

DATED

18th December

2017

**THE COUNCIL OF THE BOROUGH OF
KIRKLEES**

and

JEAN SYMONS-CAMPBELL

and

JONES HOMES (YORKSHIRE) LIMITED

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to at Land at
Dunford Road, Hade Edge, Kirklees**

Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND

4156-2179-0478, v. 1

4156-2179-0478, v. 1

4149-2097-8954, v. 1

THIS AGREEMENT is made the

18th

day of December

Two Thousand and Seventeen BETWEEN JEAN SYMONS-CAMPBELL of Tranquility, Sutton Road, Ogmere By Sea, Mid Glamorgan, CF32 0PE (hereinafter called "the Owner") of the first part AND JONES HOMES (YORKSHIRE) LIMITED (Company Number 3186376) whose registered office is at Emerson House Heyes Lane Alderley Edge Cheshire SK9 7LF (hereinafter called "the Developer") of the second part AND THE COUNCIL OF THE BOROUGH OF KIRKLEES of the Town Hall Huddersfield West Yorkshire (hereinafter called "the Council") of the third part

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Deed are enforceable.
2. The Owner is the freehold owner of the Site registered under title number WYK607958.
3. By the provisions of Section 106 of the Town and Country Planning Act 1990 ("the Act") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of the land.
4. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to:-
 - (i) secure the provision of Affordable Housing on the Site;
 - (ii) secure the payment of the Education Contribution in the sum of £246,834; and
 - (iii) secure the payment of the Highway Works Contribution in the sum of £287,546.50.

NOW IT IS HEREBY AGREED as follows:-

1. **INTERPRETATION**

In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

“Additional Affordable Housing” means any provision of affordable housing as defined by Annex 2 of the NPPF provided over and above the requirements of this Agreement and which may be a commercial arrangement between the Owner and/or Developer and Registered Provider or other provider approved by the Council for the provision of Affordable Housing.

“Administration Charge” means 1% (one percent) of the Financial Contribution.

“the Affordable Dwellings” means the 12 Dwellings to be provided as Affordable Housing, which shall include Social Rented Dwellings and Intermediate Dwellings.

“Affordable Housing” means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to in in annex 2 of the NPPF.

“the Affordable Price” means the sum to be paid by the Registered Provider (or Alternative Registered Provider) to the Developer which shall reflect the range of prices prevailing in the Kirklees Interim Affordable Housing Policy 2016 or such other sum as may be reasonably agreed between the Developer and the Council and the recipient Registered Provider which shall enable the recipient Registered Provider to provide Additional Affordable Housing.

“the Alternative Registered Provider” means such other Registered Provider as shall be nominated by the Council under Clause 3 of this Deed.

“Application” means the application for the erection of 58 dwellings and associated means of access on land at Dunford Road, Hade Edge, HD9 2RT, known to the Council by reference 2017/91623.

“Development” means the development of the Site in accordance with the Planning Permission.

“Dwellings” means the Affordable Dwellings and the Market Dwellings.

“Education Contribution” means the sum of £246,834 (two hundred and forty six thousand eight hundred and thirty four pounds) to be paid by the Developer to the Council.

“Financial Contribution” means the payment that may be made by the Developer in lieu of the provision of on-site Affordable Dwellings (or a full complement thereof) calculated as a financial contribution to the equal value of median build costs for Kirklees recognised by the RICS Build Cost Information Service (BICS) in respect of the relevant Affordable Dwellings **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Dwellings not transferred to a Registered Provider.

“Highway Works Contribution” means the sum of £287,546.50 (two hundred and eighty seven thousand five hundred and forty six pounds and fifty pence) to be paid by the Developer to the Council.

“Homes and Communities Agency” means the national housing and regeneration delivery agency for England.

“Implementation” means the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56(4) of the Act; save that the term “material operation” shall not include operations in

connection with any works associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of fencing to site boundary and **"Implement"** and **"Implemented"** shall be construed accordingly.

"Intermediate Dwelling" has the same meaning as the term "intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the NPPF and comprises six Dwellings to be provided on plots 40, 41, 42, 43, 44 and 45 or such other locations or house types that may be agreed in writing between the Developer and the Council and can include shared equity (shared ownership and equity loans) or discounted sale.

"Kirklees Interim Affordable Housing Policy 2016" means the Council's Interim Affordable Housing Policy 2016 which provides an interim approach to providing affordable housing in new housing developments in the district annexed at Appendix 1.

"Market Dwellings" means those Dwellings within the Development excluding the Affordable Dwellings.

"NPPF" means the National Planning Policy Framework published by the Department for Communities and Local Government.

"Occupation and Occupied" means occupation 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 **"Occupy"** shall be construed accordingly

"Plan" means the plan annexed hereto.

"Planning Permission" means the planning permission to be granted pursuant to the Application.



Schedule of Accommodation

Housetype	Type	No. of Units	Percentage
Bungalow	Semi-detached	2	3.45
Cratford	Terraced	10	17.24
Bevelley	Semi-detached	12	20.69
Holcombe	Detached	6	10.34
Benbury	Detached	9	15.52
Northwood	Detached	7	12.07
Stratton	Detached	5	8.62
Latchford	Detached	7	12.07
Totals		58	100.00

LEGEND:

1.8m HIGH TIMBER FENCE

PROPOSED TREES

EXISTING TREES TO BE REMOVED/PRUNED

EXISTING TREES

PROPOSED PLANTING

AFFORDABLE UNITS

PLOT REFUSE COLLECTION POINTS

NI

S

SKETCH
subject to structural review
subject to accurate measured survey

I	15.08.17	HIGHWAY TURNING HEADS AMENDED IN LINE WITH HIGHWAY ENGINEER PROPOSALS PLOT 48 HARVED	B
H	14.08.17	FENCE LINE ADJUSTED TO PLOT 57 FENCE LINE & PARKING ADJUSTED TO PLOT 28	B
I	25.07.17	2.5m OFFSET FROM SITE BOUNDARY TO THE NORTHERN & SOUTHERN SITE BOUNDARIES AMENDED IN LINE WITH LATEST SKETCH SCHEME & CLIENT COMMENTS. PRIVATE DRIVE INTERFERED ADJACENT PLOTS 51 - 53. PLOTS 23 & 28 BAY STORAGE LOCATIONS AMENDED. JUNCTION BETWEEN PLOTS 13 & 18 REDUCED IN WIDTH TO 4.8m.	B
G	17.07.17	PLOT 59 & 28 AMENDED. PLOT 59 SPACING AMENDED. TOTAL PLOTS 33-36 REFUSE COLLECTION POINTS AMENDED TO ACCOMMODATE 33-36 UNITS. PLOT 36 AMENDED TO BANBURY HOUSE TYPE. SPACE BETWEEN PLOTS 35 & 34 & 33 INCREASED.	B
F	06.07.17	PLOT 36 AMENDED TO BANBURY HOUSE TYPE. SPACE BETWEEN PLOTS 35 & 34 & 33 INCREASED.	B
E	03.05.17	SITE BOUNDARY ADJUSTED. PLOTS 4, 22 & 59 HOUSE TYPE FOOTPRINT AMENDED.	B
D	25.04.17	AFFORDABLE UNIT INDICATORS ADDED TO BANGLAHOUSE TYPES. BANGLAHOUSE TYPE PLANS AMENDED TO LATEST REGIONAL PAVING. BANGLAHOUSE TYPE PLANS AMENDED TO LATEST REGIONAL PAVING.	B
C	19.04.17	SITE LAYOUT AMENDED IN LINE WITH LATEST SKETCH SCHEME & CLIENT COMMENTS. SCHEDULE OF ACCOMMODATION AMENDED.	B
B	28.11.16	SITE LAYOUT AMENDED IN LINE WITH LATEST SKETCH SCHEME. SCHEDULE OF ACCOMMODATION AMENDED.	B
A	19.04.16	AFFORDABLE UNITS INDICATED. PROPOSED SHOP LOCATION ADDED. PLOTS RE-NUMBERED AND SCHEDULE OF ACCOMMODATION AMENDED.	B
revision	date	comment	version

PROPOSED RESIDENTIAL
DUNFORD ROAD
HADE EDGE

client
JONES HOMES

proposed
PROPOSED SITE LAYOUT

date
29.03.16

scale
1:500 @ A1

drawn
JB

drawing number
2847-0-001

checked
J

Niemmen Architects
Deck 2 The Waterscape
42 Leeds & Bradford Road
Kirkstall Leeds LS5 3EG
Tel: 0113 239 5400
Fax: 0113 239 5401
office@niemmen.co.uk
www.niemmen.co.uk

"Registered Provider" means a social landlord registered with Homes and Communities Agency or any such housing provider approved by the Council at its absolute discretion which can deliver Affordable Housing as defined herein and in Annex 2 of the NPPF.

"Site" means the land at Dunford Road, Hade Edge, Kirklees, shown edged red on the plan.

"Social Rented Dwelling" has the same meaning as the term "social rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the NPPF and comprises ^{Six} ~~seven~~ Dwellings to be provided on plots 1, 2, 8, 9, 10 and 11 or such other locations or house types that may be agreed in writing between the Developer and the Council.

2. GENERAL

- 2.1. The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed
- 2.2. The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site
- 2.3. The expressions "the Council" and "the Owner" and "the Developer" shall include their successors in title and assigns
- 2.4. No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

- 2.5. This Deed shall not be binding upon the owner/occupiers of the Dwellings nor upon the Registered Provider or any Alternative Registered Provider nor against a mortgagee charge or administrative receiver of the Affordable Dwellings or any person acquiring the same under a statutory right to acquire the same or any lessee under a shared ownership lease who has acquired 100% equity in the Dwelling, or any successor in title to any of the parties mentioned in this clause
- 2.6. This Deed shall come into effect upon the date hereof
- 2.7. If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Developer this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date
- 2.8. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed
- 2.9. This Deed is a local land charge and shall be registered as such
- 2.10. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.11. The Developer shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed

3. AFFORDABLE HOUSING

The Developer covenants with the Council:-

- 3.1. Not to permit or allow in excess of fifty percent of the Market Dwellings to be Occupied until the Affordable Dwellings have been constructed in accordance with Clause 3.2 hereof and made available for sale to the Registered Provider or Alternative Registered Provider
- 3.2. To construct the Affordable Dwellings to Homes and Communities Agency design and quality standards or Housing Corporation scheme development standards (or such other standards as may be agreed between the Developer and the Registered Provider or Alternative Registered Provider) in accordance with the Planning Permission and approved plans unless otherwise agreed with the Registered Provider or the Alternative Registered Provider
- 3.3. To deliver six Social Rented Dwellings and six Intermediate Dwellings together with such Additional Affordable Housing (if any) as may be agreed with the Council, the Registered Provider (or Alternative Registered Provider) and the Developer (each acting reasonably).
- 3.4. If the Registered Provider shall not confirm in writing to the Developer its willingness subject to contract to accept the Affordable Dwellings at the Affordable Price within twelve (12) calendar months of Implementation then the Council upon receipt of notice in writing from the Developer to that effect shall as soon as reasonably practicable nominate an Alternative Registered Provider and this provision may be repeated as often as is necessary (subject to Clause 3.5 below) until such time as one of the nominated Registered Providers shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings.
- 3.5. If neither the Registered Provider nor an Alternative Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings at the Affordable Price within a period of twenty four (24) calendar months from Implementation or such other period agreed between the Developer and the Council and the Developer shall have produced evidence in writing no later than the period referred to in clause 3.4

above to the reasonable satisfaction of the Council that it has made all reasonable but commercially prudent endeavours to secure acceptance of the Affordable Dwellings by an Alternative Registered Provider then the Developer will be free to offer such Dwellings for sale on the open market but the provisions of Clause 3.6 and 3.7 shall apply

3.6. If the Registered Provider or Alternative Registered Provider after confirming its willingness to purchase the Affordable Dwellings does not then contract to buy the Affordable Dwellings within two (2) months from the delivery of the complete package of contract documentation to the Registered Provider's solicitor or the Solicitor of the Alternative Registered Provider or such other period as agreed between the Developer and the Council (such agreement not to be unreasonably withheld or delayed) then:-

- i. if a period of twenty four (24) calendar months from the Implementation has expired the Developer will be free to offer the Affordable Dwellings for sale on the open market but the provisions of Clause 3.7 below shall apply
- ii. in any other circumstances the provisions of Clause 3.5 shall continue to apply

3.7. In the event that the Developer is free to offer the relevant Affordable Dwellings for sale on the open market pursuant to Clause 3.5 hereof the Developer shall within 28 (twenty eight) days thereof pay to the Council:-

- i. the Financial Contribution; and
- ii. the Administration Charge

4. EDUCATION CONTRIBUTION

4.1. The Developer covenants not to cause or permit Occupation of more than 50% of the Market Dwellings until the Education Contribution has been paid to the Council.

5. HIGHWAY WORKS CONTRIBUTION

- 5.1. The Developer covenants not to cause or permit Occupation of more than 50% of the Market Dwellings until the Highway Works Contribution has been paid to the Council.

6. COUNCIL'S OBLIGATIONS

- 6.1. The Council hereby covenants to apply the Education Contribution towards the provision of education facilities in the vicinity of the Development the need for which directly arises from the Development provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 6.2. The Council hereby covenants to apply the Highway Works Contribution towards highway improvement works within the village of Hade Edge provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 6.3. The Council hereby covenants to apply (if applicable) the Financial Contribution towards the provision of Affordable Housing in the administrative district of the Council provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.

6.4. The Council shall provide to the Developer such evidence as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Agreement.

6.5. At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

7. WAIVER

7.1. No waiver (whether expressed or implied) by the Council or Developer of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. VAT

8.1. All consideration given in accordance with the terms of this Agreement shall be inclusive of any value added tax properly payable.

9. JURISDICTION

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

10. DELIVERY

10.1. The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed
as a Deed

THE CORPORATE COMMON SEAL of
THE COUNCIL OF THE BOROUGH
OF KIRKLEES was hereunto affixed
but not delivered until the date hereof
In the presence of:-

)
)
)
)
)



010265

.....
~~Assistant Director - Legal, Governance~~
& Monitoring /Authorised Signatory

EXECUTED AS A DEED by **JEAN**
SYMONS-CAMPBELL in the presence of:-

.....
Witness signature

STEPHEN HISLOKS.....

Witness name

22 NEWPORT RD, CARDIFF.....

Witness address

SOLICITOR.....

Witness occupation

EXECUTED AS A DEED by JONES HOMES)
(YORKSHIRE) LIMITED in the presence)
of:-)


.....
Director

DIRECTOR

APPENDIX 1

Kirklees Interim Affordable Housing Policy 2016

Kirklees Interim Affordable Housing Policy 2016

Draft Kirklees Interim Affordable Housing Policy

Introduction

This document provides an interim approach to providing affordable housing in new housing developments in the district.

The Interim Affordable Housing Policy (*The Policy*) covers the period up to the adoption of the Local Plan, however this may be amended over time to reflect any relevant changes to national and local planning policy and evidence. The Policy represents an additional material planning consideration for securing affordable housing as part of the determination of planning applications. It takes account of the changes to the definition of affordable housing, the introduction of Starter Homes and other emerging Government policy and guidance.

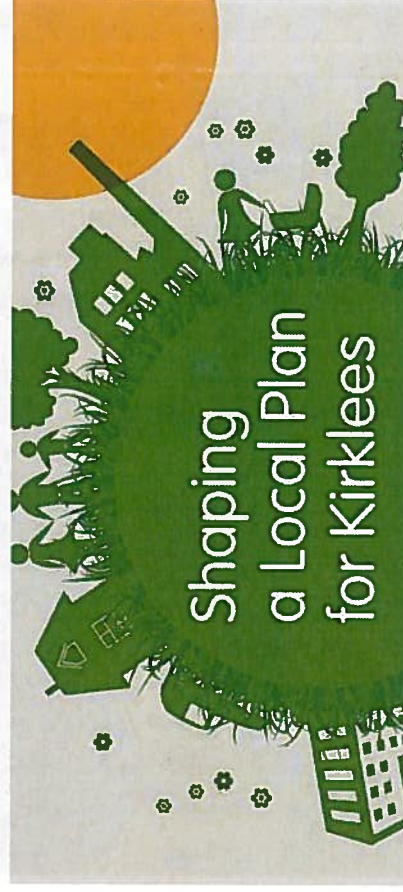
The approach outlined here contributes to improving the number of commencements and completions on sites to improve housing delivery. It helps to support us in meeting the district's 5 year land supply. The policy also sets out our preferences for early delivery and a process to consider viability issues on planning applications.

Kirklees Interim Affordable Housing Policy

The delivery of affordable housing is a key priority both nationally and locally. This policy seeks to improve the delivery of affordable housing across the district as part of the Council's broader approach to improve housing delivery in Kirklees.

The existing Affordable Housing Policy is set out in Supplementary Planning Document 2 – Affordable Housing [‘SPD2’]. This was adopted in November 2008. Since then there has been a transformation within the housing market, both nationally and locally. This change has, in part, been influenced by the recession of 2008-2013. There has also been significant change to planning policy and guidance with the issuing of the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG).

More recent Government policy has also emphasised a shift in focus to include home ownership options and the provision of Starter Homes as detailed in the Housing and Planning Act (2016).



The economic viability of development has also become a particularly prominent issue in recent years. There has been a rise in the submission of viability studies with applications. The independent assessment of these suggests that the current policy requirements as set out in SPD2 of 15% of floorspace on brownfield sites, and 30% of

floorspace on greenfield sites on developments of 5 or more dwelling has become more challenging.

Evidence

The key evidence bases for devising an affordable housing policy are the need and delivery for affordable housing as well as the economic viability of any affordable housing requirement. As stated above, Central Government has also amended the definition of affordable housing in the Housing and Planning Act (2016) to include other delivery models such as Starter Homes.

Furthermore additional planning policy guidance has been issued in the NPPG in relation to vacant building credits for the development of brownfield sites. The NPPF has also reinstated guidance when infrastructure contributions through planning obligation should not be sought, setting a threshold of 11 or more units or over 1000 square metres.

Need

The NPPF highlights the importance of meeting the need for new homes. It also places importance on widening the choice of high quality homes, the delivery of both market and affordable homes, and widening the opportunities for home ownership. The NPPF goes on to state that provision should be met on site unless off site provision is justified, and policies should provide sufficient flexibility to account for changing market conditions over time.

The current draft Strategic Housing Market Assessment (SHMA) (October 2015) evidences a net imbalance of affordable housing in the district of 1,049 per annum. This figure is an expression of the overall

annual shortfall in affordable housing needs and should not be taken as a district target. It does, however, justify the need for new developments to provide affordable housing of a type which addresses the identified need.

The SHMA has detailed the current required tenure split as 54% affordable rent, and 46% intermediate tenure. It should however be noted that the introduction of Starter Homes by Central Government, and the anticipated Starter Homes Regulations, will add a further tenure to this tenure split/mix of affordable housing which has not been currently evidenced by the SHMA.



Affordable Housing at Asquith Fields, off White Lee Road, Batley

The SHMA also provides evidence on household incomes and house prices across the district which is considered appropriate to note when considering levels of affordability for households. The SHMA shows

that median house prices in Kirklees are around £125,000 with median income at around £25,000 per annum, with lower quartile prices at £93,000 and lower quartile incomes at £18,500 per annum. Both of these represent a ratio of income to house price of 5 times.

Viability

The ability of development within the district to be economically viable is a key consideration when setting an affordable threshold. Paragraph 173 of the NPPF highlights the importance of viability in setting policy standards.

As part of work on the draft Local Plan, a viability study for the whole of the district entitled the Kirklees Local Plan Infrastructure and Viability Study 2015 ('KVS') was commissioned. The KVS has been used to inform policies in the draft Local Plan including the draft affordable housing policy and the preliminary rates for the Community Infrastructure Levy (CIL). The viability study carried out a district wide assessment considering issues such as land prices, build costs, sales values, abnormal and professional fees, finance, S106 contributions and developer profit levels.

The KVS has concluded that an interim affordable housing rate of 20% is appropriate as a district-wide target, unless demonstrated to be economically unviable for specific applications.

Definition of Affordable Housing

The Housing and Planning Act became law on 12th May 2016. The Act has amended the definition of affordable housing to include Starter Homes. The new definition of affordable homes is a new dwelling that:

"...is to be made available for people whose needs are not adequately served by the commercial housing market, or are Starter Homes."

Starter Homes are defined as:

'A new dwelling for first time buyers which are at least 23 years old but under the age of 40 that are sold at a discount of at least 20% of market value, with a price cap of £250,000 outside of Greater London, and a time restriction on the property before it can be sold.'

Detailed guidance is expected in the Starter Homes Regulations following the Government's recent technical consultation on proposed Regulations. The technical consultation proposed a number of approaches which included introducing Starter Homes as part of the tenure mix for housing sites and setting a minimum percentage requirement. The consultation document proposed a minimum requirement of 20%. The final approach is yet to be determined and it is expected to be clarified at a later date.

Vacant Building Credit

Vacant building credit is national policy set out in the NPPG and provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of the vacant buildings when the local planning authority calculates any affordable housing contribution. This will apply in calculating either the number of affordable housing units

to be provided within the development or where an equivalent financial contribution is being provided.

Affordable housing contributions will be required for any increase in floorspace.

The LPA will determine on a case by case basis whether a building is vacant or abandoned. As a general principal to qualify for the vacant building credit a building should be vacant at the time a planning application is registered. The LPA will consider case law where a dispute arises about whether a building is abandoned rather than vacant. The credit is only applicable to relevant vacant buildings. The LPA will not accept, for example, sheds and non-permanent buildings as being relevant for the purposes of calculating a vacant building credit.

Further information on vacant building credit is set out in the NPPG.

Assessment of Evidence

When setting a new affordable housing policy a balance has to be struck. The Council wishes to secure housing delivery across all tenures, although the shortfall in affordable housing also needs to be addressed. The Council wishes to ensure that the policy requirement is economically viable and changes in affordable housing delivery such as Starter Homes are considered.

The KVS evidence indicates that housing development across the district is clearly viable provided an appropriate affordable housing rate is set against an appropriate threshold. The NPPG sets out specific circumstances when contributions for affordable housing should not be sought from small scale developments. This follows the order of the

Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014. The policy has set a threshold of 11 units or more or schemes over 1000 square metres when affordable housing contributions can be sought. It is noted that this threshold does not align with that set out consultation on the Starter Homes Regulations, which proposes to align the threshold to the definition of major development (10 units).

For the interim affordable housing policy it is considered appropriate that the most current and consistent position is taken forward for the policy. The threshold will therefore be set at 11 units or more reflecting that set out in the affordable housing policy in the draft Local Plan and that which has been tested by the KVS.

On outline applications where the number of units is not known, the Council will require the applicant to submit an indicative layout to demonstrate the number of dwellings which will be proposed. These amendments represent a significant change to the current 5 unit threshold in SPD2, taking small schemes out of the requirement and helping to make larger schemes more viable.

This is a significant step in assisting smaller sites to come forward. It also assists small developers in the district to have greater confidence in being able to deliver new housing for the district. Recent evidence shows that of the gross completions for 2014/15 44% were on sites of 10 or less.

Given the evidence available it is concluded that an interim affordable housing rate of 20% of the number of market units is appropriate given the current evidence set out in the KVS.

The current SPD2 has different rates for brownfield sites (15%) and greenfield sites (30%), relating to the delivery of floorspace which the KVS has not considered. However, it is not considered to be necessary to set a different rate between brownfield and greenfield sites in this instance. Whilst it is acknowledged that a 20% rate may slightly increase the requirement on brownfield sites, the alterations from floorspace to number of units combined with the vacant buildings credit is considered to mitigate against this change. Units will be sought from this percentage rate which best fit local housing needs.

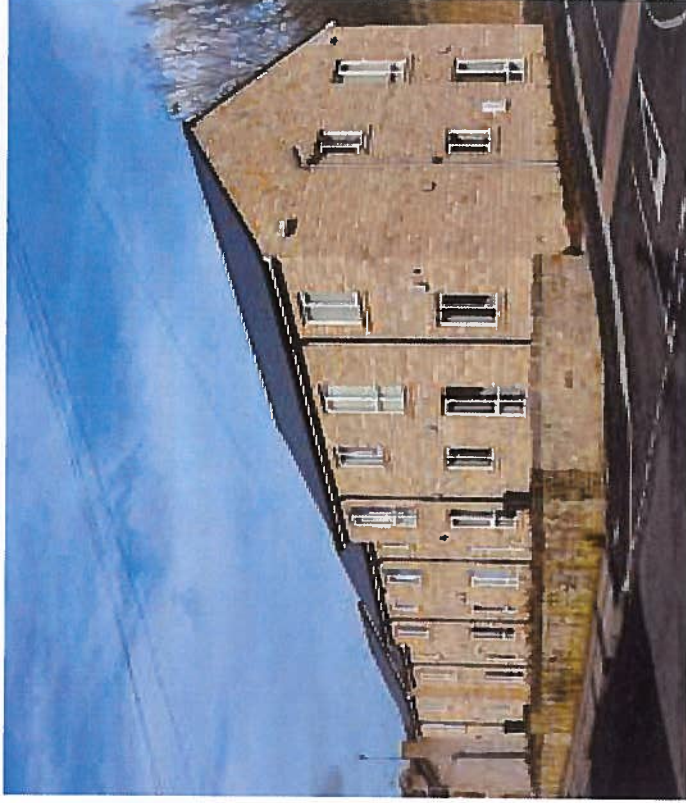
Notwithstanding the above, the Housing and Planning Act and Starter Homes Regulations have the potential to influence how negotiations on affordable housing take place. The recent technical consultation on Starter Homes Regulations (2016) has provided some indication on possible approaches although the outcome of the consultation will not be known until a later date. It is therefore proposed to make reference to Starter Homes in the interim Policy with the approach being consistent with the potential future national regulations or legislation on them. This approach will allow the interim Policy to be implemented at the earliest opportunity but allow for Starter Homes to be taken into account on affordable housing negotiations when the regulation comes into force for Starter Homes.

The policy as set out below is considered to support the delivery of affordable housing within the district ensuring that schemes are economically viable and allows for the consideration of Starter Homes.

Option for Off Site Provision

The policy seeks as a preference on site provision. However, where the LPA considers it appropriate, a financial contribution to be paid in lieu of on-site provision will be acceptable. The calculations for financial

contributions will be of at least equal value to that of onsite provision to enable provision elsewhere.



'Excellent Homes for Life' affordable homes, Lowerhouses

Policy

Draft Interim Affordable Housing Policy

On developments of 11 or more dwellings* the council will negotiate with developers for the provision 20% affordable units based on the number of dwellings on market housing sites or meet the requirements of Starter Homes Regulations set out nationally or an appropriate combination of the two.

The affordable homes should be incorporated within the development, but where justified and agreed with the LPA, a financial contribution of at least equal value of median build costs for Kirklees recognised by the RICS Build Cost Information Service (BCIS) may be accepted to provide affordable homes elsewhere or to improve the existing housing stock.

The affordable housing provision should:

- cater for the type of affordable need identified in the latest housing evidence in terms type, tenure and size;
- incorporate appropriate arrangements to retain the benefits of affordability for initial and subsequent occupiers for affordable rent and shared ownership schemes, or for the subsidy to be recycled for alternative affordable housing provision; or for Starter Homes Schemes to accord with the requirements of the Starter Homes Regulations set out nationally, and
- be indistinguishable from market housing in terms of achieving the same high quality of design.

Transfer values for affordable units are set out in Appendix A and are subject to review where considered appropriate.

*On outline planning applications for housing where the number of dwelling are unknown, the council will require the applicant to provide an indicative layout which will form the basis for affordable housing negotiations.

Housing Mix Issues

The SHMA sets out household needs and examines the current range of housing stock. In addition consideration is given to the needs of residents within Kirklees in the Joint Health and Well-being Strategy (JHWS), Kirklees Joint Strategic Assessment (KJSA) and other relevant evidence document such as those relating to the need for extra care housing or mental health (Mental Health Accommodation Strategy).

Such strategies related to specific groups in need include an Accommodation Strategy for Older People in Kirklees. This seeks a full range of housing solutions which provide varied support, care and other services so that older people can remain in their homes even as they become frailer or disabled.

To meet such need extra care housing which provides for a range of needs including those of frailer older people is particularly favoured. There is also the need to provide for the care facilities of both adults and children with disabilities, those with long-term illnesses and residents with mental health issues.

Where there is evidence of local need the Council would welcome the inclusion of units which meet these needs. Applicants are encouraged to discuss this aspect at an early stage of scheme development.

Early Delivery

The delivery of housing is a key priority both nationally and locally and this approach seeks to increase delivery across the district. The annual housing requirement for housing across the district was set at 1,700 per annum in the now revoked Regional Spatial Strategy RSS. The Council is currently consulting on a draft objectively assessed need

figure of 1,730 per annum. This is based on the evidence in the Council's latest draft Strategic Housing Market Assessment (SHMA) (October 2015).

The Annual Monitoring Report (AMR) sets out the number of dwellings with permission and the number of completions each year. The AMR details that net annual completions each year over the past 5 years has fallen short of the delivery requirement.

Getting the house building market moving is a key aim which will provide homes at a time when the supply has fallen and will help towards the targets for new housing set in existing and emerging local policy to meet the needs of the district in the years ahead. Of considerable importance is that increased supply at a time of economic downturn provides construction jobs and helps to stimulate the local economy.

There has been a clear difference between the housing target and actual delivery in recent years. This is a contributory factor in the current lack of a 5 year housing land supply for the district, especially in light of the NPPF requirement for a 20% buffer in the five year land supply calculation as a result of "persistent under delivery" as well as making up a previous shortfall (since the SHMA base date of 2013). Continued under performance will not assist this position as we move forward.

As delivery of new homes becomes a greater priority and recent completions are lower than the housing requirement, the Council do need to consider further incentives to facilitate more starts on site and encourage more completions. The Council is already stimulating delivery through its 'Homescape' approach to bringing forward large

sites, small sites and stalled sites. However, the planning system can help to deliver more.

As set out previously affordable housing will only be required on developments of 11 or more dwellings and the requirement will be adjusted to 20% of units to make schemes more economically viable. However further incentive is required to promote delivery.

Implementation of Interim Policy

To further promote the delivery of housing sites, schemes which meet the affordable housing threshold will have a clause in the S106 or any appropriate condition, which requires sites to commence within 2 years of the date of decision to gain the benefit of the interim policy. If schemes have not been commenced within the 2 year period the affordable housing requirement will have to be renegotiated based on the affordable housing policy at the time.

This clause is aimed at encouraging developers to start on housing projects in the district at the earliest available opportunity and to aid in increasing completions in the district.

To further support the delivery of housing within the District the approach also sets out how economic viability assessments will be considered when applications do not meet the policy requirements set out in the policy.

Demonstrating Viability

When applications cannot meet the requirements of the Interim Affordable Housing Policy a viability appraisal for the proposal will be required that accords with the guidance set out in Appendix B. When

applications are interim policy compliant at 20% - no viability assessment is required but negotiations will need to take place on mix, tenure and Starter Homes.

Appendix A - Transfer Values

The table below sets out the price to be paid to the developer by the Registered Provider or other housing provided accredited by the Council for the affordable element of a scheme. The figures represent the price which will be paid per square metre of gross internal floorspace.

Per m2	Social Rented	Intermediate
House	£588	£999
Flat	£698	£1171

Appendix B - Viability Appraisal Requirements

Background

The Council fully recognises that financial viability is inherently linked to the ability to satisfy planning policy and to deliver regeneration objectives and economic development.

In the current economic climate this is particularly important in the context of negotiating section 106 contributions/obligations including affordable housing, public open space and education and where such contributions are to be relaxed.

The NPPF states that '...where obligations are being sought or revised local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled'.

The Ministerial Statement of 6th September 2012, the revisions to the Planning Act 1990 through the Growth and Infrastructure Act and the DCLG Guidance on the review of S106 Affordable Housing contributions set out the need for the Council to consider such aspects more proactively. This advice and the existing SPD2 (Section 13) on Affordable Housing demonstrate the requirement for the Council to strengthen and make its approach on this issue, and the requirements for planning applications, clearer.

Pre- Application discussions

The Council encourages applicants to engage in pre-application discussions around key policy requirements and issues around viability. The council will work with developers to consider alternative approaches that may help developments to deliver against policy objectives and remain viable.

There are small charges for this advice and this is updated periodically. It is a valuable part of the overall process and one which is recommended.

Requirements – both full and outline applications.

The submission of a planning application for a development where a relaxation of 'policy driven' contributions is sought on viability grounds will need to be accompanied by a viability assessment/financial appraisal ('the appraisal').

The Council will expect that this is independently assessed. The independent assessor will be one which is approved by the Council. The cost of the independent financial assessment shall be borne by the applicant as a separate cost to the planning application fee.

Agreement to pay this cost will be required at the time the application is submitted. The application will not be validated without that agreement in writing. In addition the Council will not progress the application until the necessary fee has been paid.

Submission of any planning application for development which is intended to comply with policy requirements will need to be accompanied by a statement which sets out that financial viability has been fully considered and that the full contributions can be met.

The format of the viability approach and evidence is set out in Annex A of DCLG guidance "[Section 106 affordable housing requirements Review and appeal](#)". Although this guidance relates to affordable housing the format in Annex A also provides key variables that are relevant in other circumstances.

Requirements for applications seeking review of planning obligations on planning permissions which relate to the provision of affordable housing. As set out in the DCLG Guidance "[Section 106 affordable housing requirements Review and appeal](#)".