

WEST NORTHAMPTONSHIRE COUNCIL PLANNING POLICY COMMITTEE

28 FEBRUARY 2023

PORTFOLIO HOLDER FOR PLANNING, BUILT ENVIRONMENT AND
RURAL AFFAIRS: COUNCILLOR REBECCA BREESE

Report Title	First Homes Policy
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List of Appendices

Appendix 1 - First Homes Policy

1. Purpose of Report

- 1.1 To inform members of the changes to the National Planning Policy Guidance (NPPG) requirement to deliver First Homes through the planning system.

- 1.2 To seek Members' approval to introduce a First Homes Policy for West Northamptonshire in line with Government guidance to Local Authorities for the administration of First Homes.

2. Executive Summary

- On 24th May 2021, the Government published a Written Ministerial Statement (WMS) setting out its plans for the delivery of First Homes, defining the product and changes to planning policy. This was accompanied by changes to the Planning Practice Guidance (PPG) that sets out that First Homes meet the definition of affordable housing for planning purposes as well as other changes to facilitate the delivery of First Homes.
- An early delivery programme of First Homes was launched in March 2022. West Northants area has been involved on phase 2 of this early delivery, this phase consisted of £150m of funding to deliver approximately 1,500 First Homes between 2021 and 2023. Within West Northants there have been two developers that have engaged with phase 2, that will deliver 35 First Homes.
- Delivery of First Homes will be primarily enabled through the planning system, via developer contributions and exception sites.
- First Homes allows first-time buyers to purchase a home at a discount of 30% of its open market value.
- To ensure the council can effectively administer the guidance provided by Homes England, a policy and procedure needs to be in place which ensures that the guidance is fairly and robustly implemented.

3. Recommendations

- It is recommended that Planning Policy Committee:
 - a) note the new tenure First Homes, that will become part of the standard affordable housing offer on a new-build sites.
 - b) approve the First Homes Policy and accompanying procedure.

4. Reason for Recommendations

- To seek Member's agreement to introduce a West Northants First Homes Policy.

5. Report Background

- First Homes were introduced as an affordable housing product in the Ministerial Statement and updated Planning Policy Guidance issued in May 2021. The PPG states that 25% of all new affordable homes provided as S106 developer contributions must be First Homes.

- There are transitional arrangements in place where the First Homes requirements will not apply. These are:
 - a) on sites with full or outline permission already in place or determined before 28th December 2021.
 - b) where Local Plans were submitted for examination before 28 June 2021.
 - c) where Local and Neighbourhood Plans reached publication stage by 28 June 2021, provided they were submitted for examination before 28th December 2021.

There is an expectation that any future review of published plans should include First Homes delivery.

First Homes exception site

- In addition to the above, national planning guidance allows First Homes exception sites, which can come forward on unallocated land outside of a development plan. As part of the work in developing a West Northants Local Plan we will need to set our policy approach to this type of delivery.

First Homes Early delivery programme

- Homes England are currently working with some local authorities and developers on a First Homes pilot project. The results from the pilot project will inform the wider rollout of First Homes as an affordable housing option; this is expected from September 2023 onwards. Guidance has been issued to local authorities and developers by Homes England to support them in the delivery of First Homes.

First Homes criteria

- First Homes are a discounted market sale housing product and meet the definition of 'affordable housing' for planning purposes. First Homes:
 - must be discounted by a minimum of 30% against market value
 - sold to a person meeting the First Homes eligibility criteria
 - must be at a price no higher than £250,000 outside London on first sale. This discount is applied and passed on at each subsequent sale.
 - are open to first-time buyers whose household income does not exceed £80,000, with priority given to local people.
- The government's guidance sets out several requirements, and subject to an appropriate evidence base, Local Planning Authorities can introduce the additional following local criteria:
 - Increase the level of discount from 30% to 40% or 50%
 - Set a lower price cap
 - Set a lower income cap
 - Apply a local connection test
 - Apply criteria based on employment status
- Any local criteria are only permitted by the government to be in place for 3 months from when a home is first marketed. After which the eligibility will revert to the national criteria as set out above.

- The standard of evidence will need to be consistent with what is usually required within Local Plans. West Northamptonshire Council is working on the development of a new West Northants Local Plan, and it is recommended that the potential for adopting a greater local market discount and a lower price and income cap be considered through the work on the new Local Plan.

The West Northants First Homes Policy

- The First Homes Policy sets out West Northants approach to First Homes and how it will apply the government’s First Homes’ policy, including:
 - a) who is eligible for First Homes
 - b) how the discount and price will be applied
 - c) if a local connection policy can be applied.

It is intended that the local connection policy will be as follows:

Local Connection means criteria which are met by a person who satisfies one or more of (i) to (vi) below:

- (i) is and has been a resident for the past 12 months within the administrative area of West Northamptonshire;
 - (ii) is permanently employed in or has an offer of permanent employment within the administrative area of West Northamptonshire;
 - (iii) is temporarily employed or has an offer for temporary employment, in a contract not less than 12 months, within the administrative area of West Northamptonshire;
 - (iv) has been a resident within the administrative area of West Northamptonshire for three out of the immediately preceding five years;
 - (v) has been a resident within the administrative area of West Northamptonshire for five out of the immediately preceding ten years; and
 - (vi) is a person with a Close Relative, who is and has been a resident for the past 12 months, within the administrative area of West Northamptonshire.
- As the prospective homeowner will apply directly to the developer, it is important that the council still has a role in ensuring that the applicant is a suitable candidate for the home and therefore a process has been appended to the policy to ensure that the council has the necessary oversight.

6. Issues and Choices

- The council could decide not to implement the First Homes Policy. However, this would mean that the council would be relying on the Government’s national guidance instead of a local policy.

7. Implications (including financial implications)

- **Resources and Financial**

7.1 The introduction of First Homes may have an implication on staff time in approving the eligibility of first-time buyers seeking to buy First Homes properties. The amount of time will depend on the number of units delivered. As part of the Phase 2 early delivery programme, local authorities will receive £150 from the house builder for each First Home delivered. This is to support the additional resource requirements created by the programme. It is currently unknown whether administration burden monies will be available for the future delivery of First Homes. The Strategic Housing Team will monitor the amount of time required to administer First Homes.

- **Legal**

7.2 There are no legal implications save as noted herein arising from the recommendation in this report.

7.3 It is noted that the Interim First Homes Policy requires (subject to the proposed purchaser meeting the consent and eligibility requirements of the council) the participation of legal services as part of the conveyancing process to help facilitate the purchase of these properties under the First Homes scheme of which the restriction noted at paragraph 7.4 forms part.

7.4 To secure the delivery of First Homes specifically drafted Section 106 agreements will be used to implement the necessary restrictions on the use and sale of the property. A legal restriction is required to be registered on the legal title of the property purchased in accordance with the First Homes scheme.

7.5 This restriction will ensure that the legal title to the property cannot be transferred when sold unless the council issues a certificate (as part of the completion process of any future disposal of a First Homes property) which confirms that the requirements of the restriction have been complied with. The certificate, if issued by the council, will enable the transfer of legal title to be registered at HM Land Registry.

7.6 The requirements for First Homes are set out in Written Statements – Written Questions, Answers and Statements UK Parliament 24th May 2021 and National Planning Practice Guidance (NPPG)

- **Risk**

7.7 There are no significant risks arising from the proposed recommendations in this report.

- **Consultation**

7.8 Consultation has taken place with Planning Policy officers, further consultation with relevant stakeholders on possible local eligibility criteria will take place as the West Northants Local Plan is developed and an evidence base is in place.

- **Consideration by Overview and Scrutiny**

7.9 Not applicable.

- **Climate Impact**

7.10 There are no direct consequences of this report.

- **Community Impact**

7.11 The policy will allow the council to apply its own local criteria to First Homes which will mean that the homes are targeted at local people.

8. Background Papers

8.1 None



Interim First Homes Policy

February 2023

www.westnorthants.gov.uk

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Issue	Date	Comments
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NB: Draft versions 0.1 - final published versions 1.0

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1.0 Introduction

1.1 First Homes' is a new government scheme to help more people onto the property ladder. First Homes are just like normal, open market homes, but they are offered for sale with a significant discount of at least 30% on the market value. The scheme is open to first-time buyers whose household income does not exceed £80,000, with priority given to local people and key workers.

1.2 First Homes were included as an affordable housing product within the Ministerial Statement; [Written statements - Written questions, answers and statements - UK Parliament](#) and updated Planning Guidance issued in May 2021; [First Homes - GOV.UK \(www.gov.uk\)](#) The Planning Guidance states that 25% of all new affordable homes provided as S106 developer contributions must be First Homes.

1.3 There are transitional arrangements in place where the First Home requirement will not apply:

- on sites with full or outline permission already in place or determined (or significant pre-application engagement) before 28th December 2021
- where Local Plans and Neighbourhood Plans were submitted for examination before 28 June 2021.
- where Local and Neighbourhood Plans reached publication stage by 28 June 2021, provided they were submitted for examination before 28 December 2021.

1.4 Homes England guidance encourages the review of all published plans to include First Homes delivery in the future.

1.5 Homes England are working with some local authorities and developers on a pilot project to deliver First Homes. The results of the pilot project will inform the wider rollout of First Homes as an affordable housing option; this is expected from September 2023 onwards.

2.0 Scope

2.1 The purpose of this document is to set out the policy context and the roles and responsibilities of stakeholders in delivering new affordable homes as First Homes, as defined in Homes England and planning policy guidance.

2.2. A procedure for applying the policy is provided at Appendix 1 of this document. The policy and procedure will be reviewed post September 2023 when further government guidance is published.

3.0 Policy outcomes

3.1 This policy will ensure that the Homes England First Homes Guidance to Local Authorities for the administration of First Homes is followed. This policy links with the Council's wider corporate responsibilities of enabling the provision of a range of affordable housing as outlined in the Council's Housing Strategy.

4.0 First Homes

4.1 The Government's Written Ministerial Statement and accompanying Planning Practice Guidance 2, dated 24 May 2021, introduced First Homes as an affordable housing product in planning policy.

4.2 The First Homes scheme is designed to provide new build homes for first-time buyers. The homes will be offered at a discount of at least 30% on the purchase price, with a maximum purchase price before discount of £357,143.

4.3 Guidance has been issued by Homes England to local authorities and developers to support them in implementing the delivery of First Homes. A full copy of the guidance is available on the Homes England website; [First Homes Early Delivery Programme 2021 to 2023: guidance for developers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/first-homes-early-delivery-programme-2021-to-2023-guidance-for-developers)

Planning Policy

4.4 All new planning applications from June 2021 which meet the requirement for affordable housing provision should include 25% of that provision as First Homes.

4.5 However, Local Plans and Neighbourhood Plans submitted for examination before 28 June 2021 are not required to include First Homes policy requirements. Local and Neighbourhood Plans that reached publication stage by 28 June 2021 are also not required to include First Homes policy requirements provided they were submitted for examination before 28 December 2021.

4.6 First Homes are exempt from the Community Infrastructure Levy (CIL). The CIL Regulations were amended in 2020 to allow relief for homes that are sold at no more than 70% of their open market value at their first and subsequent sales.

4.7 The Government is currently running a Phase 2 pilot programme which sets the maximum discount for First Homes at 30%. It may be possible for the Council to look at the potential for adopting a greater local market discount and a lower price and income cap once the pilot programme has finished. The standard of evidence will need to be consistent with what is usually required within Local Plans. West Northamptonshire Council is working on the development of a new West Northants Local Plan and there is therefore an opportunity for the discount and price and income cap to be considered through the work on the new Local Plan.

First Homes Early Delivery Programme

4.8 An early delivery programme of First Homes was launched by the Government in March 2022. West Northants area has been involved on phase 2 of this early

delivery, with £150m of funding to deliver approximately 1,500 First Homes between 2021 and 2023. Within West Northants there have been two developers involved who will deliver 35 First Homes.

4.9 The Phase 2 pilot programme requires developers to convert some housing that had planning permission for market sale homes into First Homes. Developers and local planning authorities are required to agree and complete a S106 Deed of Variation where a S106 agreement already exists. The Phase 2 pilot programme has a specific set of S106 definitions/clauses to be used; these are provided at Appendix B.

4.10 During the Phase 2 pilot programme, we can also apply our own local eligibility criteria by agreeing with the developer to amend the existing S106 Agreement for the development. It is intended that the local eligibility criteria will be as follows:

Local Connection means criteria which are met by a person who satisfies one or more of (i) to (vi) below:

- (vii) is and has been a resident for the past 12 months within the administrative area of West Northamptonshire;
- (viii) is permanently employed in or has an offer of permanent employment within the administrative area of West Northamptonshire;
- (ix) is temporarily employed or has an offer for temporary employment, in a contract not less than 12 months, within the administrative area of West Northamptonshire;
- (x) has been a resident within the administrative area of West Northamptonshire for three out of the immediately preceding five years;
- (xi) has been a resident within the administrative area of West Northamptonshire for five out of the immediately preceding ten years; and
- (xii) is a person with a Close Relative, who is and has been a resident for the past 12 months, within the administrative area of West Northamptonshire

4.11 If a First Home in the Phase 2 pilot programme is unsold after 3 months, the Homes England national criteria will apply. After the pilot programme finishes, the national criteria will be applied to all new First Homes.

4.12 The discount for all First Homes delivered through the phase 2 programme is fixed at 30%. The Council will not be able to set higher discounts on the First Homes delivered through the phase 2 programme.

4.13 Homes England are supporting developers in the pilot programme by providing the discounts directly to them. Once the pilot programme finishes developers will be expected to fund the discounts themselves.

Who is eligible for a First Home?

4.14 As the aim of First Homes is to give the option of home ownership to first time buyers unable to afford a property on the open market, eligibility controls are required to ensure that First Homes go to those who genuinely need them.

4.15 Purchasers of First Homes should:

- be a first-time buyer as defined in the Finance Act 2003 (Section 6ZA; paragraph 6). Purchasers will be required to sign a declaration that they meet these criteria as part of the application process
- be at least 18 years of age
- have a combined annual household income not exceeding £80,000 in the tax year proceeding the year of purchase
- have a mortgage and/or home purchase plan to fund a minimum of 50% of the discounted purchase price
- be unable to afford to buy a home on the open market suitable for their needs in the local area
- be purchasing the home to live in as their sole main residence, not for investment or commercial gain.

How is the First Homes discount and price cap applied?

4.16 To work out the discounted value of a property it will first be necessary to establish its open market value. Open market valuations of the property will need to be provided by two local independent valuers who have Royal Institute of Chartered Surveyors qualifications.

4.17 A price cap of £250,000 (after discount) will be applied, meaning the maximum open market value for a First Home will be £357,143 (outside London) if a 30% discount is applied.

4.18 We are not allowed to provide more than a 30% discount during the Phase 2 programme, but local income data to justify a higher percentage discount after September 2023 may be considered.

4.19 The discount must be secured 'in perpetuity' by a legal agreement between us and the developer, which is to be noted on the title deed of the property (as a 'restriction on title') at the Land Registry. The legal agreement will set out the percentage discount that was applied on the initial sale, which also needs to be applied for all future sales.

Will there be a requirement to have a Local Connection?

4.20 A local connection policy may be applied at our discretion to help residents unable to access housing locally. Restrictions applied to each development may vary to suit a local area.

Can the owner make home improvements?

4.21 The owner is responsible for all repairs and maintenance costs and is entitled to undertake any home improvements they wish, for example adding a conservatory or extending the property (subject to getting planning permission where appropriate).

4.22 However, it is important for homeowners to be aware that if they sell the home, they may not benefit from the full value uplift of any improvements made; this is due to the requirement to sell the home at the same percentage discount for which they purchased it.

Is subletting of the property allowed?

4.23 As the intention of a First Home is to provide home ownership for a first-time buyer unable to afford to buy a property on the open market, they should live in it as their sole main residence, not for investment or commercial gain.

4.24 In some circumstances, we will allow a First Home to be rented out on a temporary basis, subject to approval from the mortgage lender. This is allowed to offer owners the ability to respond to changes in their circumstances, such as unexpected life events. Written approval from us must be received before the First Home can be rented out.

4.25 Approval given by us in the above circumstances will result in permission being given to let the property for a maximum two-year period. The property must then be listed for sale for a further six months before re-applying to us for permission to resume letting.

Can the property be sold on the open market?

4.26 A First Home is worth the same as buying an equivalent property on the open market if the limits on eligibility and value were removed. Therefore, unlike shared ownership, the purchaser owns 100% of the property and has full responsibility for it.

4.27 If the property has not sold within six months of being marketed as a First Home, then it may be sold for full market value. The seller must pay the value of the discount to the Local Authority, and the money received is to be used for new affordable housing.

What are the Rights of Succession - can the First Home be left to family/friends in a will?

4.28 The owner of the First Home can leave the property to whoever they wish.

4.29 The new owners would have to abide by the conditions of owning a First Home, meaning it would need to be their only or main residence and they would not be able to let out the home without permission from the local authority. If they do not abide by these conditions, they will be in breach of the legal obligations related to the First Home which will carry serious consequences

PROCEDURE FOR APPLYING THE FIRST HOMES POLICY

Introduction

The purpose of this document is to set out the process for ensuring that the First Homes Policy is fairly and robustly implemented, including the responsibilities of the local authority, the developer, and the conveyancer in making this happen.

This procedure will be reviewed after September 2023 (as required), once the Homes England pilot programme has finished and further guidance has been published.

Procedure

1.1 The developer of the site has sole responsibility for initiating the marketing and selling of the First Homes. The Homes England Developer Advertising Requirements for the First Homes Early Delivery Programme set out the marketing and selling responsibilities for the developer. The developer must use the Homes England marketing logo and follow the requirements within the marketing document when dealing with the First Homes purchaser. Only one purchase application per plot can be pending.

1.2 The maximum timescale a developer should commence marketing is 10 months prior to anticipated practical completion. A customer can reserve a plot up to 9 months before the anticipated completion date.

1.3 It is a condition of Homes England grant funding that the developer can only commence marketing once the S106 agreement or S106 Deed of Variation is agreed and completed with the local authority using Homes England prescribed clauses. This is so that local eligibility criteria are agreed prior to marketing.

1.4 The developer has sole responsibility for informing the potential purchaser of the process and eligibility criteria for acquiring a First Home and completing the First Homes Application Form.

1.5 Before submitting the application form to the local authority, the developer must check that:

- all sections of the form are complete
- all seven declarations in the application have been signed by the prospective purchaser
- the prospective purchasers are first time buyers, as defined by the Finance Act 2003 (Section 6ZA- paragraph.6)
- the household income of the proposed purchasers does not exceed £80,000 per annum.

- the proposed purchaser meets any other eligibility criteria required by the local authority, including local connection, keyworker status, armed forces[^]
- if no specific eligibility criteria have been set by the local authority, that the national criteria are being met and that the purchaser has signed a legal declaration to confirm this
- the purchaser has obtained a mortgage lending ‘decision in principle

[^] Local connection criteria will only apply until 3 months before practical completion, after which if no sales are achieved then the national criteria will apply.

*The full mortgage application cannot be submitted to the mortgage lender until the local authority has checked the application and issued the Authority to Proceed and Eligibility Certificate to the proposed First Homes purchaser/s and their conveyancer.

1.6 The developer and mortgage adviser complete the confirmation declaration on the First Homes application form and submit the pack to the local authority with supporting evidence.

1.7 Evidence of a local connection (where required) should clearly show that the applicants have met the Local Connection criteria for at least 12 months. Evidence submitted to support income should clearly show the annual income of the applicant.

1.8 On receipt of the First Homes application pack from the developer the local authority will use the checklists and supporting evidence supplied to make its eligibility decision. The focus on pack preparation by the developer means it is not anticipated that local authorities will need to conduct further due diligence.

1.9 If application packs are partially completed and/or omit the “sign-offs” they will be rejected by the local authority and returned to the developer.

1.10 The local authority will decide and notify the developer on whether the applicant meets the Homes England First Home sales criteria within five working days of receipt of the application pack. If the local authority decide that the applicant is not eligible it will decline the application.

1.11 If the applicant is eligible, the local authority will complete an Authority to Proceed (ATP) and Eligibility Certificate. The completed ATP, together with a Conveyancer Pack will be sent to the purchaser, the purchaser’s conveyancer, and the developer. The ATP is valid for a period of 3 months.

1.12 Once the developer has received the Authority to Proceed (ATP), they will arrange for the purchaser to complete the reservation paperwork and pay the reservation fee. A reservation period of 35 working days applies, during which the purchaser should be commencing the conveyancing and mortgage application process.

1.13 Once the sale contract has been prepared and a mortgage offer received, the purchaser’s conveyancer will request approval to exchange contracts by preparing and submitting their signed legal undertaking to the local authority with an Authority to Exchange (ATE) request. The legal undertaking confirms that the sale meets the local authority’s First Homes requirements. By submitting their legal undertaking, the conveyancer is committed to providing the local authority with:

- the date of exchange

- notification of legal completion*
- a certificate of title
- notification that the First Homes restriction is registered at the Land Registry

*legal completion must be within 6 months of exchange.

1.14 Exchange of contracts should normally take place within 3 months of the ATP being issued. For the Phase 2 pilot, the 3-month period is specified in the agreement between Homes England and the developer. The conveyancer packs also indicate that the 3-month limit should be adhered to.

1.15 If an ATP is about to expire but an exchange is expected shortly then the local authority will notify both the developer and conveyancer that the 3-month period is due to expire by issuing an informal notification. If exchange of contracts does not look likely within a longer timeframe (e.g 6 weeks or more) from the expiry date, then the local authority will issue a formal notification of an ATP extension to the developer and conveyancer.

1.16 After exchange of contracts, the developer should return the whole Conveyancer Pack to the Council.

1.17 During the First Homes Phase 2 pilot, developers must follow the Homes England funding agreement; this requires that the developer confirms to Homes England that the local authority has been provided with:

- the solicitor's formal undertaking (with the attached certificate of title completed and signed by the conveyancer)
- the eligible purchaser's final professional valuation (obtained on behalf of an approved lender) or (where not available) the eligible purchaser's mortgage offer confirming the valuation.

Therefore, the local authority will need to confirm receipt of these documents to the developer.

FIRST HOMES – SECTION 106 PROVISIONS

14 DECEMBER 2021

INTERPRETATION

The following words and expressions below shall mean as follows:-

<p>“Additional First Homes Contribution”</p>	<p>means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of this Schedule, the lower of the following two amounts:</p> <p>[30%]^[1] of the proceeds of sale; and</p> <p>the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.</p>
<p>“Affordable Dwellings”</p>	<p><i>means a Dwelling to be provided as Affordable Housing together with rights and easements over the Site^[2] to provide access to the Dwelling and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including car parking in accordance with this Schedule^[3]</i></p>
<p>“Affordable Housing”</p>	<p><i>Definition to be found in Affordable Housing provisions. If First Homes are included in the definition, they will need to be specifically excluded from some of the Affordable Housing drafting relating to transfer to and management by RPs, mortgagee exclusion provisions</i></p>
<p>“Affordable Housing Mix”</p>	<p><i>Where required, definition to be found in Affordable Housing provisions but to include number and type of First Homes</i></p>
<p>“Affordable Housing Plan”^[4]</p>	<p><i>Definition to be found in Affordable Housing provisions but to include requirement to show location of First Homes</i></p>
<p>“Armed Services Member”</p>	<p>means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service</p>
<p>“Cluster”</p>	<p>shall mean a group of Affordable Dwellings which does not have contiguous boundaries with another group of Affordable Dwellings^[5]</p>
<p>“Compliance Certificate”</p>	<p>means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the</p>

[1] To be adjusted in areas where First Homes are provided at a greater level of discount

[2] Amend throughout if the s.106 agreement uses a different term e.g. ‘Land’

[3] Affordable Dwelling and Affordable Housing – can use existing standard definitions but if First Homes are included ensure existing Affordable Housing drafting specifically excludes First Homes where provisions will not apply to First Homes

[4] It is assumed that an Affordable Housing Plan will either be attached to the s.106 agreement, or the s.106 agreement will contain a requirement for the Owner to obtain the Council’s approval of such a plan (potentially on a phased basis in the case of a phased development)

[5] Cluster – can use existing standard definition

	Eligibility Criteria (National) and unless paragraph 6.2 applies the Eligibility Criteria (Local) [in the form at Annex [1]]
"Development Standard"	<p>means a standard to fully comply with the following:-</p> <p>"Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015</p> <p>all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time</p> <p>Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited</p> <p>Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings) [and</p> <p>(e) <i>local requirements as set out in adopted local plan</i>]</p> <p>and the same may be amended by written agreement of the Parties in accordance with paragraph 5.1^[6]</p>
"Discount Market Price"	means a sum which is the Market Value discounted by at least [30%]
"Disposal"	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <p>a letting or sub-letting in accordance with paragraph 7</p> <p>a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner</p> <p>(c) an Exempt Disposal</p> <p>and "Disposed" and "Disposing" shall be construed accordingly</p>
"Dwelling"	<i>As defined in s106 (no additional definition required)</i>
"Eligibility Criteria (National)"	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <p>the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).</p>

^[6] Development Standard – or use standard definition

<p>“Eligibility Criteria (Local)”</p>	<p>means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:</p> <p>the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local) (if any); and</p> <p>any or all of criteria (i) (ii) and (ii) below are met:</p> <p>the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or</p> <p>the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or</p> <p>(iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker</p> <p>[it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.]^[7]</p>
<p>“Exempt Disposal”</p>	<p>means the Disposal of a First Home in one of the following circumstances:</p> <p>a Disposal to a spouse or civil partner upon the death of the First Homes Owner</p> <p>a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner</p> <p>Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order</p> <p>Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 shall apply to such sale)</p> <p>Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7</p>
<p>“First Home”</p>	<p>means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the</p>

^[7] Include words in square brackets if the Council is not imposing any Eligibility Criteria (Local) at the date of the S106 agreement

	Discount Market Price and which on its first Disposal does not exceed the Price Cap
“First Homes Owner”	means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than: the Developer; or another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or the freehold a tenant or sub-tenant of a permitted letting under paragraph 7
“First Time Buyer”	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
“Income Cap (Local)”	means [•] or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home [it being acknowledged that at the date of this agreement the Council has not set an Income Cap (Local)] ^[8]
“Income Cap (National)”	means: in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London), ninety thousand pounds (£90,000); and in the case of any other First Home, eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home
“Key Worker”	[means a person employed or with a confirmed job offer in one of the following categories of employment: XXX or such other categories of employment as may be published by the Council from time to time as the “First Homes Key Worker criteria” and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Key Worker” criteria which shall apply to that disposal.] ^[9] [such categories of employment as may be designated and published by the Council from time to time as the “First Homes Key Worker criteria” and is in operation at the time of the relevant disposal of the

^[8] Include words in square brackets if the Council is not setting an Income Cap (Local) at the date of the S106 agreement

^[9] First option to be selected where the Council is imposing Key Worker criteria in the S106

	First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Key Worker” criteria which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any categories of employment as Key Worker] ^[10]
“Local Connection Criteria”	<p>[means either (a) or (b) below:</p> <p>(b) criteria which are met by a person who satisfies one or more of (i) and (ii) below:</p> <p>(i) is ordinarily resident within [•] and has been for a continuous period of not less than [•] consecutive months prior to exchange of contracts for the relevant First Home; and/or</p> <p>(ii) who has a close family association with [•] [by reason of a parent or child who is ordinarily resident within [•]]</p> <p>(c) such other local connection criteria as may be published by the Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall apply to that disposal.]]^[11]</p> <p>[such local connection criteria as may be designated and published by the Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria”. which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any criteria as Local Connection Criteria.]]^[12]</p>
"Market Dwelling"	means any Dwelling which is not a First Home or Affordable Housing
"Market Value"	means the open market value as assessed by a Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the [30%] discount in the valuation ^[13]
“Mortgagee”	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First

[10] Second option to be selected where the Council is not imposing Key Worker criteria at the date of the S106 agreement

[11] Select the first option where the Council is setting Local Connection Criteria in the S106 agreement

[12] Select the second option where the Council is not setting Local Connection Criteria in the S106 agreement

[13] Market Value – or use definition in existing standard drafting

	Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
"Practical Completion"	means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied ^[14]
"Price Cap"	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed [Two Hundred and Fifty Thousand Pounds (£250,000) or Four Hundred and Twenty Thousand Pounds (£420,000)] ^[15] if the First Home is situated within the administrative area of any London Borough Council including the City of London or such other amount as may be published from time to time by the Secretary of State
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

1 OBLIGATIONS

Unless otherwise agreed in writing by the Council^[16], the Owner^[17] for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the Council as below save that

- 1.1 paragraphs 2, 3, 4 and 5 shall not apply to a First Homes Owner;
- 1.2 paragraphs 6 and 7 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner^[18]; and
- 1.3 Paragraph 8 applies as set out therein.

^[14] Occupied – as defined in standard drafting

^[15] Or a lower price cap if the local authority can demonstrate the need for this through evidence and has decided to apply that lower price cap, as set out in the policy.

^[16] Ensure that this terms corresponds with the definitions in the S106 agreement

^[17] Ensure that this terms corresponds with the definitions in the S106 agreement

^[18] We are aware that it is the practice of some LPAs to agree 'carve-out' clauses, usually in the front-end of a s.106 agreement, providing that residential purchasers are generally not liable for compliance with the obligations in the s.106 agreement. However, this drafting contains certain obligations which must bind residential purchasers as successors in title; specifically, provisions which are designed to ensure that the First Homes remain discounted and subject to the sales and lettings restrictions in perpetuity. Care must therefore be taken when using this template to ensure that any such 'carve-out' clause in the s.106 agreement does not override the relevant provisions of this template.

2. QUANTUM OF FIRST HOMES

- 2.1 [[•%] of the total number] OR [•] of the Dwellings on the Site [(rounded up or down to the nearest whole Dwelling – *where percentage only*)] shall be identified reserved and set aside as First Homes in accordance with the [approved] Affordable Housing Plan and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.
- 2.2 [*Where phased development*] Unless otherwise agreed through the [Site Wide Affordable Housing Plan] [•%] of the total number of the Dwellings in each residential phase (rounded up or down to the nearest whole Dwelling) OR [•] Dwellings in each residential phase shall be identified reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule in accordance with the [approved] Affordable Housing Plan relevant to that residential phase.

3. CLUSTERING^[19]

- 3.1 The First Homes shall not be visually distinguishable from the Market Dwellings based upon their external appearance;
- 3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted
- 3.3 Clusters of houses shall not exceed • Affordable Dwellings;
- 3.4 Clusters of flats in blocks with • or less storeys shall:
- 3.4.1 not exceed • Affordable Dwellings;
- 3.4.2 not have more than 6 flats with shared access; and
- 3.4.3 be of a single tenure where sharing a communal entrance;
- 3.5 The size of Clusters and shared access arrangements for Affordable Dwellings which are flats in blocks with • or more storeys shall be agreed in writing with the Council as part of the Affordable Housing Plan

4 TYPE AND DISTRIBUTION

The mix of First Homes provided within the Site shall be in accordance with

- 4.1 the Affordable Housing Mix; and
- 4.2 the distribution in the Affordable Housing Plan

5. DEVELOPMENT STANDARD^[20]

All First Homes shall be constructed to:-

- 5.1 the Development Standard current at [*the time of the relevant reserved matters approval/the date of this Agreement*]; and

[19] Clustering wording to be removed if dealt with as part of wider affordable housing requirements

[20] Only to be included if not secured via planning condition, or as part of general Affordable Housing provisions in s.106 agreement

5.2 no less than the standard applied to the Market Dwellings.

6 DELIVERY MECHANISM

6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

6.1.1 the Eligibility Criteria (National); and

6.1.2 the Eligibility Criteria (Local) (if any).

6.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 6.1.2 shall cease to apply.

6.3 Subject to paragraphs 6.6 to 6.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

6.4.1 The Council has been provided with evidence that:

6.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 applies meets the Eligibility Criteria (Local) (if any)

6.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

6.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be ^[21]

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clause[s] [] of the [Supplemental] S106 Agreement a copy of which is attached hereto as the Annexure." ^[22]

c) A definition of "[Supplemental] S106 Agreement" means the [supplemental] agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council [and] (2) [and] (3)]

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

6.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being

^[21] Include name of LPA here

^[22] Include clauses numbered 6.1 – 6.9

provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3 and 6.4.1 have been met

- 6.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

- 6.6 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

6.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 6.1 and 6.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4.1; or

6.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

- 6.7 Upon receipt of an application served in accordance with paragraph 6.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

- 6.8 If the Council is satisfied that either of the grounds in paragraph 6.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 that the relevant Dwelling may be Disposed of:

6.8.1 to the Council at the Discount Market Price; or

6.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

- 6.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

- 6.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 6.8 or 6.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution
- 6.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 6.11.1 within []^[23] working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title
- 6.11.2 apply all monies received towards the provision of Affordable Housing
- 6.12 Any person who purchases a First Home free of the restrictions in schedule []^[24] of this Deed pursuant to the provisions in paragraphs 6.9 and 6.10 shall not be liable to pay the Additional First Homes Contribution to the Council.^[25]

7. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

- 7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

^[23] Local authority to insert standard response period

^[24] First Homes schedule

^[25] Any walkaway clause in the section 106 agreement will need to dovetail with this requirement – i.e. the outgoing First Home Owner will still need to be on the hook for paying the Additional First Homes Contribution even after it has parted with its interest in the land.

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence^[26].

8. MORTGAGEE EXCLUSION

The obligations in paragraphs 1-7 of this Deed in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 8.1 such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 8.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3
- 8.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
- 8.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 8.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
 - 8.4.2 apply all such monies received towards the provision of Affordable Housing

^[26] Local authorities may want to update this to reflect local policies

