.
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				to modify it (test iv) Council must demonstrate its policies are economically sound and deliverable (test iii) Does the Council have a robust and comprehensive evidence base in order to inform the formulation of housing policy, specifically affordable housing (test vii) No mechanisms are demonstrated for the implementation and monitoring of the delivery of affordable and market housing arising from the application of the SPD (test viii) There is a lack of conformity to the adopted or draft policies which ultimately could result in the provision of housing being frustrated and less housing being provided resulting in the need for affordable housing being further exaggerated.	
	James Johnson / Persimmon Homes (North East) Limited	Para 2.1, 2.2, 9.2	Comment / Objection	2.1 – Circular 6/98 has now been superseded by the publication of PPS 3 and its companion document relating to Affordable Housing 2.2 – There is currently a policy vacuum following the publication of PPS 3 which is due to come in to force 1 April 2007, therefore the planning system is currently within a transitional period until this date 9.2 – The Council are to review this documentation in light of emerging changes to the planning system. Following the publication of this document, PPS 3 has now been published therefore the current document is out of date and should be recalled and re-written accordingly	

	Phil Jones / North East Assembly		Support	SPD conforms to RPG1 (Policy H7) and Submission Draft RSS (Policy 32): The Assembly welcomes the publication of the Draft South Affordable Housing SPD	Support welcomed
	Martin Jefferson / Accent North East	Para 3.6, 6.5,	Support / Objection	General support to the policy NAHP funding not normally available (a classic double subsidy). Developers need to understand the wider community benefits paid out to better land values following planning approval and not the public purse. Include some words from Housing Corporation in Context Section to provide a more complete picture Para 3.6 Nomination Rights: wrong in a land use planning document. Can an LA “reserve the right” to 100% nominations on a privately owned site being developed by independent RSLs and house builders? Nomination levels: usually agreed between LAs and RSLs where NAHP is involved; but in no grant S.106 situations this is very much a negotiation situation and there is very much doubt whether	

				Impending difficulty of justifying refusal of planning permission on issues now dealt with under Building Regulations, HQIs and normal DC practice The intention of ensuring affordable housing is indistinguishable from market housing is laudable, however, the application of SDS to the affordable element only will result in the reverse of this as the SDS housing will instantly stick out due to its larger size and requirements for garden sheds and canopies (for example). The Three Rivers/Haslam Homes development at Middlefield, Pelton near Chester le Street provides a good example of this Model S.106 Agreement: rather impenetrable, of little use. Suggest: bullet points covering main themes emphasizing each site's uniqueness and the issues negotiated with the developers-all parties concerned have to agree it, not the Council dictate it	
	Mary Edwards / GONE		Objection / Comment	Whilst SPD mentions Core Strategy Policy SC4, SPD needs to be made much clearer up front that it is in support of that Policy, and that Policy SC4 is the hook upon which it hangs Also concerned with the publishing of SPD just before the new PPS3 and Affordable Housing guidance note were published	Point noted and document amended accordingly. Changes in relation to PPS3 have been completed. Core Strategy is still consistent with PPS3.

Annex D: Results of Sustainability Appraisal

Policy: Affordable Housing							
	Questions	Timescale	Impact	Scale	Rural	Urban	Commentary

Sustainable Development Objectives

Short term
Long term
Severity
Cumulative
L

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
		Short term	Long term		Cumulative	Local	Trans-boundary			
Sustainable Development Objectives										
4. To establish and retain a flexible and highly skilled workforce through training and education	Will it improve people's skills? Will it improve educational performances against the national average? Will it encourage retention of people with higher level skills? Will this encourage links between education and employment at all educational levels? Will this encourage social inclusion?	-	Ø	Ď	Ď	Ď	-	Ď	Ď	<u>Debate</u> – the 3rd and 5th points are relevant, but 4th

Policy: Affordable Housing										
	Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
Sustainable Development Objectives		Short term	Long term	Severity	Cumulative	Local	Trans-boundary			
6. To prevent deterioration and where possible improve local air quality levels for all	Will it prevent deterioration or improve local air quality?	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	
7. To protect and enhance the quality of the Borough's land and groundwater, rivers and seawaters	Will it reduce pollution of land, groundwater, rivers and the sea? Will it protect and enhance the quality of the Borough's groundwater, river and seawaters? Will it encourage use of the Borough's natural assets?	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	
8. To protect and enhance the Borough's coastline and water frontage	Will it manage the coastline in accordance with the Shoreline Management Plan? Will it reduce and minimise the risk to people and properties of flooding? Will it reduce the risk of damage to property by storm events?	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	

Policy: **Affordable Housing**

Questions

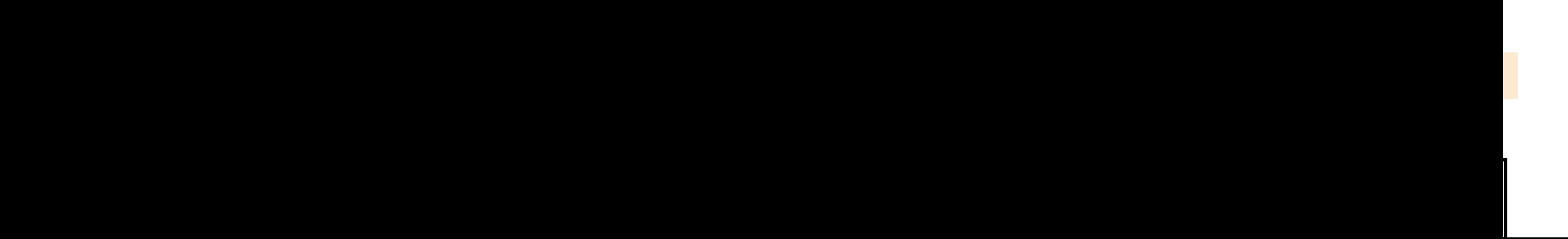
Timescale

Impact

Scale

R

Policy: **Affordable Housing**



		Questions	Timescale		Impact	Scale			Rural	Urban	Commentary
Sustainable Development Objectives			Short term	Long term	Severity	Cumulative	Local	Trans-boundary			

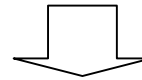
19. To reduce crime and anti-social behaviour and the fear of crime and anti-social behaviour

Policy: **Affordable Housing**

Questions	Timescale	Scale	Impact	Rural	Urban
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Annex E: Stages of the planning process

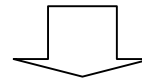
Developer contacts Area Planning and Housing Futures Teams for pre-application advice and meeting



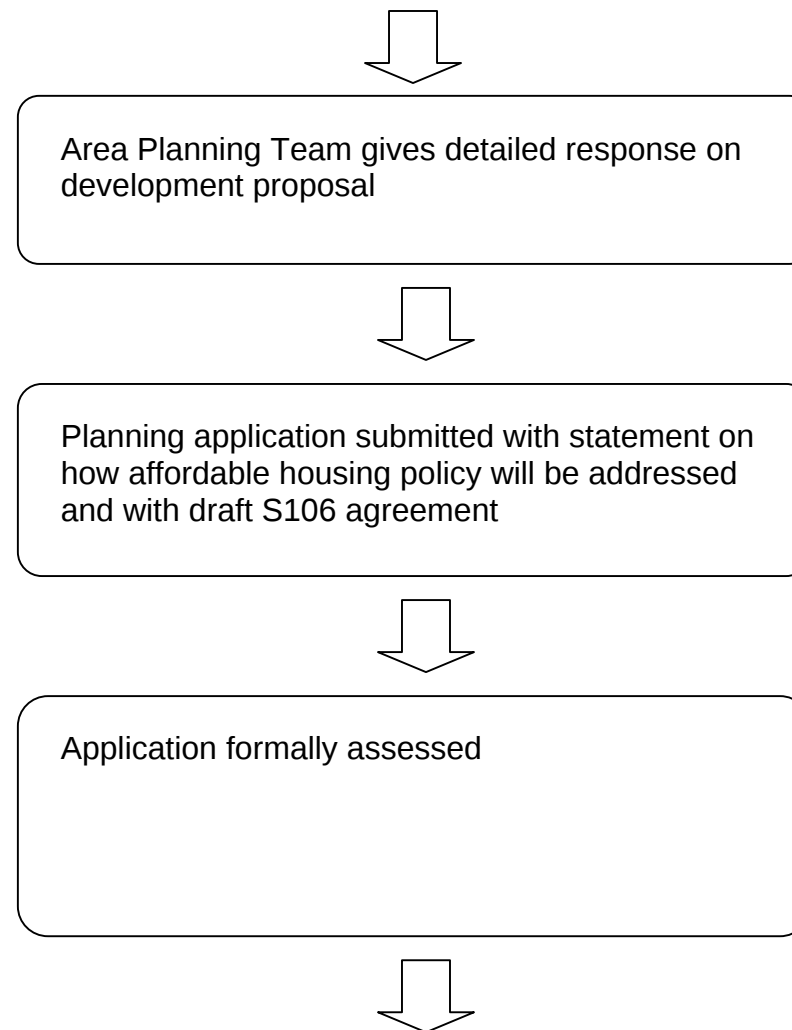
In consultation with Housing Futures, Area Planning Team confirms:

- Suitability of site for housing
- Whether affordable housing is required
- Number of units, size and tenure of affordable housing
- Any other relevant planning issues

Area Planning Team provides current list of Development Partners



Developer prepares initial sketch scheme, taking into account advice given, including Development Partner input, to allow Area Planning Team to provide further pre-application advice on all aspects of development



Annex F: Model Section 106 Legal Agreement

DATED _____ XXXX _____ 200Y

SOUTH TYNESIDE BOROUGH COUNCIL

and

A N OTHER

PLANNING OBLIGATION pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) relating to land at AAAAA

THIS DEED is made the [] day of [] 200Y

BETWEEN

- (1) **South Tyneside Council** ("the Council")
- (2) **?????LIMITED** (Company NoNNNNN) whose registered office is at ("the Owner")

IT IS AGREED as follows:

1 INTERPRETATION

- 1.1 Any reference in this Deed to either of the parties is deemed to include their successors in title and assigns.
- 1.2 The expression "person" means any person, firm, authority or company or other legal entity.

2 DEFINITIONS

2.1 In this Deed the following words and expressions which begin with capital letters shall, unless the context so otherwise requires, have the precise meanings set out below:-

2.1.1 “**Affordable Housing**” means the XXXX Affordable Rented Dwellings or the YYYY Shared Ownership Dwellings or the ZZZZ Shared Equity Dwellings or, where the context so admits, both the XXXX Affordable Rented Dwellings and the YYYY Shared Ownership Dwellings, or both the XXXX Affordable Rented Dwellings and the ZZZZ Shared Equity Dwellings, or both the YYYY Shared Ownership Dwellings and the ZZZZ Shared Equity Dwellings, or the XXXX Affordable Rented Dwellings and the YYYY Shared Ownership Dwellings and the ZZZZ Shared Equity Dwellings.

2.1.2 “**Housing Commuted Sum**” means a contribution in lieu of on-site provision of affordable housing which is agreed between the Owner and the Council.

2.1.3 “**Affordable Rent**” a rent which is comparable to Government Target Rents. Affordable Rented Dwellings *including all service charges and ground rent*



- (b) That prior to the date of valuation there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale; and
- (c) That the state of the market level of values and other circumstances were on any earlier assumed date of contracts the same as on the date of valuation; and
- (d) That no account is taken of any additional bid by the prospective purchaser with a special interest; and
- (e) That both parties to the transaction had acted knowledgeably and prudently and without compulsion;

2.1.17 “**Shared Ownership Basis**” means the granting of a lease or sublease as the case may be in the form of a shared ownership lease containing those clauses designated as mandatory by the Housing Corporation;

2.1.18 “**Staircasing**” means the exercise by a leaseholder from time to time of his right to pay for a further percentage of the value of the Shared Ownership Dwelling or the Shared Equity Dwelling up to a maximum of 100% of its Open Market Value;

2.1.19 “**Subsequent Sale Price**” means the sum at which any Shared Ownership Dwelling or any Shared Equity Dwelling is always sold subsequently and which is to be calculated by multiplying the Open Market Value by the Rented Proportion or Discount Percentage provided always that where Staircasing has taken place in relation to a Shared Ownership Dwelling or Shared Equity Dwelling the Subsequent Sale Price shall be calculated by multiplying the Open Market Value by the percentage of the equity owned by the owner of the Shared Ownership Dwelling or the Shared Equity Dwelling following such staircasing;

2.1.20 “**Planning Act**” means the Town and Country Planning Act 1990 (as amended);

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5 OBLIGATIONS

- 5.1 The Owner hereby covenants with the Council to perform the obligations or activities specified in Schedule 1 of this Deed.
- 5.2 The Owner further covenants to pay the Council's reasonable legal costs charges and disbursements incurred in the negotiation of this Agreement.
- 5.3 The Council covenants with the Owner to observe and perform its obligations set out in the Second Schedule 2.
- 5.4 No party shall be liable for breach of a covenant contained in this Agreement after having parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 5.5 The Owner and the Council do not intend that any of the terms of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 5.6 This Agreement shall not bind or be enforceable by the Council against the buyer of a freehold or leasehold individual Open Market Dwelling.

6 DETERMINATION OF DEED

- 6.1 If the Planning Permission shall expire before the Development is commenced (within the meaning of Section 56(4) of the Planning Act) or shall at any time be revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Deed from the Register of Local Land Charges.
- 6.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a Planning Permission (other than the one relating to the Development as specified in the Application) granted (whether or not an appeal) after the date of this Agreement.

6.3 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.

6.4 This Agreement is a local land charge and shall be registered as such.

7 ARBITRATION

7.1 Any dispute or difference relating to any matter or thing arising out of or in connection with this Agreement shall be referred to arbitration in accordance with the Arbitration Act 1996 except for valuation required by the Schedule.

7.2 If the parties do not agree upon the appointment of the Arbitrator within 28 days of the service of an arbitration notice, the Arbitrator shall be nominated upon the application of either party by the President or Vice President for the time being of the Royal Institution of Chartered Surveyors. The Arbitrator shall be an independent person who is professionally qualified in respect of the subject matter of the dispute for minimum period of 10 years.

7.3 Unless the Arbitrator shall direct to the contrary:

7.3.1 Not more than 28 days after the Arbitrator's appointment the claimant shall send to the Arbitrator and respondent a summary of its case together with a bundle of key documents relied upon;

7.3.2 Not more than 28 days after the receipt of the claimant's submission the respondent shall send the Arbitrator and the Claimant a summary of its case together with a bundle of key documents relied upon;

7.3.3 The Arbitrator shall not hear oral evidence or representations.

7.4 The Arbitrator shall be at liberty to visit the Land.

- 7.5 The Arbitrator may call for such written evidence from the parties as he may require.
- 7.6 The Arbitrator shall use all reasonable endeavours to make his award and the reasons for it in writing as quickly as possible and in any event within 90 days of his appointment. Within 21 days of the receipt of the Arbitrator's award either party may apply to the Arbitrator for further written clarification of his award and the reasons including details of the methodology of any calculation and the Arbitrator shall provide such clarification within 21 days of the Application.

IN WITNESS whereof those present have been duly executed as a Deed by the parties hereto the day and year first before written.

SCHEDULE 1

PLANNING OBLIGATIONS OF THE DEVELOPER AND THE OWNER

1 AFFORDABLE HOUSING

The Owner covenants with the Council as follows:

- 1.1 To build the XXXX Affordable Rented Dwellings and offer copy of offer to be sent to the Officer at the same time as the to the Housing Association to transfer the freehold or Long Leasehold in accordance with the terms of this Agreement and in accordance with the Transfer Trigger requirements of Schedule 6 at a price which enables the Housing Association to charge an Affordable Rent.
- 1.2 The Owner will leave the offer open for acceptance by the Housing Association for a period of 56 working days and will during that period use reasonable endeavours to agree with the Housing Association the terms other than price PROVIDED ALWAYS that it will be a term of the sale of the XXXX Affordable Rented Dwellings that the Housing Association shall not dispose of or cause or permit the disposal of the XXXX Affordable Rented Dwellings other than for the purpose of providing tenancies at an Affordable Rent to persons pursuant to the Nomination Deed as set out in Schedule 4 provided that the Housing Association may transfer or sublet the XXXX Rented Affordable Dwellings or any of them to another Registered Social Landlord (or other provider of social housing) with the consent of the Council such consent not to be unreasonably withheld but subject to such reasonable terms which seeks to preserve the purposes of this Agreement (and any successors may transfer or sublet on the same basis) subject to and with the benefit of the restrictions and other relevant matters contained in this Agreement and the use by any such Housing Association of the Nomination Deed (Mutatis Mutandis).

- 1.3 If the offer is accepted by the Housing Association within the 56 day period provided by clause 1.2 above then the Owner will use reasonable endeavours to exchange contracts for the sale of the XXXX Affordable Rented Dwellings within a period of 3 calendar months from the date of acceptance to the offer by the Housing Association or the date of delivery of a full package of contract documentation and full evidence of title by the Owner/Developer to the Housing Association whichever is the later.
- 1.4 If the offer has been rejected or has not been accepted or contracts have not been exchanged with the Housing Association within the period deferred to at clause 1.3 above for the sale of the XXXX Affordable Rented Dwellings the Owner will in writing notify the Council to that effect with an explanation as to why such exchange of contracts has not been secured or the offer was not accepted and will propose the Alternative Housing Associations for the Council's approval (such approval not to be unreasonably withheld or delayed).
- 1.5 Within 15 working days of the Council receiving from the Owner the notification pursuant to clause 1.4 above the Council will notify the Owner in writing of its approval to the Alternative Housing Associations proposed by Owner or will nominate Alternative Housing Associations to whom the Owner shall make an offer of sale of the XXXX Affordable Rented Dwellings to (the Council) (the "Notification") PROVIDED ALWAYS



- 1.12.1.3 Upon the commencement of marketing the XXXX Affordable Rented Dwellings to notify the Officer of the commencement of the same and send with such notice a copy of this agreement referring to this provision;
- 1.12.1.4 In clause 1.12 “Price” shall mean the value of the XXXX Affordable Rented Dwellings as specified by the Seller in its notice served on the Council pursuant to Clause 1.12.1.3 above or otherwise (or if such value is challenged by the Council) determined by an independent Chartered Surveyor of not fewer than ten years’ relevant experience agreed between the Seller and the Council (or appointed on the application of the Seller or the Council by the President for the time being of the Royal Institution of Chartered Surveyors if the parties cannot agree) not more than four weeks after the Seller has specified the value in accordance with the Royal Institute of Chartered Surveyors Appraisal and Valuation Manual current at the date of marketing the Property) Existing Use Value Social Housing;
- 1.12.1.5 The approval of the Council required by clause 1.12.1.4 above shall not be unreasonably withheld or delayed provided that upon any buyer declaring an interest to purchase the XXXX Affordable Rented Dwellings and the Seller notifying the Executive Director of Neighbourhood Services of the Council in writing of the identity of such a buyer the Council must respond within 15 working days of receipt of such notice confirming whether it approves such buyer for the purpose

1.12.1.8 The process for approval referred to in this clause shall be repeated as many times as necessary and time shall be of the essence;

1.12.2 In the event of a purchase of XXXX Affordable Rented Dwellings being effected in accordance with clause 1.12.1 above the Buyer shall be subject to the obligations in respect of the XXXX Affordable Rented Dwellings set out in this Deed as if references to the Buyer were references to the Owner;

1.12.3 If despite the Seller using reasonable endeavours the Seller cannot dispose of the XXXX Affordable Rented Dwellings (or relevant part or parts of them) to a Buyer after having complied with the terms of clause 1.12.1 above the Seller shall be at liberty to dispose of the XXXX Affordable Rented Dwellings on the open market upon such terms as it thinks fit and the Seller of the XXXX Affordable Rented Dwellings and any owner thereof of any interest therein including any lessee successor in title assignee or otherwise shall forthwith cease to be subject to the terms of this planning obligation;

1.12.4 In the event that clause 1.12.3 becomes effective then the Council will upon written request supply promptly to any interested party confirmation of the effect and events to the same and will on written request promptly remove any entry in the Local Development Framework assignee or o2001 Tcr3 0 TDC TD-.0003 To

- 1.16.5 Each three bedroomed house at the price as set out in Schedule 5;
- 1.16.6 The four bedroomed house at the price as set out in Schedule 5.
- 1.17 If the persons identified in accordance with clause 1.16 above are approved by the Housing Association the Owner shall offer to sell individually each of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings to the Housing Association.
- 1.18 The offer referred to at clause 1.17 above shall include be / shall not be limited to the following terms:
 - 1.18.1 The YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings shall be offered for sale to the Housing Association in each case at the price duly indicated for that unit in Schedule 5;
 - 1.18.2 Contracts to be exchanged within two months of the date of acceptance of the offer by the Housing Association or the date of delivery of a full package of contract documentation and full evidence of title by the Owner/Developer to the Housing Association whichever is the later which in case of houses shall be a freehold or a Long Leasehold interest but in the case of flats a Long Leasehold.
- 1.19 The Owner shall leave the offer referred to at clause 1.17 above open for acceptance by the Housing Association for a period of 56 working days from the date of the offer.
- 1.20 In the event the offer referred to in clause 1.17 above is rejected by the Housing Association or is not accepted by the Housing Association within the 56 working day period provided in clause 1.19 above then the offer shall lapse and shall no longer be capable of acceptance and the terms of clause 1.22 below shall apply.

- 1.21 If the Housing Association accepts the offer within the 56 day period provided by clause 1.19 above then the Owner will use reasonable endeavours to exchange contracts for the sale of the individual unit that was the subject of the o

- 1.23.1 The Owner will notify the Council and the Housing Association in writing that the offers have been rejected or contracts have not been exchanged (“the Notification”); and
- 1.23.2 The Housing Association shall have a period of 10 working days from the Notification to serve notice in writing on the Owner and/or the

a commuted sum has been paid pursuant to Clause 1.23.3 above PROVIDED ALWAYS that the provisions of clause 1.24 shall continue to apply to any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings that have been disposed of to the Housing Association.

1.24 Subject to the provisions of clause 1.24.13 to 1.24.17 of this Schedule the following provisions shall only apply and regulate the future disposals of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings disposed of to the Housing Association by the Owner:

1.24.1 The legal interest of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings disposed of in accordance with clause 1.16 to 1.23 above shall not subsequently be assigned transferred or disposed of other than at the Subsequent Sale Price;

1.24.2 When any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings becomes available for re-sale the person seeking to re-sell ("the Vendor") will write to the Housing Association informing it and inviting the Housing Association to market the property on behalf of the Vendor;

1.24.3 On receiving notification referred to at 1.24.2 above the Housing Association shall write to the Officer requesting a list of persons who have registered an interest in purchasing homes of this type, size and location. The Council will forward this list within 10 working days of the request. The Housing Association shall write to each person on the list giving sales details of the property;

1.24.4 During the first 12 weeks from the commencement of marketing pursuant to 1.24.3 above no interest in any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings shall be offered for sale other than to a person or persons residing within the Borough of South Tyneside;

- 1.24.8 In the event of a disposal of the relevant unit pursuant to paragraph 1.24.7 the Vendor shall pay a sum to the Council equivalent at the date of such sale to the difference between the Subsequent Sale Price and the Open Market Value;
- 1.24.9 In the event of a disposal of the relevant unit on the open market in accordance with clause 1.24.8 the Shared Equity Dwelling shall forthwith cease to be subject to the terms of this planning obligation;
- 1.24.10 In the event that clause 1.24.9 becomes effective the Council (or its successor) will upon written request supply to any interested party confirmation of the effect and events of the above and will remove the entry in the Local Land Charges Register and any other entry in any other register open to public inspection;
- 1.24.11 For the purposes of 1.24.1 to 1.24.18 the Open Market Value shall take no account of any improvements made to the Shared Equity Dwelling and the Vendor shall be entitled to retain 100% of the increase in open market value attributable to such improvements;
- 1.24.11.1 In the event of a Shared Equity Dwelling being occupied on a Shared Ownership Basis and the lessee Staircasing the monies obtained by the Housing Association lessor from the lessee upon the completion of the Staircasing shall after the deduction of all administration and legal expenses reasonably incurred by the Housing Association in dealing with the Staircasing and any sums required by the mortgagee or chargee of the Housing Association in order to provide its content and/or the release of the Shared Equity Dwelling from any mortgage charge or other funding agreement which may be subsisting from time to time shall be used to assist in the acquisition and development by the said Housing Association of further land for Affordable Housing within the boundaries of the Borough of South Tyneside within five years of the

reasonable efforts to identify purchase and develop such land which it considers to be suitable for the purpose of providing Affordable Housing at a price which the Housing Association considers to be reasonable is unable to identify and purchase such land within the period of five years the provision of this sub clause shall cease to have effect upon the service of an appropriate written notice by the Housing Association on the Council;

1.24.12 If a mortgagee, chargee or a receiver of any of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings exercises any power of sale or takes any enforcement action under the terms of its charge or mortgage so that such mortgagee or chargee or receiver appointed by it wishes to realise its security by a sale or other disposition (of whatever description) of the Eligible Occupier's interest in the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) then such mortgagee chargee or receiver ("the Seller") shall use all reasonable endeavours to effect the sale or other disposition of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of it) upon the following terms:

1.24.12.1 To market the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) for a minimum period of 12 weeks [(the first 6 weeks of which shall be in respect of persons residing in the Council's area)] and;

1.24.12.2 Provided that the Seller shall effect a sale of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) at the Price (as hereinafter defined) and upon other terms that are reasonably acceptable to the Seller to use reasonable endeavours to enter into within the period of twelve weeks clause 1.24.12.1 above a binding agreement for the sale of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings (or any part or parts of them) at the Price and upon terms which are reasonably acceptable to the buyer

any part or parts of them) and any owner thereof of any interest therein including any lessee successor in title assignee or otherwise shall henceforth cease to be subject to the terms of this planning obligation;

1.24.15 In the event that clause 1.24.14 becomes effective then the Council will upon written request supply promptly to any interested party confirmation of the effect and events in relation to the same and will on written request promptly remove any entry in any other register open to public inspection;

1.24.16 Pay commuted sum....

1.24.17 Service of any notice under this clause upon the Council shall be served upon the Executive Director of Neighbourhood Services or such other person as the Council shall nominate in writing from time to time.

Determination of Open Market Value

1.25 For the purposes of clause 1.25 only;

1.25.1 The Open Market Value shall be agreed by the owner of the relevant unit of the YYYY Shared Ownership Dwellings and ZZZZ Shared Equity Dwellings and the Housing Association prior to the disposal of the relevant unit and in default of agreement determined by an independent chartered surveyor appointed by agreement between the owner and the Housing Association;

1.25.2 In the absence of the agreement the surveyor shall be appointed by the President of the Royal Institute of Chartered Surveyors;

1.25.3 The surveyor shall act as an expert and his decision shall be final and binding and in the absence of a determination by the surveyor his fees shall be borne by the parties in equal shares;

1.25.4 In arriving at the Open Market Value the assumptions contained in the definition of Open Market Value at clause 2.1.24 shall apply.

1.26 For the purpose of this clause the perpetuity period shall be eighty years from the date of this Agreement.

SCHEDULE 2

THE COUNCIL'S COVENANTS

1 PLANNING PERMISSION

The Council shall issue planning permission for the Development within seven days of completion of this Agreement in the form annexed as the Schedule 3 of this Agreement.

SCHEDULE 3

DRAFT CONDITIONS

Application at:

By:

Application Ref No:

Application Received on:

CONDITIONS OF APPROVAL

1 The shall be begun not later than the expiration of the five years from the date of this permission.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990.

SCHEDULE 4**NOMINATION DEED****NOMINATION DEED**

THIS DEED OF NOMINATION is made the

day of 200Y

BETWEEN

ASSOCIATION

Having its registered offices at

("the Association") and **SOUTH TYNESIDE COUNCIL** ("the Council")

NOW THIS DEED WITNESSETH as follows:-

1. DEFINITIONS

- 1.1 Words and phrases defined in the Agreement dated 200Y and made between the Council and [] ("the Principle Agreement") shall where the context so admits bear the same meaning where used in this Agreement.
- 1.2 Reference to any statutory provisions shall be deemed to include any such provisions as from time to time amended extended increased or replaced and to any orders or regulations made under the same.
- 1.3 Reference to a person in housing need shall include any person who might reasonably expect to live with that person as part of the same family unit.
- 1.4 Reference to the Association shall include its successors in title but not any person purchasing Affordable Rented Dwellings or an individual Affordable Rented Dwelling pursuant to Clause [] of the Principle Agreement.

2. NOMINATION RIGHTS

- 2.1 It is hereby agreed that the Council shall henceforth have the right for a period of eighty years (which period shall be the perpetuity period applicable to this Agreement) except as expressly otherwise provided to nominate as tenants of vacant Affordable Rented Dwellings or any Affordable Rented Dwellings which fall vacant during the said period of eighty years any person in housing need to whom the Council owes a statutory duty or any other persons who are from time to time on the housing register (including waiting lists of existing tenants of the Council seeking transfers) maintained by or for the Council PROVIDED THAT such right shall be in respect of 100 per centum of all initial lettings and that the first three out of every four of all subsequent re-lettings in strict rotation of Affordable Rented Dwellings.

3. NOMINATION PROCEDURE

- 3.1 The Association shall notify the Council when an Affordable Rented Dwelling to which this Agreement relates is available for nomination under clause 2 above. The Council will then within five working days of receipt of such notification send to the Association written notice of the person ("the Nominee") (with full names and addresses and such other information as the Association may reasonably require) it nominates to the Affordable Rented Dwellings. The Association shall then within ten working days offer to the Nominee a tenancy of the Affordable Rented Dwelling if the Association reasonably considers the Nominee suitable. If multiple nominations are requested, the Association shall at the same time inform the Council of the nominee(s) to which the Dwelling is not to be offered.

4 NOMINATION

4.1 On request the Association shall promptly give the Council:-

- (a) full details of any lettings made by it of each Affordable Rented Dwelling;
- (b) full details of any offer of a tenancy made by it to a Nominee and whether such offer has been accepted or rejected.

5 ARBITRATION

5.1 Any dispute or difference relating to any matter arising out of or in connection with this agreement shall be referred to in arbitration in accordance with the procedure contained in clause 9 of the Principle Agreement.

6 NOTICES

6.1 Any notice required to be served hereunder shall be sufficiently served on the parties if sent by pre-paid first class recorded delivery post to the address of the parties indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two business days after posting.

IN WITNESS whereof the parties hereto have executed these presents as a deed and delivered the day and year first before written.

THE COMMON SEAL of)

THE ASSOCIATION was)

Hereunto affixed in the presence of:-)

THE COMMON SEAL OF SOUTH TYNESIDE COUNCIL)

was hereunto)

Affixed in the presence of:-)

Head of Corporate Governance

SCHEDULE 5
RESIDENTIAL DEVELOPMENT AT

XXX Affordable Rented Dwellings Location to be specified and shown in Plan 2.

XXX Shared Ownership Dwellings Location to be specified and shown in Plan 2.

Discount for Sale Dwellings location to be specified and shown on Plan 2

SCHEDULE 6

Completion in total of xx Open Market Dwellings	The Affordable Rented Dwellings comprising the whole of Block -- as indicated on the Plan 2
Completion in total of xxx Open Market Dwellings	All the Shared Ownership Dwellings in Block -- as indicated on the Plan 2
Completion in total of xxxx Open Market Dwellings	All the Discount for Sale Dwellings in Block --as indicated on the Plan 2
Completion in total of xxxxx Open Market Dwellings Xxxxx = site total – 25% of total	The remainder of all the Affordable Rented, Shared Ownership Dwellings and Discounted for Sale Dwellings not previously transferred

**To find out more about
the new Local Development Framework,
contact:**

Spatial Planning Team
Regulatory Services
South Tyneside Council
Town Hall and Civic Offices
Weston Road
South Shields
Tyne and Wear
NE33 2RL

Telephone: **(0191) 424 7688**

Email: spatialplanning@southtyneside.gov.uk

Email: planning@southtyneside.gov.uk

Website: www.southtyneside.gov.uk/planning/strategic/

"If you know your council's role, it's just a matter of time before you know it."

