

# Affordable Housing Small Sites Contributions



Supplementary Planning Document

October 2012

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# 1 Introduction

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## 1 Introduction

### 1.1 Purpose of this document

- 1.1.1** This document is a Supplementary Planning Document (SPD). SPDs provide greater detail on the policies within the council's Development Plan Documents (DPDs) and form part of the Local Development Framework. SPDs are a material consideration in the determination of planning applications.
- 1.1.2** This SPD provides information about requirements for a financial contribution from minor (below 10 units) residential applications towards the provision of affordable housing in Islington.

### 1.2 Relationship of this document to other policies

- 1.2.1** This SPD supports the implementation of the council's Core Strategy (February 2011) and draft Development Management Policies DPD. The Core Strategy Policy CS 12 - *Meeting the Housing Challenge* requires (part G) "... all sites capable of delivering 10 or more units gross to provide affordable homes on-site. Schemes below this threshold will be required to provide financial contribution towards affordable housing provision elsewhere in the borough."
- 1.2.2** This SPD should be read in conjunction with the council's Planning Obligations (Section 106) SPD (July 2009), which details other planning obligations applicable to applications in the borough of Islington.<sup>(1)</sup>
- 1.2.3** Planning decisions are also made with reference to the London Plan and to the National Planning Policy Framework (NPPF) and technical guidance to previous Planning Policy Statements and Planning Policy Guidance Notes, other than those formally withdrawn in Annex 3 of the NPPF.

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1 The Planning Obligations (Section 106) SPD will be updated and/or replaced once the council adopts its Community Infrastructure Levy charging schedule.

### 2 Affordable housing contributions for minor developments

#### 2.1 Policy background

- 2.1.1** This document is supplementary to Islington's Core Strategy policy CS12 Part G, which states that schemes below a threshold of 10 residential units (gross) will be required to provide a financial contribution towards affordable housing provision elsewhere in the borough. The Core Strategy states that detail of the financial contributions will be set out in a Supplementary Planning Document. In accordance with the NPPF a planning authority may prepare SPDs to provide greater detail on the policies in its Development Plan Documents (DPDs). This document is also consistent with London Plan Policy 3.13 which encourages boroughs to seek a lower threshold for applying affordable housing requirements through the LDF process.
- 2.1.2** Maximising the provision of social rented housing is one of the main priorities in the Core Strategy, as set out in its overarching objectives. Policy CS 12 requires that 50% of additional housing should be affordable housing, and sets out requirements for on-site provision of affordable housing. Financial contributions from minor residential developments will also make a significant contribution towards achieving these strategic policies and targets. Policy CS12 is based on a significant identified need for affordable housing, which is outlined in the Core Strategy and in the Core Strategy evidence base.

#### 2.2 LBI need for affordable housing

- 2.2.1** Given the level of need in the borough, the council wishes to deliver as many affordable homes as possible. As demonstrated by Islington's Housing Needs Study (May 2008) and a Strategic Housing Market Assessment (2011) the need for affordable housing, and for social rented housing in particular, remains very high. Lack of affordable housing is, and will continue to be, a major issue in the borough for the foreseeable future.

#### 2.3 Housing delivery and sales values in Islington

- 2.3.1** The borough's exceptional record of delivering new housing over the past five years demonstrates strong viability for residential development, despite the downturn in the wider economy since 2008. Despite a generally depressed housing market nationally, Islington's conventional homes completions of 1,486 units in 2009/10 was still exceptionally high. In 2010/11, delivery fell below targets, but overall, delivery of housing, particularly from smaller sites, remains very high when compared to other London boroughs (Annual Monitoring Report 2010/11, p 27).

## 2 Affordable housing contributions for minor developments

Picture 2.1 Packington Estate Redevelopment



**2.3.2** Sales values in the borough are very high and continue to increase. Sales values for residential property in Islington have risen by an average of 17.5% between January 2009 and February 2012, and are now above the sales values seen during the peak in the housing market of 2007, as shown in the tables below.

Table 2.1

January 2009		
Location	Lowest £/sqm	Highest £/sqm
North	4,037	7,804
Mid-borough	5,113	8,880
South	7,804	11,033

Source: LBI Affordable Housing Study (2009)

## 2 Affordable housing contributions for minor developments

Table 2.2

February 2012		
Location	Lowest £/sqm	Highest £/sqm
North	4,750	9,150
Mid-borough	6,000	10,400
South	9,150	12,950

Source: District Valuation Service, February 2012

### 2.4 National Policy Background for Planning Obligations

**2.4.1** The Council will secure a payment for off-site provision of affordable housing as a Planning Obligation, through a unilateral undertaking provided by the property owner. The principle of requiring a contribution from owners of sites proposing schemes below the 10-unit threshold has been established as sound in the adopted Core Strategy. NPPF paragraph 204 and Regulation 122 of the Community Infrastructure regulations state that it is a legal requirement for planning obligations to meet all of the following tests, first set out in Circular 05/2005:

- a. necessary to make the development acceptable in planning terms
- b. directly related to the development; and
- c. fairly and reasonably related in scale and kind to the development

**2.4.2** The requirement of a financial contribution to delivering affordable housing from small sites is set out in the Core Strategy, and was endorsed by the Inspector as sound, and that it meets the three tests.

**2.4.3** NPPF paragraph 173 states that *“to ensure viability, the costs of any requirements likely to be applied to development, such as [inter alia] requirements for affordable housing should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*

**2.4.4** The viability evidence produced to inform this SPD demonstrates that the requirement for a commuted payment for off-site affordable housing does take into account all of these variables and should not threaten viability. NPPF paragraph 153 states that *“Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.”* While it is recognised that the financial contribution set out in this SPD increases the cost of developing schemes below ten residential units, the contribution is considered necessary for the development to be acceptable. The principle of this policy is established in the Core Strategy, which is considered to be consistent with the NPPF as it is based on meeting objectively assessed needs. Taking into account the financial viability of development will make sure that schemes are not placed at risk. Contributions will be used to deliver affordable housing that is necessary for the borough.

## 2 Affordable housing contributions for minor developments

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- 2.4.5** The council has undertaken a study to examine the level of commuted sum that would be appropriate for minor residential developments. By setting this out in a straightforward way and providing the evidence that supports it, this document will give certainty for applicants and allow them to make successful applications.
- 2.4.6** The approach set out in this SPD is compliant with the requirements set out in the NPPF and CIL Regulations. The SPD sets out the level of contributions required. These will be used for the provision of affordable housing off-site for which there is a demonstrated need.
- 2.4.7** Seeking a contribution for off-site affordable housing provision is justified in the London Plan (2011) policy 3.12 and paragraph 3.77.
- 2.4.8** The NPPF, in paragraph 7, sets out three elements of sustainable development, including “a social role - supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations...”
- 2.4.9** The requirement for a financial contribution towards affordable housing delivery will not threaten the delivery of the supply of housing required, as the evidence base demonstrates that viability will not be threatened in the overwhelming majority of cases and delivery will not be unduly hampered. This requirement will help meet the needs of present and future generations within Islington by making a significant contribution to providing housing at a level that is affordable to people within the borough. This also reflects the aims of policy 3.9 of the London Plan, which seeks the promotion of communities mixed and balanced by tenure and household income across London.

## 3 Evidence base for financial contributions for affordable housing

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- 3.0.1** The council has undertaken a study which examines the level of financial contribution that would be likely to be viable for a large majority of developments in the borough with fewer than 10 residential units. The study is titled London Borough of Islington Affordable Housing Financial Viability Assessment - Sub Threshold Contributions (Nov 2011).
- 3.0.2** The study appraisal tested the impacts upon viability of varied amounts of commuted sum. The appraisal was undertaken using robust assumptions in relation to key parameters, such as build costs, Community Infrastructure Levy/planning obligations costs, profit levels and site values, including a landowner's incentive. These are outlined in the study report. The study also varied many of these assumptions in order to test a range of scenarios.
- 3.0.3** The study concludes that a £50,000 commuted sum, per residential unit, is likely to be viable for the majority of scenarios tested. The study tested commuted payments of £40,000-£80,000. In a large number of cases a commuted sum contribution of £80,000 per unit is also likely to be viable.
- 3.0.4** Circumstances in which a contribution of £50,000 might pose viability issues for a scheme are very limited. In the south of the borough, a contribution of £60,000 is shown to be viable with very few exceptions. The circumstances in which site value, sales value and density level could combine to threaten viability, are set out in the evidence base referred to above. It is thought likely that only in circumstances where high site value is combined with very low sales values and a particular level of density that viability issues might occur. For illustration, it would be a case of a high site value seen in high spec offices found in edge of the City locations like Finsbury Square, occurring in an area in the north of the borough such as Tollington, where sales values are lower, and a proposal being of a particular density. It is highly unlikely that these circumstances will occur in practise.
- 3.0.5** In line with the evidence base, the council will expect developers to be able to pay a commuted sum of £50,000 per unit for sites delivering fewer than 10 residential units in the north and middle parts of the borough, and £60,000 for sites south of Pentonville Road/City Road. It is likely that many schemes would be able to afford a larger commuted sum, as demonstrated by the evidence of an £80,000 payment. For the sake of simplicity and to avoid prolonged negotiations on individual planning proposals, the approach proposed in this SPD is to set the contributions at a level that is very likely to be viable on a range of schemes across the borough, rather than to seek the highest possible contribution that would be viable in any given case.
- 3.0.6** The evidence base which informed the SPD will be reviewed regularly and updated as necessary to account for changes in circumstances, particularly those related to the housing market. The SPD may be reviewed and amended if appropriate as a result of changes to the evidence base. In addition the implementation of the SPD will be monitored and the SPD may be amended if appropriate. In both cases the sum required for financial contributions towards affordable housing may be revised .



## 4 Requirements for Financial Contributions

### 4 Requirements for Financial Contributions

**All minor residential developments resulting in the creation of one or more additional residential unit(s) are required to provide a commuted sum of £50,000 per unit, towards the costs of providing affordable housing units on other sites within the borough. For sites located south of Pentonville Road/City Road, this figure will be £60,000.**

- 4.0.1** It is expected, based on the evidence base, that the large majority of applications in the north and mid-borough locations should be capable of providing the required sum of £50,000 without a significant impact on financial viability. The evidence base study demonstrates that much higher sales values in the south of the borough can support much larger contributions.
- 4.0.2** This is particularly the case in the area south of Pentonville Road/City Road. In the majority of cases in this area financial contributions as high as £80,000 can be achieved without compromising viability. However, the council is taking a fairly cautious approach and has opted for a considerably lower contribution of £60,000 for this area, which is shown to be viable with few exceptions in the study.
- 4.0.3** For avoidance of doubt the required contribution applies to new build units, conversions of existing buildings resulting in the creation of new units, and subdivision of existing residential properties resulting in net additional units.
- 4.0.4** The requirement for financial contributions towards affordable housing relates to residential schemes proposing between 1 – 9 units which do not provide social rented housing on site. Schemes by Registered Providers, the council or any other developer which include on site provision of social rented housing will not be required to make a financial contribution as set out in the SPD, unless the unit/s proposed on site are worth less than the full financial contribution that would be required for the scheme.
- 4.0.5** On the basis of the evidence base study, the council considers that viability issues will not generally need to be raised.
- 4.0.6** The council would not expect an office/commercial building which makes optimum use of a site and that is attracting a high rent to come forward for residential development, as residential value is unlikely to exceed site value in these circumstances.
- 4.0.7** Similarly, for locations with medium and low site value, such as offices in the middle of the borough and storage and community uses throughout the borough, it is expected that viability issues may arise only where there is evidence of very low sales values within the tested range and where it is accepted that varying the density of the scheme would not be appropriate and/or would not resolve viability issues.
- 4.0.8** In light of the above, the council considers that viability concerns may arise only in certain circumstances, where all of the following circumstances occur on a particular proposal:
- The site value is high within the range tested in the study; and

## 4 Requirements for Financial Contributions

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- The sales values are very low within the tested range; and
- A full range of densities appropriate for the location in question has been explored and demonstrated to be unviable.

**4.0.9** However, the council acknowledges that there might be other site-specific circumstances, which might make the site substantially different to the models tested in the study, as a result of which viability issues might arise. In such circumstances, the council will accept viability assessments.

**4.0.10** In these cases, the applicant should provide a statement with their application with a justification for not providing the full financial contribution. The applicant should submit a viability appraisal of the proposed scheme, and, if necessary, pay for the council to commission an independent review of the submitted appraisal. The assumptions of any submitted appraisal exercise must be demonstrably reasonable and accurate. A viability appraisal must include sufficient information to enable the council and/or an independent viability expert to review the appraisal without having to seek further information from the applicant.

**4.0.11** Where an appraisal does not contain enough detail necessary to undertake an independent review, the application is likely to be refused. The approach to appraisal should be a recognised method, such as a Residual Land Valuation, and evidence should be submitted to justify assumptions used in the appraisal, such as costs and values. Free to use toolkits for undertaking a simple residual land value appraisal are available, for example the Homes and Communities Agency Development Control Toolkit. The council will not consider the over-payment for land as a viability consideration.

**4.0.12** For small schemes, it is likely that a simple residual appraisal will be sufficient to determine a viable contribution and the council does not require applicants to submit more complicated appraisals using proprietary software models.

## 5 Delivery of Affordable Housing

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### 5 Delivery of Affordable Housing

- 5.0.1** The council has a strong commitment to delivering affordable housing, particularly social rented housing. This has been a priority for many years, receiving cross-party support. The council was one of the first local authorities in the country to re-start building new council homes for its residents. Islington has committed to a programme to deliver new social rented housing either by building new council housing on its own land, or working with Registered Providers to deliver new social rented accommodation on council-owned land.
- 5.0.2** The council is able to support the New Build Programme in a number of ways. Land owned by the authority comprises approximately 35% of the borough's land area, which presents a good opportunity to deliver significant amounts of affordable housing without associated land costs. The council also has some capital funding in place to support the delivery of new social-rented units and will be using the New Homes Bonus to aid delivery. The borough is also piloting a scheme where some 1 bed council housing units are being sold as shared ownership to subsidise new affordable family accommodation.
- 5.0.3** Through a proactive site-finder exercise undertaken in partnership with its then Arms Length Management Organisation (ALMO) - Homes for Islington, the council has already identified a range of sites for additional affordable housing. Some of the sites in question, those capable of delivering substantial numbers of new units, are being allocated for new affordable housing through the statutory development plan process. Homes for Islington also secured funding to undertake feasibility assessments of some housing estates with a view to further delivery of new council housing.
- 5.0.4** Homes for Islington was brought back under council management on 1 April, 2012, which is likely to aid the implementation of the New Build Programme and its significant acceleration in the future.
- 5.0.5** Although still in its infancy, the New Build Programme has already identified a significant supply of new affordable housing, and the number of units delivered through this mechanism will be substantially increased as a result of the increased funding stream secured through developer contributions from small sites.

Picture 5.1 Mildmay Housing Development



- 5.0.6** In 2010-11 the council built 13 new units. 41 units have been completed in 2011/2012 and 42 are projected for completion in 2012-13. Since its inception, the council's new build programme has already accelerated very significantly. Over the next three years (2012/13 - 2014/15), over 450 units are projected to start on site, demonstrating that the programme will make a substantial contribution towards increasing supply of new social rented units in the borough.
- 5.0.7** The council's new build programme schedule will be updated regularly, as work progresses on site identification.
- 5.0.8** The commuted payments from minor residential schemes will augment existing funding sources and provide an important resource for the delivery of much-needed social rented housing within the borough. The council will be in a position to cross subsidise schemes, where necessary, in order to maximise delivery of social rented housing that will meet the identified needs of borough residents.
- 5.0.9** This includes the provision of grant funding to Registered Providers in order to maximise the provision of social rented housing. The council will use its resources in the most effective way possible in order to maximise provision, and Registered Providers will be expected to demonstrate that they are bringing a maximum level of their own resources to each scheme.

## 6 Process of securing financial contributions

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### 6 Process of securing financial contributions

- 6.0.1** Contributions for off-site affordable housing for small sites will be secured through a unilateral undertaking (Section 106, Town and Country Planning Act, 1990) which site owners, including mortgagees, will be required to enter into before the planning permission is issued.
- 6.0.2** A draft unilateral undertaking will be required in order to validate all applications for sites capable of delivering nine residential units or fewer. A model example of a Unilateral Undertaking is included at Appendix A.
- 6.0.3** In cases where an applicant is seeking to demonstrate through a viability assessment that a full contribution is unlikely to be viable, they will be required to provide a statement with robust justification of their case. This will be required in order to validate the application, and the council will not accept viability assessments submitted during the application process. Following an independent review of an applicant's viability evidence, the applicant will be required to sign a unilateral undertaking to make a contribution in line with the findings of the independent viability review, before a decision notice will be issued.
- 6.0.4** Applicants should note that financial contributions for affordable housing will be one of many planning considerations (i.e. design, space standards, residential amenity of future occupants and impact on adjoining properties) which will be assessed as part of the process of determining a planning application. A unilateral undertaking to make a financial contribution does not guarantee that a planning permission will be granted. Planning applications may be refused on matters unrelated to financial contributions set out in this Supplementary Planning Document.
- 6.0.5** The financial contribution will be payable on commencement of the development. In some cases, applicants might face genuine difficulties in paying the financial contribution on commencement of a development, for instance on very small developments (i.e. subdivision of an existing home to create one additional unit). In such cases, it may be possible to make the payment on practical completion of the development. Details of the "trigger" for making the payment will be set out in the legal agreement attached to the planning permission (the unilateral undertaking).
- 6.0.6** Where an additional self contained unit is being created for a family member (or in similar circumstances) and there will be no immediate sale of the unit, the payment will not usually be required on commencement or completion of the scheme. Such schemes will be dealt with on a case by case basis and the council will require a legal agreement to be entered into which will require the payment to be made prior to any future sale of the residential unit in question.



# 1 Appendix A

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## 1 Appendix A

1.0.1 The appendix can be downloaded [here](#).

**DRAFT UNLATERAL DEED PAYMENT OF AFFORDABLE HOUSING CONTRIBUTION SMALL SITES**

*The draft has been prepared without prejudice to the Council's discretion to properly determine this planning application at a future committee date/ under delegated powers and is not to be construed as giving any indication as to how the planning application may be determined.*

*The final wording of this draft deed remains subject to reasonable negotiations in each case and is subject to change without notice and may need to be amended in individual cases*

*The parts of the draft deed in square brackets are to be deleted /amended /completed as appropriate*



**ISLINGTON**

DATED

201[ ]

Unilateral Undertaking pursuant to section 106 of the Town and Country Planning Act given

By:

1. [Owner];
2. [Lessee];
3. [Mortgagee]; and

To:

4. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON**

In respect of:

[address of the Application Site]



**THIS UNILATERAL UNDERTAKING made as a Deed** is given on

201[ ]

**By:**

- 1) [ **name(s) of freehold owner(s)** ] of [ **address of Owner(s)** ] / [a company incorporated in England and Wales (Company No: ) whose registered office is at [ ] ] ("**Owner**");
- 2) [ **names(s) of leasehold owner(s)** ] of [ address of Lessee (s) ] / [a company incorporated in England and Wales (Company No: ) whose registered office is at [ ] ] ("**Lessee**");
- 3) [ ] a company incorporated in England and Wales (Company No. ) whose registered office is at [ ] ("**Mortgagee**"); and

[ if there are any other interests in the Application Site further additional drafting will be required ]

**To:**

- 4) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** Town Hall Upper Street London N1 2UD ("**Council**")

**BACKGROUND**

- (A) The Council is the local planning authority for purposes of the Act for the area in which the Site is located
  - (B) The Owner is the registered proprietor of the [freehold] of the Site with title absolute under title number [ ].
  - (C) [The Lessee is the registered proprietor of the leasehold of the Site with [absolute] title under title number [ ] ].
  - (D) [The Mortgagee is the owner of a charge over the Site dated [ ] between the Mortgagee and the [Owner/Lessee].
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(E) The Application has been submitted to the Council and the Parties give this undertaking by way of this Deed in order to secure the planning obligations contained in this Deed.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS

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

Act	the Town and Country Planning Act 1990
Affordable Housing	means affordable housing as defined by national regional or local policy from time to time
Affordable Housing Contribution	£[ see SPD ] to be spent by the Council towards the provision of any one or more types (as decided in the Council's sole discretion) of Affordable Housing
Application	the application for full planning permission submitted to the Council for the Development and allocated reference number [P ] <i>application number to be inserted by the council</i>
Commencement	the date on which any material operation (as defined by section 56(4) of the Act) forming part of the Development begins to be carried out (for the purposes of this Deed and for no other purpose) and "Commencement" and "Commenced" shall be construed accordingly
Development	<i>[Insert the description of what has been applied for]</i>
Decision Date	the date that the Council resolves to grant planning permission being the date of the Committee report or the delegated decision which

ever is applicable

Interest interest at four per cent above LIBOR from time to time

Index the Retail Prices (All Items) Index as published by the Office for National Statistics or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the Council may reasonably decide

Index-Linking means linked to movements in the Index between the Decision Date and the date of the payment so that the particular payment is adjusted in accordance with the following formula:

$$\text{Amount Payable} = \text{Relevant Amount} \times (A \div B)$$

Where:

Relevant Amount = the payment to be Index-Linked

A = the figure for the Index which applied when the Index was last published prior to the date that the Relevant Amount is payable

B = the figure for the Index which applied when the Index was last published prior to the Decision Date

PROVIDED THAT the Index Linked sum can never be less than the original sum payable

Parties	means the [Owner /Lessee /Mortgagee ]
Planning Permission	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
Site	the land against which this Deed may be enforced as shown edged red on the Plan and known as [address where development will take place ]
Site Plan	means the plan annexed at the Schedule showing the Site outlined in bold red

## **2 Construction of this Deed**

- 2.1 Where in this Deed reference is made to a clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that matter.
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.6 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 2.7 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

2.8 Save in respect of the Planning Permission (which at all times shall prevail) in the event of any conflict between the terms conditions and provisions of this Deed and any document or referred to therein the terms conditions and provisions of this Deed will prevail.

2.9 The Interpretation Act 1978 shall apply to this Deed.

2.10 All Parts Schedules and Annexes attached to this Deed are to be read as if the same were incorporated into the main body of the Deed.

### **3 Legal Basis**

3.1 This Deed is made pursuant to Section 106 of the Act.

3.2 The obligations covenants restrictions and Deeds on the part of the [Owner/Lessee/Mortgagee] under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Parties without limit of time.

### **4 Conditionality**

This Deed is conditional upon the grant of the Planning Permission.

### **5 The Owner / Lessee Undertakings**

The [Owner / Lessee ] give the undertakings set out in Schedule 1 to the Council.

### **6 Miscellaneous**

6.1 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties Act 1999.

6.2 This Deed shall be registrable as a local land charge by the Council.

6.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.4 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to Commencement.

- 6.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.7 It is agreed and declared by the Parties that nothing contained or implied in this Deed shall prejudice fetter or otherwise affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions rights powers or obligations.

## **7 Mortgagee's Consent**

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

## **8 Waiver**

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

## **9 Change of Ownership**

The [Owner/Lessee] agree to give the Council immediate written notice of any change in ownership of any of their interests in the Site occurring before the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

## **10 Indexation**

All sums payable to the Council pursuant to this Deed shall be Indexed Linked and for the avoidance of doubt such payment shall be Index Linked from the Decision Date.

## **11 Interest**

The Owner / Lessee agree that any money payable to the Council pursuant to this Deed shall be paid in full without deduction or set-off and if not paid on the date due shall in every case bear Interest on so much thereof as shall from time to time be due and owing from the date the payment was due to actual payment.

## **12 Legal Fees**

The Owner / Lessee shall pay to the Council on completion of this Deed the Council's reasonable legal fees of [£X] incurred in the drafting negotiation and execution of this Deed.

## **13 Notices**

13.1 Any notice or other communication to be given under or in connection with this Deed shall be in writing which for this purpose shall not include e-mail and such notices or other communications should be addressed as provided in Clause 13.3 below.

13.2 Any such notice or other communication, if so addressed, shall be deemed to have been received as follows:

- a) if delivered by hand, upon delivery at the relevant address;
- b) if sent by first class post, at 9.00 a.m. on the second working day after the date of posting

13.3 The address relevant addressee and reference for each party are:

for the Council:

Address: Strategic Planning and Regeneration, 222 Upper Street, London  
N1 1XR

Relevant addressee: S106 Planning Obligations Team

for the Owner:

Address:

Relevant addressee:

Reference:

If a party changes its name, address, or relevant addressee for the purposes of this clause it shall notify the other party in writing.

DRAFT



## SCHEDULE 1

### THE OWNER/ LESSEE UNDERTAKE

#### 1 Notices

The [Owner/Lessee] must give at least 14 days prior written notice to the Council of the date of Commencement of the Planning Permission.

#### 2 Affordable Housing Contribution

- 2.1 The [Owner/Lessee] will pay the Affordable Housing Contribution to the Council prior or on Commencement.
- 2.2 The [Owner/Lessee] agree and acknowledge that the Council will decide in its sole discretion which type of Affordable Housing to provide.

DRAFT

**SCHEDULE 2**

**SITE PLAN**

DRAFT

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written.

**Execution Clauses [NB: delete amend as appropriate]**

**1. Execution by an individual**

SIGNED AS A DEED BY [INSERT NAME OF INDIVIDUAL]

.....

in the presence of [INSERT NAME OF WITNESS]

.....

[INSERT NAME OF OCCUPATION OF WITNESS]

**2. Execution by a company with or without seal**

EXECUTED AS A DEED BY  
LIMITED )

in the presence of )

.....  
Director )

.....  
Director/Secretary )

THE COMMON SEAL OF )

)  
was hereunto affixed )

BY ORDER )

Director

Director/Secretary

**3. Execution by a foreign company**

SIGNED ON BEHALF OF [NAME OF COMPANY]  
a company incorporated in [JURISDICTION] BY  
[NAME OF THE DIRECTOR SIGNING] being a person  
Who in accordance with the laws of that territory  
is acting under the authority of the company

**4. Execution by attorney**

SIGNED AS A DEED BY [NAME OF ATTORNEY]  
as attorney for [NAME OF DONOR COMPANY]  
under a power of attorney dated [DATE]  
in the presence of [NAME OF WITNESS]

[SIGNATURE OF WITNESS]

.....

[NAME AND ADDRESS AND OCCUPATION OF WITNESS]

.....