

APPENDIX A

Halton Borough Council

**Affordable Housing
Supplementary Planning Document**

December 2012

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1. Purpose of the Supplementary Planning Document

- 1.1 This SPD seeks to provide greater certainty and clarity for all parties involved in the delivery of affordable housing in Halton through the planning system. The National Planning Policy Framework¹ requires local authorities to assess and meet the full needs for affordable housing in their housing market area. It goes on to define that affordable housing:
- Is social rented, affordable rented and intermediate housing provided to eligible households whose housing needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices; and,
 - Should include provision for the housing to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.
- 1.2 Up until 2012, Halton Borough Council did not have the policy framework in place to require affordable housing to be delivered on market housing sites (those built by a private developer for purchase on the open market). The Halton Core Strategy Local Plan (adopted in December 2012) introduced this requirement for the first time and this document seeks to provide additional guidance on how the Council will seek to work with developers to apply this requirement. Specifically this SPD aims to:
- a) Provide additional guidance on the interpretation of the affordable housing policy, CS13: Affordable Housing, contained in the Halton Core Strategy.
 - b) Ensure the smooth delivery and maximise the opportunities available for the provision of affordable housing to meet Halton's housing needs.
 - c) Reduce uncertainty, ensure a consistent approach and provide clear guidance for all stakeholders to follow.

¹ CLG (2012) National Planning Policy Framework

2. Policy Framework

- 2.1 The Affordable Housing SPD draws on and is consistent with policy and guidance from the national to the local level.

National Context

- 2.2 National planning policy is set out in the National Planning Policy Framework (NPPF)² which was published in March 2012. This single document replaces the previous Planning Policy Statements (PPSs) and Guidance (PPGs).
- 2.3 Guidance within the NPPF on affordable housing is limited, giving local planning authorities the ability to determine their own policy approaches and thresholds to which a policy requirement would apply. Local authorities are required to develop an evidence base which will objectively assess the need for affordable housing, and then to use this evidence to develop appropriate policies which will ensure that these needs are fully met.
- 2.4 In planning terms 'affordable housing' refers to a particular type of housing tenure, which is delivered by a Registered Provider³ and secured in perpetuity. Affordable housing includes social rented, affordable rented and intermediate housing, provided to eligible households who cannot afford to access suitable market housing. The glossary to the National Planning Policy Framework provides the following definitions:-

Affordable housing is available in three types:

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 affordable 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. These can include shared equity (shared ownership and equity loans), other

² CLG (2012) National Planning Policy Framework

³ Registered Providers (previously known as Registered Social Landlords) are providers of social housing, and can be private, public or not for profit organisations. All Registered Providers are regulated by the Homes and Communities Agency.

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.

Source: CLG (2012) National Planning Policy Framework: Annex 2: Glossary

- 2.5 The Affordable Rent tenure is a relatively new type of low cost rented social housing introduced on 1st April 2011 which applies to newly built and re-let properties owned by Registered Providers. The introduction of Affordable Rent means that Registered Providers will be able to charge up to 80% of gross market rents (i.e. inclusive of any service charges). This is in contrast to social rented housing whereby rents are typically around 40% - 50% of market rent levels.

Local Context

- 2.6 Halton's planning policy framework consists of Local Plans which set policy and Supplementary Planning Documents (SPDs) which provide additional guidance to higher level policy documents. The 2005 Halton Unitary Development Plan (UDP) is one such Local Plan which will be replaced by other more up-to-date Local Plans in the coming years. The recently adopted Halton Core Strategy Local Plan⁴ is a strategic planning policy document, replacing much of the first part of the UDP and sets out the overarching strategy for the future development of the Borough. Included in this is the strategy for the delivery of affordable housing across Halton.
- 2.7 Halton Core Strategy policy CS13: Affordable Housing (reproduced at para 3.14) details the policy framework for seeking affordable housing provision and as such, is the basis for this SPD. When seeking affordable housing, regard will be had to wider development aspirations for the Borough in line with the Overall Spatial Strategy and Key Areas of Change which are important elements of the Halton Core Strategy.
- 2.8 Halton's Housing Strategy 2008-11 set out the vision and objectives for the provision of housing to the Borough's residents and particularly those with the most pressing housing needs. It defined the role of the Council in providing community leadership to deliver a co-ordinated approach. It contained clear strategic priorities for action to address the issues and challenges which have been identified through the development of a robust evidence base and consultation with partners, stakeholders and residents. At the time of writing a new Housing Strategy for Halton was in preparation with adoption anticipated early in 2013.
- 2.9 The Affordable Housing SPD provides a greater level of detail and guidance for the delivery of affordable housing across the Borough in accordance with the Halton Core Strategy and Housing Strategy.

⁴ HBC (2012) Halton Core Strategy Local Plan

3. Housing Needs in Halton

Halton's Housing Characteristics

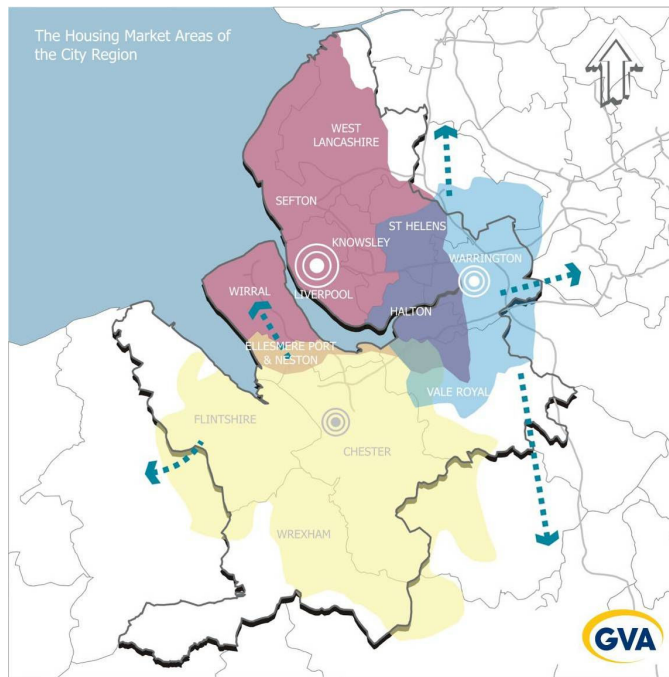
- 3.1 At 2011 there were a total of about 54,100 dwellings within the Borough⁵. The property profile is fairly varied, however, there is currently an over representation of terraced properties and a need for more family and aspirational housing.
- 3.2 In Widnes the housing profile is largely represented by Victorian and interwar housing which expanded north from Widnes Town Centre, enveloping the previous hamlets of Appleton and Farnworth. In the 1970's, social housing estates were developed at Ditton and Hough Green and there have been more recent developments of private, family housing in north Widnes at Upton Rocks.
- 3.3 Runcorn experienced significant expansion following its designation as a New Town in 1964. The New Town is structured around a number of distinct neighbourhoods with some areas now requiring redevelopment or regeneration. Over recent years, development has been concentrated in the east of Runcorn with housing renewal in Castlefields (originally built as part of the New Town) and the development of Sandymoor which was first consented for housing development during the New Town period.

Halton's Housing Market

- 3.4 Halton is currently identified as part of the Liverpool City Region Eastern Housing Market Area which covers the authorities of Halton, St Helens and Warrington, also known as the Mid-Mersey Housing Market Area⁶. Halton demonstrates close linkages with St Helens and Warrington, as highlighted through migration, travel to work and household moves data.

⁵ HBC (2011) State of the Borough Report

⁶ Nevin Leather Associates, Inner City Solutions & University of Sheffield (2008) The Definition of Housing Market Areas in the North West Region



Liverpool City Region Housing Market Areas

- 3.5 To understand housing market trends in Halton, demographic trends are a key determinant in the medium to long-term. Halton's resident population has, after a significant period of decline, started to experience modest growth and is estimated to increase from 125,700 in 2011⁷ to 129,200 by the end of the Core Strategy plan period (2028)⁸. The population profile in the Borough is skewed towards younger people with an estimated 18.6% of the population aged under 15, compared with 17.6% nationally⁹. The proportion of older people in the Borough (over 75) at an estimated 6.4% of Halton's population is slightly lower than the average national figure of 7.8%⁹. However, the population of older people is expected to increase substantially during the plan period.
- 3.6 In terms of household structure in Halton, data shows fewer pensioner and single person households and a greater proportion of households with children when compared with regional or national figures⁹. The household size in the Borough is currently 2.35 persons per household and this is expected to drop to 2.21 persons per household by 2026⁹. This is likely to be due to the expected increase in the older person population.
- 3.7 Owner-occupied housing and private rented dwelling stock makes up a smaller proportion of the total in the Borough than national and regional averages whilst the social rented sector is significantly higher¹⁰ due to the high proportion of social housing provided as part of the Runcorn New Town initiative. In recent years there has been a marked increase in the number of private rented dwellings, which now make up around 10% of the total housing stock⁹. It is thought that this was attributable to the availability of buy to let mortgages and more recently an increase in the

⁷ ONS (2011) 2011 Census

⁸ ONS (2010) 2010-based Subnational Population Projections

⁹ ONS (2011) 2011 Census

¹⁰ HBC (2010) State of the Borough Report

number of “reluctant” landlords who are unable to sell their properties due to prevailing housing market conditions and opt to let them out as an alternative.

- 3.8 House prices across the Borough are still below regional and national averages but have risen significantly in recent years. Since the economic downturn, market activity remains weak mirroring the experience found nationally. At 2011, entry-level prices in the Borough range from around £57,000 for a one bedroom home in Runcorn up to around £190,000 for a four bedroom property in Widnes. In terms of the market availability three bedroom properties are most commonly available to purchase and one bedroom homes are least prevalent⁹.

Halton’s Affordable Housing Needs

- 3.9 Housing need is defined as the quantity of housing required by households who are unable to access suitable housing without financial assistance. Strategic Housing Market Assessments (SHMA) are seen as key tools in the development of housing and planning policy for affordable housing which consider the balance between supply and demand for affordable housing. The Halton SHMA⁸ has been undertaken in conjunction with neighbouring authorities in the Mid-Mersey Housing Market Area. It is in accordance with prevailing Government guidance and has involved interrogation of a range of information, discussions with local stakeholders, together with a household survey to collect information regarding the housing needs and aspirations of the Borough’s population.
- 3.10 Overall, the 2011 SHMA suggests that to meet all affordable needs in the Borough, an additional 891 units of affordable housing would need to be provided per annum for the next five years. This is made up of a requirement for 78 units per annum to meet the backlog of existing households in need and a further 813 units per annum to meet projected future needs. The SHMA notes that the high level of housing need identified reflects a combination of factors including the difference between the costs of market housing and local incomes (particularly of younger households), and the decline by 15% in the stock of affordable housing within the Borough over the last decade which could have been used to meet need.
- 3.11 Annual unmet need for affordable housing is far in excess of the proposed total housing delivery targets as set out in the Core Strategy which is approximately 550 dwellings per annum. It is therefore essential to seek to maximise the contribution of new affordable units from new housing developments although viability of the impact of such a requirement on the overall development must be considered. The National Planning Policy Framework (NPPF) also states that policies for affordable housing should be sufficiently flexible to take account of changing market conditions.

- 3.12 In addition to the SHMA, the Council commissioned an Economic Viability Assessment¹¹ which considered the cumulative impacts of policy requirements and planning obligations on residential development in Halton, to determine the appropriate level for an affordable housing requirement. The Economic Viability Assessment provided advice on the most ambitious yet achievable and viable target(s) and threshold(s) for affordable housing which fully reflected the value of housing in different areas of the Borough. The assessment follows the approach advocated by the NPPF which emphasises that policy requirements and planning obligations should not threaten the viability of a development scheme.
- 3.13 The basis for the study was to appraise a range of hypothetical sites using a model which calculated the cashflow of the hypothetical schemes and the rate of return (profit), similar to that used by most house builders/ developers. Sites in high value areas tended to have the capacity to deliver the highest proportions of affordable housing whilst remaining financially viable (including delivering a reasonable profit margin for the developer). Sites in low value areas experienced the greatest impact on profitability as quotas of affordable housing were increased. The assessment showed that under a Mid Market Position¹², 25% affordable housing is deliverable at a 50% social rented and 50% intermediate housing tenure split.¹³ Although a higher percentage of affordable housing could be delivered in an Improved Market Position (40% with a 34% social rented and 64% intermediate tenure split) it is acknowledged through the assessment that it is difficult to predict whether the improved market scenario will ever be met. It is however, considered likely that based on previous cycles of the property market that the Mid Market position will be reached during the Core Strategy Plan period.

Halton's Affordable Housing Policy

- 3.14 By considering Halton's housing needs and the financial viability of development within the Borough through the SHMA and Economic Viability Assessment, the Council has developed its affordable housing policy within the Core Strategy, Policy CS13: Affordable Housing. This policy seeks to maximise affordable housing, whilst recognising the need to maintain the financial viability of sites to deliver such affordable housing:

¹¹ DTZ (2010) Economic Viability Assessment

¹² The EVA used a Baseline Position of revenues at May 2010. The Mid Market Position used a 10% increase on revenues over and above the Baseline Position whilst the Improved Market Position assumed a 20% increase.

¹³ The EVA was conducted prior to the introduction of Affordable Rent in April 2011.

Core Strategy Policy CS13: Affordable Housing

Affordable housing units will be provided, in perpetuity, on schemes including 10 or more dwellings (net gain) or 0.33 hectares or greater for residential purposes.

Affordable housing provision will be sought at 25% of the total residential units proposed. The Council will seek to secure 50% of new provision as social and affordable rented tenures and 50% intermediate housing tenures across the Borough.

The provision of affordable housing must:

- address the identified local housing needs as quantified in the most up to date Strategic Housing Market Assessment; and
- be fully integrated in the development site so as to avoid the over concentration of affordable housing in any particular location within the development site and in order to achieve seamless design

The affordable housing contribution may only be reduced where robust and credible evidence is provided to demonstrate that the affordable housing target would make the development unviable.

There will be a presumption that any affordable supply will be provided on site. Off-site provision or a financial contribution in lieu of on-site provision may only be made in exceptional circumstances where on-site provision is proven to be unachievable or localised need does not necessitate affordable housing provision.

Planning permission will be refused on development sites which are subdivided into separate development parcels below the affordable housing threshold, unless the affordable housing provision is proportionate to that which would have been required on the site as a whole.

- 3.15 The following sections discuss in more detail the components of the Core Strategy policy including thresholds, tenure, size, on/ off-site provision, financial contributions, viability and design and how these considerations should be incorporated into development design.

4. Thresholds

- 4.1 Halton Borough Council will seek to negotiate affordable housing on developments of 10 or more dwellings or on sites of 0.33 hectares or greater for residential purposes where there is a net gain in housing (i.e. excluding replacement dwellings after demolitions). On all qualifying sites the Council will seek 25% of the total residential units proposed as affordable in order to maximise the affordable housing contribution in accordance with Halton's housing needs as set out in the SHMA. In circumstances where the calculation of affordable housing results in a fraction of a unit (e.g. 0.7) the Council will round the number up or down to the nearest whole unit (with 0.5 being rounded up).
- 4.2 For the purposes of planning policy in Halton, a dwelling is defined as falling under the C3 Use Class in the Town and Country Planning Use Classes Order¹⁴. The requirement will apply to all planning applications for residential development which would result in a net gain of 10 or more dwellings to be sold on the open market. This includes some specialist accommodation such as certain types of older persons housing. However, the policy does not apply to development providing accommodation outside Use Class C3, for example residential care and nursing homes (where the residential accommodation is not within self-contained units), hotels and hostels. For housing schemes proposed by Registered Providers comprising wholly of affordable housing, the Core Strategy policy requirement for affordable housing is superfluous and will not apply. Where Registered Provider schemes comprise of, or include 10 or more non-affordable units, the full policy provisions will apply.
- 4.3 In the case of phased developments where an application for residential development is subject to a single permission, but is due to be delivered in phases, the affordable housing requirement will be applied across the whole scheme. Where outline planning permission is sought for residential development, a commitment to the delivery of affordable housing will be necessary at this stage in order for the proposal to be in conformity with the policy framework. This will generally be secured through a Section 106 Agreement, and then implemented on a subsequent Reserved Matters application. Proposals for developments that appear to be designed or artificially sub-divided to fall below the qualifying thresholds at which affordable housing is required will have an affordable housing requirement assessed on the basis of the reasonably achievable site capacity or by combining split sites as appropriate.

KEY POINTS

- Affordable housing units will be negotiated on planning applications for 10 or more dwellings or on sites of 0.33 hectares or greater
- The affordable housing policy will not apply non-market housing

¹⁴ The Town and Country Planning (Use Classes) Order 1987 as amended

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schemes proposed by Registered Providers

- Affordable housing requirements will be applied across the overall scheme
- Provision will be sought at 25% of the total residential units proposed
 - Where the calculation results in a fraction of a unit, the figure will be rounded to the nearest whole unit
- Conditions requiring affordable housing will be required at the outline planning application stage

5. Tenure Mix and Dwelling Size

- 5.1 To support the creation of sustainable, inclusive and mixed communities, the Council will aim to ensure a mix of housing tenures and sizes for the affordable housing elements of a scheme which respond to identified needs.
- 5.2 In accordance with the findings of the SHMA, the Council will seek to secure 50% of all affordable housing units as social and affordable rented tenures and 50% as intermediate housing tenures in order to meet the Borough's identified needs. This is the tenure split sought for all affordable housing secured through the planning system across the whole of Halton, and will be used to inform the tenure split sought through individual planning applications. Negotiations on a site-by-site basis will take into account the most up to date housing needs and the financial viability of the site in question. Where the applicant wishes to deliver a significantly different mix of affordable housing tenures, they will be required to provide reasoned evidence to justify their proposals through the planning application, ideally supported by a Registered Provider.
- 5.3 The size and type of affordable supply sought on individual sites will be dependent on the most up to date SHMA indicating priorities to meet local needs within the sub-area. Consideration will also be given to the site location and localised housing mix. The 2011 SHMA looked at the likely sizes of affordable housing that would be required to meet housing need. Information was taken from both the household survey and the Housing Register. Overall, it is estimated that at 2011, around 80% of additional affordable housing should be smaller homes (one and two-bedroom) and around 20% should be delivered as larger homes (three and four plus bedroom)¹⁵. This takes account of both need and the supply and turnover of existing properties. The Council's preference is that two-bedroomed units are provided as houses or bungalows. The Council will agree the sizes of affordable houses on a site-by-site basis having regard to the findings of the most up to date SHMA at the time of the application for planning permission. When meeting size needs, a mix of dwelling types (houses, bungalows and flats), reflecting the mix on the wider development scheme should be provided.

KEY POINTS

- The Council will seek to secure a tenure split of:
 - 50% social and affordable rented tenures
 - 50% intermediate housing tenures
- The sizes of affordable housing units to be provided will be based on the Council's most up to date SHMA

¹⁵ Appendix B indicates size requirements for affordable homes, as detailed in the 2011 Strategic Housing Market Assessment

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- Data in the 2011 SHMA indicates that the greatest need is for one and two-bedroomed properties
- Two bedroomed properties should be delivered as houses or bungalows
- A mix of dwelling types (houses, bungalows and flats) reflecting the wider development scheme should be delivered.

6. On / Off-Site Provision

On-Site Provision

- 6.1 The Council will require any affordable housing secured through the planning process to be delivered on-site. The provision of affordable housing on-site has a number of advantages, including making it easier to integrate such provision within the wider development and thus contribute towards creating balanced and mixed communities. Section 9 provides further guidance on the integration of affordable housing into a site.

Off-Site Provision

- 6.2 Only in **exceptional circumstances** will off-site provision or a financial contribution in lieu of on-site provision (of broadly equivalent value) be accepted. This would need to be robustly justified in accordance with the National Planning Policy Framework and may only be accepted as long as the agreed approach contributes to the creation of mixed and balanced communities in the local authority area. Off-site provision will only be agreed by the Council where off-site provision would be more suitable, either partly or wholly. This would need to be subject to robust justification based upon, for example:

- scheme viability (see Section 7);
- where housing need priorities could be better met in an alternative location; or,
- where there is already a dominance of a particular type of affordable housing provision in the immediate area.

- 6.3 Where it is agreed that the affordable housing units are to be provided by the developer on an alternative identified site, the Local Planning Authority will require provision of affordable housing of equal value as generated by the original application site. The location of off-site provision will be subject to the Council's absolute discretion, however, this should generally be within the vicinity of the development site and be equally well located in terms of amenities and facilities. Provision of affordable housing units on an alternative site will be in addition to any applicable affordable housing requirement arising from the development of any market housing on the alternative site.

- 6.4 The Council will require applicants to have secured planning permission for the required amount of off-site affordable housing before any occupation of the market housing development on site.

Use of Commuted Sums

- 6.5 In the instance where it has been demonstrated exceptional circumstances dictate that affordable housing provision cannot be delivered on-site and in the unlikely situation where there is no reasonable prospect of delivering the affordable housing off-site in a timely manner, a commuted sum will be negotiated. It should be emphasised that this is seen as the least preferable option by the Council and the overwhelming preference is for on-site provision of affordable housing.

- 6.6 The payment in lieu which is calculated for off-site provision of affordable housing covers the basic costs associated with site acquisition, servicing and construction of the commensurate number of units. In addition the associated costs of project management and professional and legal fees involved in delivering the affordable housing elsewhere will have to be taken into account in calculating the appropriate level of contribution. This is justified as the need to incur these costs has arisen directly through a failure to provide affordable housing on site in the first instance as required by the Core Strategy policy. Applicants will also have to bear the costs of any financial assessment and development appraisal work required to ascertain the veracity of submitted material in support of payments in lieu.
- 6.7 In calculating a commuted sum the following approach will be adopted:
- An agreement between the Council and developer will be reached on the number and type of affordable units required (based on the Council's most up to date SHMA)
 - The Council will agree the Open Market Value (OMV) of these units
 - Advice usually required from at least three local Estate Agents
 - The cost will be ascertained as to the amount a Registered Provider would pay to purchase the properties whilst ensuring the properties remain affordable
 - Advice usually required from at least three Registered Providers
 - The level of contribution required will be equal to the difference between the OMV and the average price that the Registered Provider(s) could pay

For Example:

- Scheme of 10 dwellings
 - 25% of 10 units = 2.5, rounded up to 3 affordable units
 - Tenure required in this location is intermediate housing
 - For all properties the Open Market Value (OMV) agreed is £150,000
 - For shared ownership properties the Registered Provider is able to pay a average of £100,000
 - Level of commuted sum
 - Difference between OMV and maximum price = £50,000 per unit
 - 3 x £50,000
 - Total commuted sum = £150,000
- 6.8 As with the provision of on or off site affordable housing, where it can be proven by way of a financial viability assessment that the required commuted sum would render the development scheme unviable, this will be taken into consideration. Further guidance on viability is detailed in Section 7.
- 6.9 The Council will ensure that the money collected from commuted sums is used to prioritise the delivery of new affordable housing to meet current needs. The financial sum agreed will be paid into a “ring fenced”

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affordable housing fund to be used to finance additional affordable housing schemes across the Borough in accordance with the latest Housing Strategy.

KEY POINTS

- Affordable housing will be required to be provided on-site
- Off-site provision will only be agreed in **exceptional circumstances**
- The location of off-site provision will be subject to the Council's absolute discretion
- In the unlikely circumstance where neither on site nor off-site provision is feasible, a commuted sum will be negotiated

7. Viability

Viability

- 7.1 The provision of affordable housing within market housing developments is often viewed as an additional cost to the developer. If an applicant claims that it would be unviable to provide the required amount of affordable housing on a particular development site then the onus will be on them to prove this through the use of an appropriate financial viability assessment submitted at the same time as their planning application.

Financial Viability Assessment

- 7.2 Financial Viability Assessments need to cover costs and expected receipts arising from a development, including a profit margin to which the developer has reasonable expectations (which may vary), in order to provide the necessary net residual value. The net residual value is the surplus that remains after all development costs (except land costs), have been met from revenue. The residual value should cover the land acquisition costs and for development to be economically viable, the residual value must be large enough to at least cover the cost of acquiring the site. It should be noted that the actual price paid for the land does not factor into the financial viability assessment. A summary of the residual valuation methodology is provided in Appendix C.
- 7.3 When doing financial viability assessments, the Council will use the residual valuation method and will be working to ensure that the estimations that have been made are reasonable, particularly with regard to build costs and house prices. An open book approach is advocated to assist in demonstrating what planning obligations a development can and cannot support. The results of these assessments will then be used when negotiating affordable housing provision (see section 11).
- 7.4 A financial appraisal will need to ensure that it covers all the major components of development including:
- Details of the residential product to be offered:
 - Dwelling Types, Number of Bedrooms, Likely Sale Price
 - Gross Development Value - Anticipated revenue from the proposed development including a full market research report and offers from RSLs
 - Build costs including :
 - Demolition
 - Site abnormalities such as remediation costs
 - Ground conditions
 - Surveys e.g. ecological
 - Drainage or flood prevention means
 - Construction costs
 - Landscaping
 - Contingency sum
 - Professional Fees – Architects, Engineers, Quantity Surveyors
 - Details of any finance agreements / other sources of funding

- Finance Costs – Loan fees related to acquiring land and site development
 - Section 106 - Other policy requirements such as planning obligations for open space / highways improvements
 - Profit Margin – Desired level of developer profit
- 7.5 Chartered Surveyors within the Council's Property Services department will undertake the viability assessment, using the Homes and Communities Agency's Development Appraisal Tool¹⁶ as the basis for this. Applicants should provide the Council with all of the information necessary for an assessment of viability to be undertaken, as indicated in para 7.4. This will be supplemented by other relevant sources of information such as BCIS build cost data and local house price information.
- 7.6 Applicants will be required to pay for the costs associated with carrying out financial appraisals and the Council's reasonable costs associated with the subsequent assessment of them. This is because the financial appraisal seeks to justify the planning merits of reduced affordable housing provision or financial contribution in lieu of on (or off site) affordable housing provision, as an exception to Halton's adopted planning policy for affordable housing (Core Strategy Policy CS13: Affordable Housing).
- 7.7 Where the applicant and the Council are unable to agree the financial appraisal, the Council may request an independent assessment. Both parties will abide by the results of the independent viability assessment. The costs of any additional assessment will again be borne by the applicant including any specialist technical information required for the purposes of agreeing the assessment.
- 7.8 Where viability affects a particular site and this can be reasonably justified by means of a Financial Viability Assessment which is agreed by all parties, the Council will reduce the requirement for affordable housing to align with the point where the scheme becomes viable.

KEY POINTS

- Where the affordable housing provision is claimed to be unviable by the developer this must be proven through a Financial Viability Assessment
- Financial Viability Assessments will be undertaken by the Council, with the use of independent assessors should a position of stalemate be reached
- Applicants are required to pay for the costs associated with carrying out any viability assessments

¹⁶ <http://www.homesandcommunities.co.uk/ourwork/development-appraisal-tool>

8. Delivery of Affordable Housing

Legal Agreements

- 8.1 Affordable housing (at the time of writing) is excluded from the Community Infrastructure Levy Regulations 2010 and therefore will continue to be provided through Section 106 Agreements (S106 Agreement). The provision of affordable housing on open market residential development sites will therefore be secured by means of a legal agreement (planning obligation) with the landowner under the provision of Section 106 of the Town and Country Planning Act 1990. The cost of preparing the agreement will be borne by the applicant. Draft Heads of Terms for a Section 106 Agreement should be submitted alongside a planning application so that negotiation of the legal agreement does not unduly delay the process.
- 8.2 The S106 Agreement will ensure that the agreed proportion of affordable housing will be provided and will define the terms under which it should be provided. It will detail nomination rights, staircasing arrangements and transfer rights. It should ensure that the housing provided remains affordable in perpetuity and will be available to successive occupiers who need affordable housing. This is with the exception of shared ownership or shared equity homes, where a shared owner has 'stair cased' to outright ownership or where the value is recycled to provide other forms of affordable housing.
- 8.3 To ensure the timely delivery of the affordable housing element of the scheme, the Council will require through the S106 Agreement that no more than 90% of the total number of market units in the development are to be occupied until all the affordable housing units have been completed and handed over to the Registered Provider. For larger residential schemes, detailed phasing arrangements to ensure the timely completion of affordable units will be included within the Section 106 Agreement.
- 8.4 A model Section 106 Agreement for affordable housing is included at Appendix A.

Funding Affordable Housing

- 8.5 As has previously been the case in the past, the Homes and Communities Agency will no longer provide financial support for affordable housing secured through S106 Agreements. Registered Providers will need to make their own arrangements to fund the purchase of the affordable homes.

In Perpetuity

- 8.6 The Council wishes to ensure that affordable housing remains affordable and is occupied by local people in housing need in the long term. The involvement of a Registered Provider will ensure a greater element of control over the future occupancy of new affordable housing.

- 8.7 Whilst Halton Borough Council are not prescriptive about which Registered Providers should work in particular locations or on individual developments, the Council does have established relationships with a number of Housing Associations and will assist developers in negotiations with them regarding particular sites. Applicants are advised to contact the Council's Housing Commissioning Manager regarding Registered Providers operating in Halton.
- 8.8 In order to safeguard the quality of delivery, Registered Providers are expected to be registered with the Homes and Communities Agency (or its successor).
- 8.9 Tenants to occupy properties developed as a result of a S106 Agreement will be selected in accordance with the Council's allocation policy prevailing at the time of development. Shared ownership properties in Halton are frequently marketed to potential tenants through the HomesHub (www.homeshub.co.uk).

Management and Maintenance

- 8.10 Many new developments, particularly flat/ apartment schemes, require the payment of annual service maintenance charges for the upkeep of internal and external shared areas. These costs will be included in the assessment of the 'affordability' of the proposed units factored into the Viability Assessment. In developments where the affordable housing provided would be subject to service and/ or maintenance charges, this should be minimised so that occupancy does not become unaffordable.

KEY POINTS

- The provision of affordable housing will be secured through S106 Agreements
- The cost of preparing the agreement will be borne by the applicant
- The S106 Agreement will ensure that affordable housing remains affordable and is occupied by local people in housing need in the long term
- No more than 90% of the market units should be occupied before all of the affordable units are completed
- Tenants for the affordable homes will be selected in accordance with the Council's allocation policy prevailing at the time of development

9. Design, Integration and Layout

Good Design

- 9.1 Affordable housing should be visually indistinguishable as far as practicable from the market housing on site. Where a unit will be transferred to a Registered Provider, the Council will expect the affordable units to conform to the current Design and Quality Standards¹⁷ produced by the Homes and Communities Agency as a minimum standard.
- 9.2 Halton Borough Council will expect high standards of design for all developments, which respects the character of the area and reflects local distinctiveness in accordance with the Council's most up to date adopted policy and guidance. Detailed guidance on the design of residential development is available in the Council's Design of Residential Development SPD¹⁸. This provides guidance for developers, designers and architects in order to contribute towards securing sustainable, high quality and well designed residential developments across Halton.
- 9.3 Where appropriate, the Council will consider removing permitted development rights to ensure that dwellings are not extended or altered in such a way as to increase their value beyond an affordable level. However, this will not prevent appropriate adaptations or extensions necessary to meet the needs of an occupant.

Integration

- 9.4 The integration of affordable homes within market housing developments works towards social inclusion and against segregation, in accordance with the Government's aims for balanced, mixed and sustainable communities. Affordable units should not be grouped together in a single cluster but evenly distributed or 'pepper potted' across the entire site. If a cluster of affordable housing is proposed this should be proportionate to the size of the development, but in any case should not normally be larger than 6 dwellings. In the case of flats/ apartments, the affordable housing element may be grouped together as long as the block of flats/ apartments remain integrated into the wider site.

Layout

- 9.5 For full planning applications, the location and number of affordable homes should be clearly shown on layout plans. In the case of outline applications, the layout of affordable housing needs to be agreed in principle and should be set out within the S106 Agreement.

KEY POINTS

- Halton Borough Council will expect high standards of design for all

¹⁷ Or as superseded by a 'Local Standards Framework'

¹⁸ HBC (2012) Design of Residential Development SPD

2012

developments

- Market and affordable homes should be indistinguishable and achieve the same high design quality
- Affordable homes should be integrated within market housing developments with pepper potting of affordable units throughout the site preferred
- The location and number of affordable home should be clearly shown on layout plans

10. Sustainability and Access Standards

Code for Sustainable Homes

- 10.1 For all affordable units, developers will be encouraged to meet the Code for Sustainable Homes. From April 2011 affordable housing schemes directly funded by the Homes and Communities Agency were required to reach Code Level 4 with a view to the achievement of Code Level 6 by 2015¹⁹ and therefore the Council would like all affordable housing to meet this standard.
- 10.2 It should be acknowledged that the Core Strategy includes aspirations for residential development to reach Code for Sustainable Homes Level 6 by 2016 (CS19: Sustainable Development and Climate Change). Affordable housing developments will be encouraged to meet these standards in the absence of more stringent Government requirements.

Lifetime Homes

- 10.3 The Lifetime Homes standard²⁰ is intended to give the widest range of people, including those with physical and/ or sensory impairments, older people and children, convenient and independent access into and around their homes. To achieve the Lifetime Homes standard, residential developments are scored against a set of 16 criteria which aim to remove the barriers to accessibility often present in dwellings, and ensure flexibility and adaptability within the design and structure of a home to meet a diverse range of needs over time.
- 10.4 The Council will encourage the delivery of all homes, including affordable homes, to meet Lifetime Homes standards. This is set out in Core Strategy policy CS12: Housing Mix. Additional guidance relating to the achievement of the Lifetime Homes standard is available in the Council's Design of Residential Development SPD²¹. It should also be acknowledged that the Lifetime Homes standard is mandatory for the achievement of Level 6 of the Code for Sustainable Homes.

Wheelchair Accessible Housing

- 10.5 Although the Lifetime Homes standard will assist accessibility for wheelchair users, it will not necessarily provide full wheelchair access throughout the home. The Halton SHMA has illustrated that there is a need for specialist wheelchair accessible housing in the Borough²². Wheelchair accessible homes are those that are constructed to a higher specification of accessibility so that they are suitable for immediate or future occupation by a wheelchair user (with or without adaptation to meet a user's specific needs). In residential developments of 10 or more dwellings, 10% should meet wheelchair housing standards or be easily adapted for residents who are wheelchair users. Wheelchair accessible homes are required for sale

¹⁹ Housing Corporation (2007) Design and Quality Strategy

²⁰ Further information relating to the Lifetime Homes criteria is available at: www.lifetimehomes.org.uk

²¹ HBC (2012) Design of Residential Development SPD

²² GL Hearn and Justin Gardner Consulting (2011) Halton and Mid-Mersey Strategic Housing Market Assessment, Figure 16.4 and 16.9

on the open market, as well as through affordable housing schemes. Residential applications with an affordable housing requirement should seek to achieve wheelchair accessible housing in a proportion of the affordable housing units.

KEY POINTS

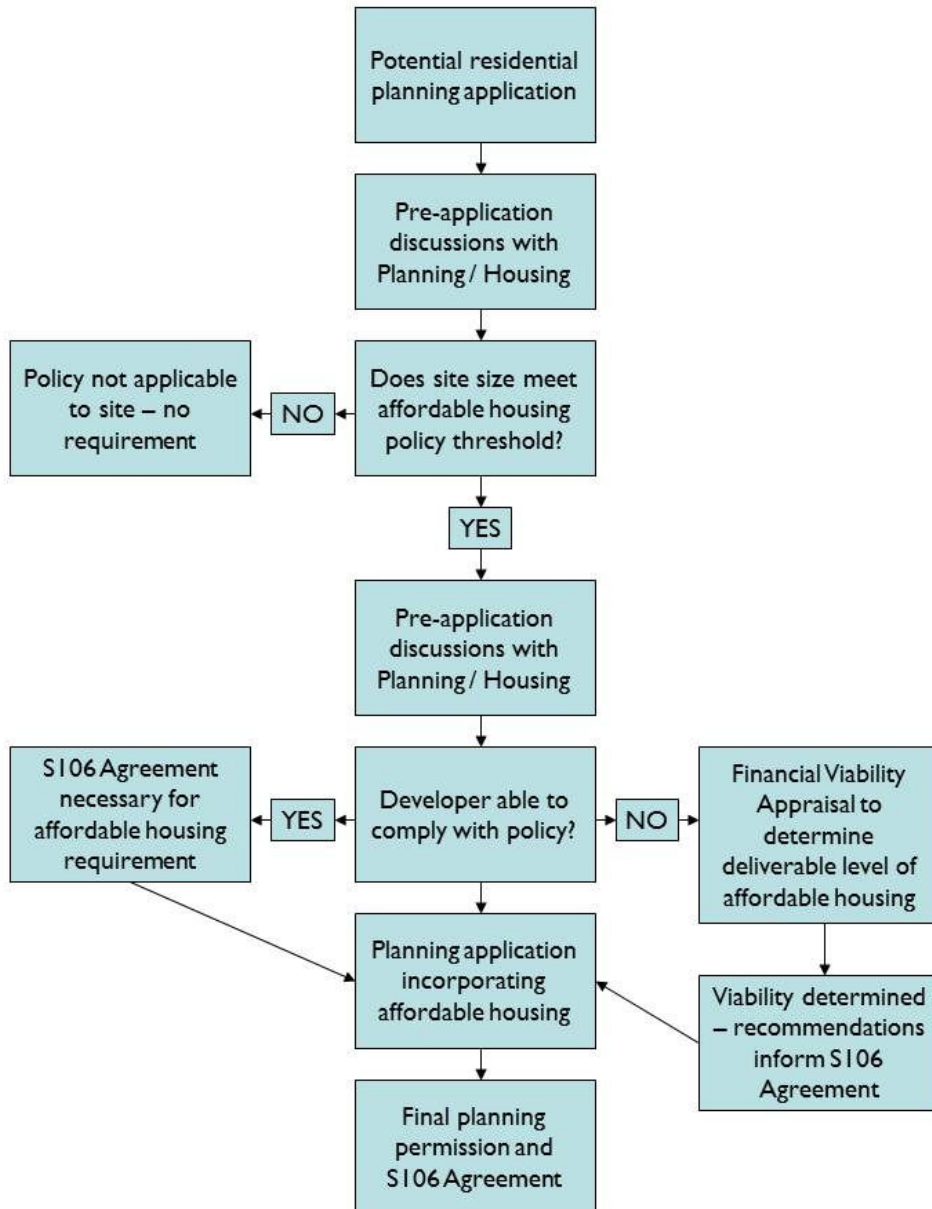
- Affordable housing developments are encouraged to meet the Code for Sustainable Homes targets as set out through the Core Strategy
- Affordable housing developments are encouraged to meet the Lifetime Homes standard
- In developments of 10 or more dwellings, 10% should meet wheelchair housing standards or be easily adapted for residents who are wheelchair users

11. Procedures

Negotiations Process

11.1 Implicit to the delivery of affordable housing is the need for the Council and Applicants to enter into negotiations on affordable housing at the earliest possible stage of the planning process. The Council's negotiations procedure which is informed by this SPD is set out in the chart below:

SUGGESTED PROCEDURE



- 11.2 The negotiations procedure highlights that applicants should consult the Council at the earliest opportunity to determine planning requirements on a particular site prior to a planning application. The applicant and the Council should enter into pre-application discussions to identify the amount, type and location of affordable housing provision. Where it has been agreed that a specific Registered Provider should be involved in the provision and management of affordable housing on a site, they should also be part of the pre-application discussions. Pre-application agreement on matters relating to the amount, type and location of affordable housing provision and any Heads of Terms for a legal agreement will be expected to be resolved in advance of the submission of the application.
- 11.3 When residential planning applications come forward, the applicant should demonstrate that they have met the policy requirement for affordable housing. In the circumstance where the developer feels that meeting the policy requirement would present viability issues, a Financial Viability Assessment will be necessary and this should also be submitted with the application to be assessed by the Council so that the viability of the scheme can be assessed.
- 11.4 A decision on the planning application will then be determined based on the outcome of negotiations and a condition attached to any planning permission granted to secure the provision of affordable housing via a S106 Agreement.
- 11.5 Following the procedure outlined, the planning application should have benefitted from early pre-application discussions/ advice. Where applicants have not sought pre-application advice, this may result in significant delays and potential refusal. Applications failing to provide affordable housing in accordance with the Core Strategy and the Affordable Housing SPD will be refused.

Appendices

2012

Appendix A: Model Section 106 Agreement

DATED

2012

HALTON BOROUGH COUNCIL

and

XXX LIMITED

[and

YYY LIMITED]

Agreement Pursuant to

Section 106 Town and Country Planning Act 1990

Relating to Land at **ZZZZ**

2012

THIS DEED dated

2012

Is made between

HALTON BOROUGH COUNCIL of the Municipal Building, Kingsway, Widnes, Cheshire, WA8 7QF (“the Council”) and

XXX LIMITED of **XXX** (“the Owner”) and

ZZZ of **ZZZ** (“the Mortgagee”)

1. INTERPRETATION

In this Deed the following words and expressions shall have the following meanings:-

“**Act**” means the Town and Country Planning Act 1990.

“**Affordable Housing**” or “**AH**” means social rented, affordable rented and intermediate housing, provided to Persons in Housing Need who cannot afford to access suitable market dwellings.

“**Affordable Rented Housing**” or “**ARH**” means housing let by RPs 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).

“**Agreed Mix**” means **A%** (**A** per cent) of the Dwellings as Affordable Housing Units of which (unless otherwise agreed in writing with the Council) **B** shall be Social Rented Housing and/or **C** shall be Affordable Rented Housing and **D** shall be Intermediate Housing.

“**Commencement of Development**” means 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 Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, site clearance, site preparations, 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 “Commence Development” shall be construed accordingly.

“**Completed**” means a Dwelling is “Completed” when it is completed to a standard so that a certificate of Practical Completion can be or is issued in respect of it pursuant to the building contract governing the construction of it (or an equivalent standard if there is no such contract) according to the usual standards expected of a skilled experienced and qualified architect and

“Completion” of the Development for the purposes of this Deed is when all of the Dwellings which form part of the Development are completed as aforesaid.

“**Council**” means the said Halton Borough Council.

“**Designated Officer**” means the Divisional Manager - Policy and Development Services at the Council or such other officer of the Council acting under any delegated authority in relation to the Planning Application.

“**Development**” means the construction of [REDACTED] as set out in the Planning Application.

“**Dispose**” means the transference of the freehold or grant of a lease (not by way of assured or secure or other periodic or short term tenancy) of a Dwelling including a binding and enforcing contract for the transference of the freehold or grant of a lease of a Dwelling provided that a contract to effect a disposal that has not been substantially performed is not a disposal until it is substantially performed.

“**Dwelling**” or “**Unit**” means a residential unit within the Development including any land within the curtilage thereof and garages outbuildings or other structures therewith.

“**HCA**” means the Homes and Communities Agency.

“**Housing Allocations Policy**” means any scheme, policy or strategy relating to the allocation of housing for homeless persons or other Persons in Housing Need, lawfully operated by the Council or any other body to whom the Council may lawfully delegate responsibility for performing that function.

“**Housing Authority**” means the Council acting in its capacity as a housing authority responsible for performing the functions required by the Housing Laws which expression may include more than one body and includes any successor body responsible for performing those functions and anybody whom the Council may lawfully delegate responsibility for performing these functions.

“**Housing Laws**” means the statutory duties functions and discretions that the Council has under any statute (including any subordinate legislation made thereunder) for the time being in force relating to the housing of homeless or any other persons for example (but not limited to) Parts 6 and 7 of the Housing Act 1996, Sections 39 and 40 of the Land Compensation Act 1973, Section 28 (7) of the Rent (Agriculture) Act 1976, Section 27 of the Children Act 1989 and the Homelessness Act 2002

“**Intermediate Housing**” or “**IH**” means homes for sale and rent provided at a cost above social rent, but below market levels. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

“**Land**” means the area of land subject of the Planning Application shown edged red on Plan 1.

“**Local Market Rent**” means the market rent agreed between the Council and the Owner as being the equivalent market rent of an Affordable Housing Unit in Halton at either the date of the grant of a lease of the relevant Affordable Housing Unit(s) by the RP to a Person in Housing Need or if not agreed shall mean the rent determined by an independent surveyor appointed by agreement between the Owner and the Council or on the application of either of them pursuant to Clause 12 assuming:

- a willing landlord and a willing tenant;

- an arm's length transaction after proper marketing;
- that any restrictions imposed on the dwelling by reason of this Deed are disregarded;
- that both parties to the transaction had acted knowledgeably prudently and without compulsion)

"Market Dwellings" means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing Units.

"Nominee" means a person nominated by the Housing Authority in accordance with paragraph 8 of the First Schedule to this Deed.

"Occupation" means use of a Dwelling for the purposes permitted by the Planning Permission 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 "Occupied" shall be construed accordingly.

"Person(s) in Housing Need" means someone who immediately prior to allocation is:

- a) a first time buyer; or
- b) is a person on the Council's housing waiting list.

"Plan 1" means the plan annexed hereto and marked "Plan 1" (showing the Land edged red)

"Plan 2" means the plan annexed hereto and marked "Plan 2" (showing the Affordable Housing Units edged blue)

"Planning Application" means the planning application for the Development bearing reference number **XX/XXXXXX/XXX**

"Planning Permission" means the planning permission subject to conditions which may be granted by the Council pursuant to the Planning Application.

"Practical Completion" means a certificate of practical completion issued by the Owner's architect or in the event that the Development is constructed by a party other than the Owner, the issue of a certificate of practical completion by that other party's architect and "Practically Completed" shall be construed accordingly.

"Qualified Approval" means an approval which is not given at the date of this Deed but which is to be given subsequently by the Council or a Designated Officer thereof, such approval is not to be unreasonably or unlawfully withheld or delayed.

"Qualifying Area" means within the area of Halton.

"Registered Provider" or **"RP"** means a registered provider as defined by Section 80 of the Housing and Regeneration Act 2008 and registered with the Homes and Communities Agency.

"RP Letting Policy" means the letting criteria and housing allocations policy of the RP owning the relevant AH Units from time to time in respect of those Dwellings in a form which is appropriate and in accordance with HCA guidance and which has the Qualified Approval of the Housing Authority.

"Shared Ownership" means a Dwelling where a RP initially owns not less than 25% of the equity in the Dwelling and the residential occupier the remainder and

which provides the residential occupier with the option to purchase 100% of the equity in the Dwelling by Staircasing.

“Shared Ownership Lease” means a lease of a Shared Ownership Dwelling.

“Shared Ownership Lessee” means a person acquiring a Shared Ownership Lease of an AH Unit.

“Social Rented Housing” or **“SRH”** means housing owned by RPs 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 Council or with the Homes and Communities Agency.

“Target Rent” means:

- a) such rent as shall be determined by a RP acting reasonably in accordance with its rent setting and convergence policy from time to time such policy to accord with HCA directions or other government policy from time to time or;
- b) such other rent that is in accordance with government policy relating to RP rent levels at the time and first approved in writing by the Council.

“Tenancy” means:

1. a secure, introductory, assured or other form of tenancy of a SRH or ARH Unit; and
2. in a standard form approved by the RP owning the SRH/ARH Unit or approved by the HCA.

“Vacancy” means the first and every subsequent occasion that a SRH, ARH or IH Unit then held by a RP becomes available for Social Renting, Affordable Renting or Intermediate Renting/Sale on a Tenancy (which for the avoidance of doubt shall not mean an occasion on which there is a statutory entitlement under Housing Laws for someone to succeed to a secure, introductory, assured or other tenancy), and “Vacant” shall be construed accordingly.

2. BACKGROUND

- 2.1 the Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- 2.2 On ZZZ the [Owner/Developer] [and the Mortgagee] submitted the Planning Application to the Council and the Owner has agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 2.3 The Owner is registered at the Land Registry under title numbers [] as proprietor of the Land which is subject of this Deed and has sufficient interest in the Land to enable the Owner to enter into this Deed.
- 2.4 The Mortgagee is the registered proprietor of a registered charge of the Land dated ZZZ referenced to at entry [] of the Charges Register of title numbers CHXXXX [and CHYYYY]

3. CONSTRUCTION OF THIS DEED

- 3.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 3.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 3.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 3.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 3.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 3.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 3.7 The headings and contents list are for reference only and shall not affect construction.

4 LEGAL BASIS

This Deed is made pursuant to Section 106 of the Act and all other enabling powers and in consideration of the covenants herein on the part of the Owner hereinafter contained which covenants are entered into with the intent that the same shall be enforceable not only against the Owner but also against its successors in title (save as provided for in clause 8 hereof) and any person corporate or otherwise claiming through or under it an interest or estate in or any part or parts thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by it.

5. CONDITIONALITY

- 5.1 This Deed is conditional upon:-
 - 5.1.1 the grant by the Council of the Planning Permission; and
 - 5.1.2 the Commencement of Development

save for the provisions of clauses 10, 12, and 13.1 which shall come into effect immediately on completion of this Deed.
- 5.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked, or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6. OWNER COVENANTS

The Owner covenants with the Council to fulfil the obligations on its behalf contained in the First Schedule and in the Second Schedule.

7. LOCAL LAND CHARGE

This Deed is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council

8. NON-ENFORCEMENT

8.1 The obligations contained in this Deed shall not be enforceable against individual purchasers or lessees of the Dwellings on the Land constructed pursuant to the Planning Permission or against statutory undertakers in relation to any parts of the Land acquired by them for electricity substations gas governor stations or pumping stations or against anyone whose only interest in the Land or any part of it is in the nature of the benefit of an easement or covenant.

8.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.3 None of the provisions of the First Schedule or the Second Schedule shall:

8.3.1 operate to prevent leaseholders tenants or other occupiers of AH Units exercising any contractual or statutory rights that they may have to "staircase" and/or acquire additional shares or further leasehold interests or the freehold estate in the Dwelling in which such persons have an interest and/or reside (including by way of example but not limitation the exercising of the statutory right to buy or to acquire).

8.3.2 apply following the exercise of such rights.

9. MORTGAGEES CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed to the extent that the obligations apply to the Land and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations to the extent that those obligations apply to the Land as if it were a person deriving title from the Owner]

10. COUNCIL'S LEGAL COSTS

The Owner will pay the Council the sum of £ZZZ on completion of this Deed towards the legal costs of the Council in the negotiation, preparation and execution of this Deed

11. NOTICES

- 11.1 Any notice or other written communication to be served upon any party or given by one party to any other under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by ordinary first class post or sent by recorded delivery post to the party whom it is to be served or to whom it is to be given or otherwise verified.
- 11.2 A notice or communication shall be served or given:
- 11.2.1 On the Council at the above address.
- 11.2.2 On the Owner at the above address.
- 11.2.3 On the Mortgagee at the above address.
- 12 DISPUTES
- The Owner and the Council hereby agree that any differences and questions which arise between the parties in connection with this Deed shall be referred for determination by an independent person in accordance with the following provisions:-
- 12.1 where such dispute relates to the construction of this or any other deed or document it shall be referred to a solicitor or barrister agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Law Society; and
- 12.2 where such dispute relates to engineering construction or highway works be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers; and
- 12.3 where such dispute relates to the valuation of property be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors; and
- 12.4 in any reference to an independent person under this clause such person shall unless the parties otherwise agree act as expert and not as an arbitrator
- 13 JURISDICTION AND LEGAL EFFECT
- 13.1 This Deed shall be governed by and interpreted in accordance with the Law of England and Wales.
- 13.2 If any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 13.3 In the event of the Planning Permission for the Development being revoked by the Council or any other authority having powers in relation to planning matters the obligations of the Owner under this Deed shall thereupon cease absolutely.
- 13.4 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner.
- 13.5 The provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Deed.

- 13.6 The covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Deed by or on behalf of the relevant parties hereto or by a subsequent deed of variation.
- 13.7 Where by this Deed any action approval consent direction authority or agreement is required to be taken given or reached by any party hereto any such action approval consent direction authority or agreement shall not be unreasonable or unreasonably withheld or delayed.
- 13.8 All references in this Deed to the identification of the Land or parts thereof by colour delineations or colourings on the Plans shall be for the purposes of identification only.
- 13.9 Any party to this Deed may make application to the Council for written confirmation to the effect that any of the provisions of this Deed have been completed and/or satisfied and the Council if satisfied that such obligations have been completed and/or satisfied shall issue a certificate to that effect and further shall remove this Deed from the Register of Local Land Charges when all obligations contained herein have been performed and the Deed no longer serves any purpose owing to the fact that no obligations remain to be performed or complied with.
- 13.10 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 Planning Permission) granted (whether or not on appeal) after the date of this Deed.

2012

IN WITNESS whereof with the intent that these presents shall be executed as a Deed
the parties hereto have duly executed the same the day and year first before
written

THE COMMON SEAL of

THE COUNCIL

was hereunto affixed in the

presence of

Authorised Signatory

SIGNED as a DEED on

behalf of the Owner

by:

and

SIGNED as a DEED on

behalf of the Mortgagee

by:

FIRST SCHEDULE**Covenants by the Owner**

- 1 To provide AH Units to Persons in Housing Need so that on Completion of the Development there is an Agreed Mix.
2. From the Commencement of Development the AH Units shall be constructed in accordance with the Planning Permission and the Agreed Mix.
- 3 That not more than 90% of the Market Dwellings (rounded up to the nearest whole Market Dwelling if necessary) shall be Occupied before 100% (one hundred per cent) of the AH Units have been Practically Completed in accordance with paragraph 2 of this First Schedule and written notification of such has been received by the Council;
4. The AH Units shall be located in accordance with Plan 2, unless otherwise agreed by the Council.
5. To use reasonable endeavours to effect the first transfer of the AH Units by the Owner to a RP on the following terms:
 - (a) the transfer of the freehold or grant of a lease for a term of at least 125 years; and
 - (b) at a price, and upon terms, that allows the Affordable Housing Units to be acquired and subsequently used by the RP for letting as Social Rented Housing and/or for letting as Affordable Rented Housing and/or for sale or letting as Intermediate Housing.
- 7 Not to :
 - (a) allow the SRH Units under the direct control of a RP to be used other than as the Agreed Mix.
 - (b) allow the AR Units under the direct control of a RP to be used other than as the Agreed Mix.
 - (c) allow the IH Units whilst demised to a RP to be used other than as the Agreed Mix.
- 8 Not to :
 - (a) grant first Tenancies of the SRH, ARH or IH Units (the "first Tenancies") or
 - (b) grant subsequent Tenancies of the SRH, ARH or IH Units (the "subsequent Tenancies")

without allowing the Housing Authority to nominate Persons in Housing Need for all of the first Tenancies of the relevant SRH, ARH or IH Units and 50% of all subsequent lettings net of internal transfers as and when a Vacancy of that SRH, ARH or IH Unit occurs in accordance with the Housing Allocations Policy for the time being in force of the Council PROVIDED THAT the procedure does not conflict with the RP Letting Policy or its charitable status (where relevant).
- 9 The Housing Authority and the RP (both acting reasonably and co-operatively) shall exchange such information between them as it is reasonable and lawful for them to exchange to give effect to the provisions of paragraph 8 of this First Schedule.

2012

10. The provisions of paragraph 8 of this First Schedule shall not bind any person who is not a RP (for example but not limited to the mortgagee of a RP) but shall apply to a Dwelling whilst (and on each occasion that) it is vested in a RP.
11. A mortgagee of a RP which owns a freehold or leasehold interest in respect of any of the AH Units or any receiver or administrator and any successor in title to such mortgagee receiver or administrator shall not be bound by the provisions of this Deed and may sell or dispose of such interest free at all times thereafter from the terms of this Deed.
12. In the case of any AH Unit which is occupied by a Shared Ownership Lessee under a Shared Ownership Lease a mortgagee of such a Shared Ownership Lessee and any successor in title to such mortgagee shall not be bound by the provisions of this Deed and may sell or dispose of its interest in the AH Unit free at all times thereafter from the terms of this Deed.

SECOND SCHEDULE**Further covenants by the Owner relating to recycling of Net Sale Proceeds from Intermediate Housing and Final Staircasing Pursuant to Shared Ownership Leases of Affordable Housing Units**

- 1 The following terms shall have the following meanings in this Second Schedule:
 - 1.1 “**Staircasing**” shall mean in the context of Shared Ownership Leases the purchase by the residential occupier of additional equity shares in the dwelling from the RP after the grant of the initial equity share.
 - 1.2 “**Net Sale Proceeds**” shall mean the net premium received on Staircasing after the deduction of all reasonable costs and expenses of the RP on Staircasing including without limitation its administrative, valuation and legal costs and fees and any taxation liability arising.
 - 1.3 “**Recycling Percentage**” shall mean 50% of the Net Sale Proceeds on any Staircasing.
 - 1.4 “**Recycling**” shall mean the application by the Council of any funds held pursuant to the following provisions of this Second Schedule for the purposes of procuring AH properties within the Borough of Halton.
- 2 As soon as reasonably possible following any Staircasing, the RP will calculate the Net Sale Proceeds and therefore the Recycling Percentage on that Staircasing.
- 3 When the aggregate amount of Recycling Percentages received exceeds £100,000.00, the RP will notify the Council in writing.
- 4 That Recycling Percentage shall be available for Recycling in whole or part.
- 5 If the Council wishes to utilise some or all of any Recycling Percentage available for Recycling it shall notify the RP in writing of the amount required and when and how this will be applied and the RP shall forthwith pay the Recycling Percentage to the Council.
- 6 The Council shall upon receipt of the amount released pursuant to paragraph 5 of this Second Schedule, acknowledge receipt and as soon as reasonably possible thereafter produce evidence of the application of the same for the purposes of Recycling.
- 7 In the event that the whole or any part of any Recycling Percentage has not been utilised by the Council within five (5) years from the date of receipt of the funds pursuant to paragraph 5 of this Second Schedule, the balance shall forthwith be released from any obligations pursuant to this Agreement and be available for application by the RP in any manner which it considers appropriate.

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- 8 On any transfer of any Affordable Housing Units by one RP to another RP the outgoing RP shall be released from any further obligations pursuant to this Agreement with the incoming RP meeting the obligations contained in paragraphs 2 to 7 inclusive of this Second Schedule in so far as these relate to Recycling Percentages received by it on Staircasing after its date of acquisition.

Appendix B: Extracts from Halton Strategic Housing Market Assessment 2011

Demand for housing (by size of property)

Figure 12.17 Estimated size requirement for additional affordable housing – Halton

	Households in need	Households in need (priority)	Housing Register	Average
1 bedroom	43.5%	39.9%	35.2%	39.5%
2 bedrooms	37.2%	39.1%	45.2%	40.5%
3 bedrooms	12.8%	14.0%	15.8%	14.2%
4+ bedrooms	6.5%	7.0%	3.8%	5.8%
Total	100.0%	100.0%	100.0%	100.0%

Source: Halton Borough household survey (2010) and HSSA 2010

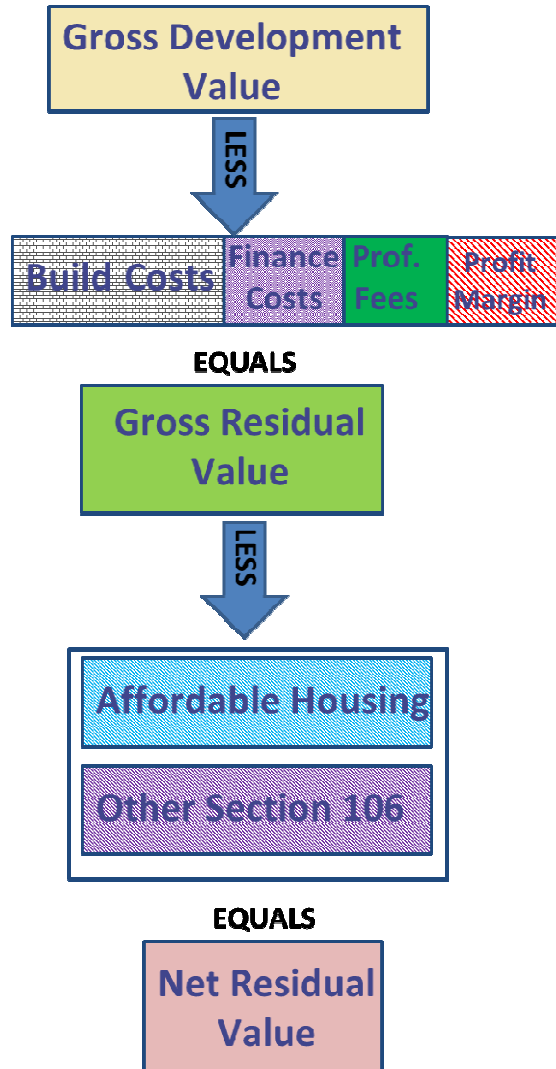
Ward level housing need

Figure 12.18 Estimated housing need by sub-area

	Gross annual need	Annual supply	Net need	Households	Need as % of households
Appleton, Kingsway, Riverside	371	215	156	7,902	2.0%
Beechwood, Halton Lea	117	107	10	4,312	0.2%
Birchfield, Farnworth, Halton View	165	96	68	8,505	0.8%
Broadheath, Ditton, Hough Green	344	212	132	8,796	1.5%
Daresbury	23	4	20	1,730	1.1%
Grange, Halton Brook, Heath, Mersey	584	225	359	11,518	3.1%
Hale	4	3	1	795	0.1%
Halton Castle, Norton (N & S), Windmill Hill	445	299	146	9,119	1.6%
Total	2,053	1,162	891	52,677	1.7%

Source: Halton Borough household survey (2010); various secondary data sources

Appendix C: Summary of Residual Valuation of Methodology



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²³ Gross Development Value – The value of a completed development if the properties are sold on the open market.
 Gross Residual Value – The value of a development scheme (including profit margin) prior to the application of Section 106 requirements.
 Net Residual Value – The surplus that remains after ALL development costs (except land costs) have been met from revenue. For a development to be economically viable the residual must be large enough to cover the cost of acquiring the land.

Appendix D: Contact Information

For more information relating to this SPD or planning policy advice on affordable housing, please contact:

Places, Economy and Transport
Policy and Development Services
Halton Borough Council
Municipal Building
Kingsway
Widnes
WA8 7QF
Tel: 0151 511 7657
Email: forward.planning@halton.gov.uk

For general advice relating to submitting a planning application and for pre-application discussions, please contact:

Development Control
Policy and Development Services
Halton Borough Council
Municipal Building
Kingsway
Widnes
WA8 7QF
Tel: 0151 511 7606
Email: dev.control@halton.gov.uk

For advice relating to Housing Strategy and for pre-application discussions, please contact:

Commissioning Manager (Housing)
Runcorn Town Hall
Heath Road
Runcorn
WA7 5TD
Tel: 0151 511 8859
Email: steve.williams@halton.gov.uk

For advice relating to Financial Viability Assessments, please contact:

Property Services
Halton Borough Council
Municipal Building
Kingsway
Widnes
WA8 7QF
Tel: 0151 511 8528 / 8621
Email: peter.o'donnell@halton.gov.uk / louise.risk@halton.gov.uk