



Introduction / Guidance to:
Standard Model Affordable Housing
Section 106 Agreement for Cumbria

Cumbria Housing Group

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1. Introduction

Please find attached the standard model Section (S106) template Agreement, which should be used to help secure affordable housing by local planning authorities in Cumbria.

The development of this document forms an Action to the Cumbria Housing Strategy 2011. The role of this document will be to improve and speed up the production of Affordable Housing S106 Agreements in the County, and thus assist in the delivery of affordable housing.

The document was prepared with the input of a writing group consisting of officers and employees representing:

- Allerdale Borough Council
- Carlisle City Council
- Cumbria County Council
- Copeland Borough Council
- Eden District Council
- Lake District National Park Authority
- Homegroup
- Riverside Housing Association
- Story Land

In May/June 2011 the document was subject to a 6 week consultation focused on stakeholders in the County and as part of this process a meeting with stakeholders was held on 16 May. Responses received as part of this process were given full consideration and the responses received have helped with the shaping of this document.

2. Role

The role of this document will be to provide a standard model S106 Agreement to be used to secure affordable housing in the county.

It will be for individual local planning authorities to adopt and use this document as appropriate in particular circumstances.

3. Scope

The document provides a model planning obligation that can be used to secure affordable housing. Nevertheless, given the number of planning authorities in Cumbria the model provided should be employed flexibly to work in different circumstances.

Consequently, it has been prepared in such a way that allows elements to be changed (and in some instances; included and omitted) to reflect local circumstances; the nature of development; specific geographical issues; local policy and the proposed development. For example matters like **Qualifying Person and Local Occupancy definitions** and **timescales**

amongst others, should be **edited to better reflect local policy and circumstance** or some authorities may wish to have reference made to local letting policies which not all authorities may have.

In line with the flexible nature of this document, a number of schedules have been included, these relating to various types of affordable housing types and tenures, namely:

- Discounted Sale
- Rented (Social and Affordable)
- Registered Provider Rented (Social and Affordable)
- Shared Ownership (and Shared Equity)

The schedules should be used as appropriate in respect of individual developments.

Consideration was also given to the opportunity to prepare a schedule relating to Self Build Affordable Housing. It is agreed that such housing can provide a valuable supply of deliverable affordable housing. However, given the general level of detail required to be included within S106s relating to self build housing and the particular circumstances concerning their provision it was not considered practical to do so in this document. Instead it is recommended that individual S106 should be prepared for Self Build Affordable Housing.

While an important source of contribution, it is considered appropriate that contributions towards the provision of commuted sums for affordable housing is not included in this document whose scope at present is limited to the securing of affordable on development sites directly.

It should also be noted that this document only relates to Section 106 Agreements to be used to secure affordable housing, and does not relate to any other form of infrastructure or requirement to be secured/controlled through a Section 106 Agreement.

4. Monitoring

It is intended that the document will be subject to annual review and will be subject to update as appropriate.

5. Content of Standard Model S106

Set out below is guidance to be considered when using this document and should give a better understanding with respect to the use of this document.

Definitions

The definitions provided within the document relate to all the schedules provided. Clearly different schedules would require the use of appropriate schedules. When preparing S106 document, district and applicant solicitors will be required to ensure the appropriate definitions are used in each case.

Particular Comments:

Locality - this definition refers to the geographic locality in which occupants of affordable homes would be derived. The appropriate geographic area would be identified as part of this definition.

Qualifying Person - this definition will vary on a case by case basis to reflect local planning policy but also the particular circumstances affecting a site. Within the document an indicative list of potential conditions are listed as a guide.

Shared Equity Transfer - it should be noted restrictions on the level of equity that could be purchased should not be limited in areas where right to buy legislation does not apply.

Mortgagee in Possession

Mortgagee in Possession means a person or body which has entered into a mortgage in respect of a dwelling constructed on the Land and has taken action following a default by the borrower in respect of the repayment due under that mortgage. This is considered an important element of any S106 Agreement.

With respect to Mortgagee in Possession five potential **options** were considered to reflect different approaches to this matter that may be sought to use.

The first of these stipulates that where the property is repossessed, the Mortgagee in Possession will be affected by all restrictions stipulated within the S106 Agreement.

The second and third options stipulate that where the property is repossessed, the Mortgagee in Possession will be unencumbered by the restrictions set out within the S106, however any subsequent occupier will be affected by the requirements of the S106. The third option relates only to a mortgagee of a Registered Provider or LHA, whereas the second includes mortgagees of individual owners. Paragraph 7.2 of the third option provides that a mortgagee in possession of a shared ownership unit would not be bound by the obligations so long as they have given the LHA the chance to nominate an occupier of that unit.

The fourth option stipulates that the only relaxation with the terms of the S106 that will take place will be in so far as to permit a disposal to any person where following repossession no Qualifying Person has been found within a nomination period of one month but that all other obligations continue to apply (not least the affordable price etc.) and then all obligations are re-imposed on a subsequent occupier.

The fifth option stipulates that where the property is repossessed the Mortgagee would be expected to take best steps to transfer the homes as an affordable unit. Where there is no one willing to take the unit on as an affordable unit (ie where there is no need for the homes) the mortgagee in possession would be able to dispose of affordable units free of the restrictions contained within the Agreement.

The Local Planning Authority should determine the most appropriate Mortgagee in Possession clauses to use in particular circumstances and locations. Option 4 would be considered most appropriate in Eden, as this would retain the property as affordable in perpetuity, while allowing an element of flexibility to the lender.

In using the document regard should be given to mortgages to ensure S106 Agreements do not prove unnecessarily onerous. When considering and utilising any mortgagee in possession clauses it is important that consideration be given to their impact on the ability to get finance and hence a series of options are offered for use by individual authorities, according to circumstances. Nevertheless it will remain important that S106 are robust and result in the delivery of appropriately secured housing.

6. The First Schedule

Depending on the types of affordable housing to be provided as part of a development different schedules may be utilised either individually or a number on a single site where different forms of affordable housing are to be provided.

Where reference is made to and/or in the context of affordable need and local occupancy, the occasions when the 'or' element would be used would depend upon each Council's housing policy. The option is there for each Council to amend as appropriate.

Schedule A - Discounted Sale Affordable Housing

This schedule relates to discounted sale affordable housing. These are properties on housing development that are sold by the developer initially with a discount from the open-market value which remain with the property through all subsequent sales.

Discounts in Eden's planning policies are linked to the open market value of the property, as set out below:

- Above £115,000 - 40%
- Between £100,000 and £115,000 - 35%
- Below £100,000 - one third (33.33%).

Schedule B - Non Registered Provider Delivered Rented Affordable Housing

This schedule relates to rented affordable housing which is delivered by a non-Registered Provider and which is either managed by a non-registered provider or where it transferred to a registered provider.

This can relate to social rented affordable housing which is rented housing owned and managed by local authorities or registered providers for which guideline target rents are determined through the national rent regime.

It could also relate to Affordable Rented Housing. This is rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable rent is not subject to the national regime

but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

Schedule C - Registered Provider Delivered Rented Affordable Housing

This schedule relates to rented affordable housing which is delivered and managed by a Registered Provider.

This can relate to social rented affordable housing which is rented housing owned and managed by local authorities or registered providers for which guideline target rents are determined through the national rent regime.

It could also relate to affordable rented housing. This is rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable rent is not subject to the national regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

Schedule D - Shared Ownership Affordable Housing

Shared ownership is used to help people achieve home ownership even though they cannot afford to purchase a property outright. With this form of housing, normally a developer will sell a percentage of the property. As well as the percentage bought by the occupier, the purchaser may be required pay a rent on the remaining non-purchased proportion. The purchaser can normally buy further shares in the property (called staircasing), in some instances 100% of the property, however in areas defined as rural areas by the Government there is a limitation as to the level of staircasing that can be achieved.

This schedule can also be modified to reflect Shared Equity affordable housing. Under shared equity the purchaser buys all of a property but with an equity share loan making up the difference between the mortgage and the purchase price. The loan is normally for a maximum period of 10 years (interest only is paid) or is repaid on the sale of the property (if this happens first).

Relevant to all schedules in situations where housing is for 'Local Occupancy' but not affordable housing reference schedules should remove reference to local needs housing.

Cascades

Within the document two different approaches to cascades are presented. Which cascade is used can depend on preference and suitability in a local context. Careful consideration should be given to the timescales within any cascade and it should be noted that if the process is too slow it could create financing difficulties, nonetheless, cascades should not operate with undue speed given their important role.

7. The Second Schedule

The second schedule is used to identify the affordable housing (and their type) to be delivered on an individual site.

In this schedule the plot numbers associated with individual homes would be listed as would be accompanied by a map highlighting properties. In instances where no plot numbers can be identified (eg in the case of some outline applications) this schedule can be simplified to acknowledge the number of range of affordable homes to be provided.

8. Use

It will be for individual planning authorities to adopt and utilise this document which sets out a framework to be used across the county as far as possible.

9. Review

Legislation in respect to planning and housing is currently undergoing a considerable period of flux; with this it is important that this document remains current. It is also important independent of changing legislation and guidance this work is subject to regular review to see what elements are effective and which may require review. This process can be undertaken through the Cumbria Housing Group Structures.

To this end it is considered important that, using this document; the development industry, local planning and housing authorities and mortgage providers work closely together during negotiations to ensure, as far as practical, these can be concluded to the satisfaction of parties.