East Riding Local Plan

Affordable Housing
Supplementary Planning Document

Adopted April 2016
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1 Introduction

1.1 The aim of a Supplementary Planning Document (SPD) is to add further detail to the policies in the Local Plan. They should be used where they can help applicants make successful applications and should not be used to add unnecessarily to the financial burdens on development. SPDs can be used to provide further guidance for development on specific issues, such as affordable housing. They are capable of being a material consideration in planning decisions but are not part of the Development Plan. This SPD is intended to add further guidance to the East Riding Local Plan, Strategy Document Policy H2: Providing Affordable Housing and other related policies.

1.2 The SPD provides a brief introduction to affordable housing and related planning policy, and considers Policy H2 of the East Riding Local Plan which covers both the provision of affordable housing through requirements on market housing schemes (Section 106 agreements) and on rural exception sites. The document explains how the policy is applied and answers questions that may be raised when considering the policy. It is structured in a way that explains each section of Policy H2 in turn, with likely queries that are not specifically related to a particular section being considered towards the end of the document.

1.3 Throughout this document the importance of pre-application discussions is highlighted. Discussing the provision of affordable housing early in the process will allow the appropriate affordable housing to be incorporated into a scheme from the outset. This will inevitably improve the quality of design and ultimately save both time and financial resources for the applicant and the council.

1.4 Appendix 1 sets out a flow chart that summarises the process for considering affordable housing on market housing sites.
2 What is Affordable Housing?

2.1 Affordable housing is defined in the National Planning Policy Framework (NPPF) as:

"Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria of the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as "low cost market" housing may not be considered as affordable housing for planning purposes."

2.2 In the East Riding the majority of affordable housing is owned and let by the council (approximately 11,300 dwellings), with a further 2,400 dwellings let by Private Registered Providers (housing associations), including shared equity dwellings. The council requires affordable housing provided through requirements on market housing developments and on rural exception sites to:

- meet housing need;
- be available to those in housing need (households who cannot meet their housing requirements through the market); and
- be affordable in perpetuity or for the subsidy to be recycled for new affordable housing in the East Riding.

Planning and Housing Bill

2.3 The Planning and Housing Bill (2015)\(^1\) introduces a statutory duty on local authorities to promote the supply of starter homes and a requirement for a proportion of starter homes to be delivered on all suitable reasonably sized housing developments. A starter

\(^1\) Available to view at [http://services.parliament.uk/bills/2015-16/housingandplanning.html](http://services.parliament.uk/bills/2015-16/housingandplanning.html)
home is defined as a new dwelling only available for purchase by qualifying first-time buyers and made available at a price which is 20 percent less than the market value. The Bill does not define the proportion of starter homes required on new developments.

2.4 The Government intends to extend the definition of affordable housing in the NPPF (set out above) to include a range of affordable housing products for rent and ownership. Local authorities may be expected to secure starter homes as part of Section 106 (S106) agreements on development sites. Further details will be provided in regulations and secondary legislation. The council will respond to any future changes to national planning policy accordingly, including dealing with any amendments to the definition of affordable housing.
3 What is the Evidence Base for the Local Plan Affordable Housing Policy?

3.1 Local Plan policy is consistent with national planning policy (set out in section 4) and is underpinned by local evidence to ensure that the policy is justified and effective. The main evidence base documents that relate to affordable housing are described below and are available to view on the council’s website. 

Housing Strategy

3.2 The council’s Housing Strategy was adopted in 2011. Its vision is that “the range, quality and affordability of housing in East Riding meets the needs of current and future residents, contributing towards more sustainable communities and encouraging economic growth and prosperity.” The strategy has 3 objectives which seek to deliver this vision:

- knowing our community: understanding the socio-economic housing and support needs of current and future residents;
- ensuring strong, vibrant and healthy communities: ensuring the East Riding has quality sustainable development, complimented by local service and infrastructure, to meet the needs of current and future residents;
- delivering excellent housing services: promoting and facilitating excellent service delivery across all housing tenures to meet the housing and support needs of residents.

3.3 The Strategy sets out a number of different approaches to addressing the many housing challenges facing the council which include the need for more affordable housing in both towns and rural areas:

- direct delivery by the council, following on from the success of the Local Authority New Build Programme 2009 - 2011 and through the Affordable Homes Programme 2011-2015 and a potential future Housing Revenue Account investment programme.
- delivery of both supported and general need homes by housing associations through the Affordable Homes Programme 2011 - 2015.
- bringing empty homes back into use as both affordable and market housing through a combination of voluntary and enforcement action using external funding where available.
- delivery of affordable housing through planning policy requirements on private housing developments.

Strategic Housing Market Assessment

3.4 Local planning authorities are required to prepare a Strategic Housing Market Assessment (SHMA) to assess their full housing needs. The SHMA should identify the scale and mix of housing and the range of tenures that the population will need. This should include

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affordable housing and housing to help meet the needs of specific groups in the community. Assessments should consider housing demand and the scale of housing necessary to meet that demand.

3.5 In October 2011 the council approved the use of the SHMA to inform the preparation of the Local Development Framework, now known as the Local Plan, and housing policy. The SHMA was based on the Government’s Strategic Housing Markets Assessments: Practice Guidance (2007). A Housing Survey was carried out in January and February 2011 which formed the empirical basis for establishing the number and distribution of current and concealed households in housing need. Over 24,500 completed postal questionnaires were returned, resulting in a 95 percent confidence that the calculations in the SHMA are accurate to within +/- 0.57 percent. This is a very high degree of statistical confidence.

3.6 The SHMA identified an annual requirement of 1,008 additional affordable homes for the five year period from April 2011 to March 2016, a total of 5,040 homes. This would meet the backlog of affordable housing need and newly arising need over the period to 2016. If this amount of affordable housing were provided the council would then only need to provide enough affordable housing for newly arising need in future years.

3.7 Given the scale of identified need it is clearly very important through working and negotiating with house builders to maximise the number of affordable dwellings that it is reasonably practicable to deliver from market development sites. The council will also endeavour to meet need through related activities such as ongoing programmes of house building, bringing existing properties into use as affordable housing and encouraging other Registered Providers, either on their own or in partnership with private developers, to deliver affordable housing in areas of need, including rural exception sites.

Council’s Housing Register

3.8 The Housing Register is a live system which is continuously updated as new households apply for council and housing association homes in the East Riding of Yorkshire and others are re-housed. It supports the wider evidence base and is used to inform specific affordable housing requirements. Following the adoption of a revised Housing Allocation Policy in 2013(3), which introduced a local connection qualification, the council’s Housing Register has been reviewed. At January 2016 the Register contained approximately 6,800 applicants.

Affordable Housing Viability Assessment

3.9 The Affordable Housing Viability Assessment (2011, 2012 and 2013) (AHVA) was commissioned to allow the council to consider the viability of providing affordable housing on open market sites. The council commissioned additional research because more detail was required on some aspects of the assessment. Collectively these documents are referred to as the AHVA. The AHVA focuses entirely on development viability and does not revisit the need for affordable housing.

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3 Available to view at: [http://www2.eastriding.gov.uk/council/plans-and-policies/all-plans-policies-and-strategies/#allplans](http://www2.eastriding.gov.uk/council/plans-and-policies/all-plans-policies-and-strategies/#allplans)
3.10 The AHVA tested whether the location of the site within the East Riding, the role of the settlement and the size of the development impact on the viability of a site. This showed that the threshold for requiring provision of affordable housing on open market housing sites could be set at 10 units in urban areas and 3 units in rural areas, without impacting adversely on viability to a degree that would restrict development from coming forward and result in the policy being undeliverable.

3.11 Six housing market areas, identified in the Housing Needs Market Assessment (2007), were considered in the AHVA. The 2011 AHVA Addendum looked at the Goole housing market area in more detail. The results of the AHVA showed that different affordable housing requirements could be set in each of the housing market areas. The percentage of affordable housing that can be delivered on a site differs depending on a number of factors such as size, type and location of development as well as how the market is performing.

3.12 The AHVA recommended that different requirements of up to 25 percent affordable housing would be deliverable, depending on the location of development, but that individual site circumstances should be taken into account in any new policy. However, as the study is strategic in nature it is recognised that in reality some sites may be able to provide more or less affordable housing than the recommended requirement. Therefore, the council allows private developers of open market sites to submit financial information where the viability of a scheme is in question and the applicant does not intend to meet the affordable housing requirement. Such information will be assessed by the council in reaching a conclusion as to the level of affordable housing required (see section 6).

Local Plan Viability Assessment

3.13 The aim of the Local Plan Viability Assessment (2014) was to establish whether the proposed standards imposed on residential development in the Local Plan Strategy Document are realistically viable. The principal policy standards imposed in respect of residential development in the Local Plan Strategy Document are as follows:

- Policy H2: Providing affordable housing (5-25 percent area wide variations).
- Policy H4: Making the most efficient use of land (minimum density standard 30 dwellings per hectare).
- Policy C3: Providing public open space for leisure and recreation (approximately £3,000 contribution per dwelling) of either on or off-site provision of public open space.

3.14 This assessment showed that of the three policy standards tested, the minimum housing density requirement of 30 units per hectare (ha) does not in any way impinge on development viability. Affordable housing requirements and the required contribution to sport, recreation and open space do introduce significant costs to development and the combined impact of these standards has a variable impact across the East Riding.
3.15 It was identified that residential development viability in current market conditions is sensitive to land owners’ expectations of return and that greenfield development is likely to be more profitable than brownfield development.

3.16 Overall evidence suggested that some locations may have difficulties in the short term in being able to withstand all proposed policy standards. However, over the course of the Local Plan period it is reasonable to expect that development is likely to be able to meet the proposed policies in the majority of cases given the probability of some improvement in market conditions. There is however, a need for caution in how policies are constructed to ensure there is flexibility and that they do not put at risk development in certain locations in the short term. The introduction of Local Plan policies on a ‘subject to viability’ basis, where appropriate, will assist in this regard. This approach has been taken to the affordable housing policy.
4 What Does Planning Policy Say About Affordable Housing?

National Planning Policy

4.1 The National Planning Policy Framework (NPPF) is a material consideration in the determination of planning applications.

4.2 A presumption in favour of sustainable development is at the heart of the NPPF. Local planning authorities should positively seek opportunities to meet the development needs of their area. This includes planning for a mix of housing based on present and future trends and the needs of different groups and identifying the size, type, tenure and range of housing required in particular locations to reflect local demand. The NPPF requires that, where it is identified that affordable housing is needed, policies should be set for meeting the need on-site unless off-site contributions or a financial contribution of broadly equivalent value can be robustly justified.

4.3 The NPPF states that planning should contribute to creating mixed and balanced communities and that policies should be flexible enough to account for changing market conditions, considering the viability of development. Planning requirements, such as affordable housing should, when taking into account the normal costs of development, allow competitive returns to a willing landowner and developer.

4.4 Planning conditions should be used where possible to make developments acceptable. However, if this is not possible, planning obligations may be used and should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.
National Planning Practice Guidance

4.5 The national Planning Practice Guidance (PPG) sets out how affordable housing need should be calculated. This states that plans should be deliverable and that the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.

4.6 Understanding Local Plan viability is critical to the overall assessment of deliverability. Local Plans should present visions for an area in the context of an understanding of local economic conditions and market realities. This should not undermine ambition for high quality design and wider social and environmental benefit but such ambition should be tested against the realistic likelihood of delivery.

4.7 Decision-taking on individual schemes does not normally require an assessment of viability. However, viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible. The underlying principles for understanding viability in planning are evidence based judgement, collaboration and a consistent approach. This SPD sets out how each of these will be achieved in relation to the provision of affordable housing.

4.8 The guidance states that policies should be drafted in a manner which avoids the need for frequent updates, thus allowing for changing markets and giving flexibility to prevent planned development from being stalled. It states that viability assessments should be proportionate and planning obligations policies should reflect local viability.
East Riding Local Plan

4.9 The East Riding Local Plan Strategy Document sets out the council’s policy for providing affordable housing.

4.10 Policy S5: Delivering Housing Development sets a target to deliver on average 335 new affordable homes per year, to contribute towards meeting the need for affordable housing. This figure will be delivered through a variety of means including:

- the sites that are allocated in the Local Plan Allocations Document;
- extant planning permissions which had been secured through S106 agreements and had not been completed at the start of the plan period;
- affordable homes delivered since the start of the plan period;
- Homes and Communities Agency (HCA) grant funding;
- directed delivery as projected in the Housing Revenue Account Business Plan; and
- rural exception sites and other affordable housing provided by Housing Associations.

4.11 Policy H2: Providing Affordable Housing sets out the policy approach to requiring affordable housing. The policy is set out below.
EAST RIDING LOCAL PLAN STRATEGY DOCUMENT POLICY H2

A. Affordable housing will be required as part of housing developments, including where it would form part of a wider site or allocation, where the proposal comprises:

1. 10 housing units or more, or 0.33 hectares or more, in the Major Haltemprice Settlements, Principal Towns and Towns; or
2. 3 housing units or more elsewhere.

B. Development that meets the thresholds in Part A should:

1. Achieve the level of affordable housing set out in Figure 8, unless it can be demonstrated that this would have an unacceptable impact on the economic viability of the proposed scheme; and
2. Provide affordable housing on site unless it can be demonstrated that an off site contribution would be more appropriate.

C. Rural exception sites for affordable housing will be supported where they:

1. Are well related to the development limits of a Major Haltemprice Settlement, Principal Town, Town, Rural Service Centre or Primary Village; or
2. Are within or well related to the development limits of a Village; and
3. Meet an identified local need for the type and scale of development proposed; and
4. Are of a scale and design that is appropriate to the role, character and appearance of the settlement; and
5. Provide for 100% affordable housing. If it is demonstrated that this is not achievable market housing units will be allowed if they support the delivery of at least 80% of the units as affordable housing.

D. The tenure split, size and type of affordable housing will be informed by the latest Strategic Housing Market Assessment, the housing register, housing surveys and the level and type of existing affordable housing in the locality.

E. Where affordable housing is provided as part of a mixed tenure site it should be integrated into the development in terms of its design and layout.
4.12 The remainder of this document sets out how Policy H2 will be implemented. Each chapter sets out the relevant part of the policy followed by text explaining how to apply that part of the policy.
5 When is Affordable Housing Required on Market Development Sites?

5.1 This section sets out the wording of part A of Policy H2. It then explains how to apply that part of the policy.

POLICY

Policy H2: Part A

A. Affordable housing will be required as part of housing developments, including where it would form part of a wider site or allocation, where the proposal comprises:

1. 10 housing units or more, or 0.33 hectares or more, in the Major Haltemprice Settlements, Principal Towns and Towns; or

2. 3 housing units or more elsewhere.

APPLICATION OF THE POLICY

Thresholds

5.2 Affordable housing should be provided where a proposal results in a net increase of 10 housing units or more, or the site area is 0.33 hectares (ha) or more, in the Major Haltemprice Settlements, Principal Towns and Towns.

5.3 In all other locations, affordable housing should be provided where a proposal results in a net increase of 3 housing units or more. The thresholds for particular settlements are set out below in Table 1 below.
### Table 1 - Threshold by location within the settlement network

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Settlement Network</th>
<th>Settlement</th>
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<tbody>
<tr>
<td>10 housing units or more, or 0.33 hectares or more</td>
<td>Major Haltemprice Settlements</td>
<td>Anlaby</td>
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<td></td>
<td></td>
<td>Cottingham</td>
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<td></td>
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<td>Hessle</td>
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<td>Kirk Ella</td>
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<td></td>
<td></td>
<td>Willerby</td>
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<tr>
<td>Principal Towns</td>
<td>Beverley</td>
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<td></td>
<td>Bridlington</td>
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<td>Driffield</td>
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<td></td>
<td>Goole</td>
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<tr>
<td>Towns</td>
<td>Elloughton cum Brough</td>
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<td>Hedon</td>
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<td>Hornsea</td>
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<td></td>
<td>Howden</td>
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<td></td>
<td>Market Weighton</td>
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<td></td>
<td>Pocklington</td>
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<tr>
<td></td>
<td>Withernsea</td>
<td></td>
</tr>
<tr>
<td>3 housing units or more</td>
<td>Rural Service Centres</td>
<td>See Strategy Document Policy S3</td>
</tr>
<tr>
<td>Primary Villages</td>
<td>See Strategy Document Policy S3</td>
<td></td>
</tr>
<tr>
<td>Elsewhere, if market housing of the scale proposed is appropriate</td>
<td>See Strategy Document Policy S3</td>
<td></td>
</tr>
</tbody>
</table>

5.4 The area threshold (0.33 ha) for the Major Haltemprice Settlements, Principal Towns and Towns is based on a density of 30 dwellings per hectare (dph). This will ensure that large, low density developments that exceed the area threshold, and could reasonably be expected to provide affordable housing, are required to make provision.
5.5 An area threshold is not set for proposals in settlements below the level of Towns although, based on a density of 30 dph, set in Policy H4 (see Appendix 2), it is expected that affordable housing will be provided on sites that are 0.1 ha or more in size, unless a lower density development is justified. The area threshold is based on the net developable area of the site, as defined in Appendix 3, and set out in the supporting text to Policy H4. Site areas should be rounded to 2 decimal places. Any queries regarding the developable area and planning requirements for low density development should be dealt with prior to the application being submitted.

5.6 The following types of development will also be exempt from any requirement to make affordable housing or tariff style contributions:

1. starter home exception site developments (see paragraph 5.11); and
2. schemes consisting only of the construction of a residential annex or an extension to an existing home.

5.7 All other forms of new market housing development will be required to contribute towards affordable housing where the threshold is met or exceeded. The thresholds should be applied to all types of proposals for new housing, including conversions, change of use, new build and self/custom build housing. Specialist housing such as retirement housing, sheltered housing and extra care housing is also included.

5.8 In some cases specialist housing, including but not limited to those types listed above, may be classed as ‘affordable’. They will only contribute towards the requirement set in Policy H2 if they meet the NPPF definition of affordable housing.

5.9 Housing developments proposed by charitable bodies, which fulfil the charity’s aims but do not strictly meet the NPPF definition of affordable housing, may not be required to provide additional affordable housing. Each application will be considered on its merits.

5.10 Residential care homes are classed as residential institutions under the Use Classes Order, rather than dwellings. Therefore, residential care homes are not included within the provisions of the policy. The difference between specialist housing and residential care is that specialist housing is primarily a place to live, potentially with an added element of care or support. Households live in their own self-contained homes which they have legal rights to occupy.

**Starter Home Exception Site Developments**

5.11 Starter home exception sites will comprise commercial and industrial land that is either under-used or unviable in its current or former use, and which is not currently identified for residential development. In accordance with national planning policy, conditions will be attached to permissions on starter home exception sites requiring that the homes built are offered for sale at a minimum of 20 percent below open market value to people who have not previously been a home buyer and want to own and occupy a home, and who are below the age of 40 at the time of purchase.
Small sites that are part of a wider site

5.12 Planning applications for sites that fall under the threshold but are part of a wider allocation or site that would be above the threshold, will be required to provide affordable housing. For example, where the site is the first phase of the development, proportionate provision towards affordable housing will be sought. Where a site is not allocated it will be considered part of a wider site if:

- it could not be developed without an earlier development which could reasonably be considered linked to the application site such as leaving access to the application site; or
- land is being brought forward piecemeal; and
- the earlier development was completed within a reasonably recent timescale.

5.13 Other circumstances where a site could be considered part of a wider site will be considered on a case by case basis.

Full, Reserved Matters and Outline Applications

5.14 The council’s usual approach is to deal with the details of affordable housing provision on full or reserved matters applications. For phased developments the contribution should be considered at the start of each phase.

5.15 Approved outline planning applications for residential development which meet the threshold will include a condition which requires affordable housing to be provided in accordance with the policy in place at the time the reserved matters planning application is determined. The model condition for affordable housing applied by the council at outline planning stage is set out in Appendix 4. An exception to this may be when the description of an outline application details the number of homes that will be acceptable, in which case the council may require some of the details of affordable housing provision to be determined at outline stage.

5.16 In some instances it may not be possible to determine whether an outline proposal will meet or exceed the thresholds for requiring contributions to affordable housing. For example, the exact number of dwellings may not yet have been determined and so will be subject to approval at reserved matters stage. In such instances, the model condition (Appendix 4) will also be attached to any approval to make clear that any necessary contributions to affordable housing or tariff style contributions will be calculated at reserved matters stage.

5.17 For applications which meet or exceed the thresholds, the council will expect applicants to submit an Affordable Housing Statement setting out how they propose to deal with affordable housing before an application is validated. The information required in the Affordable Housing Statement is set out in Appendix 5. If this information is not provided before an application is validated, the applicant will be expected enter into an agreement removing the need for the council to determine the application within 8 or 13 weeks.
If practicable, negotiations with a Registered Provider should begin well in advance of when a planning application is submitted. This will enable the council to complete the S106 agreement promptly and so determine the application within the necessary timescales. Developers are also, as an alternative, able to submit unilateral undertakings for consideration at the outset of any negotiations to show how they would propose to secure affordable housing. However, care should be taken to ensure that these meet the council’s requirements. Further details on S106 agreements and unilateral undertakings are set out in Section 10.
6 How Much Affordable Housing Should Be Provided on Market Development Sites?

6.1 This section sets out the wording of part B1 of Policy H2. It then explains how to apply that part of the policy.

POLICY

Policy H2: Part B1

B. Development that meets the thresholds in Part A should:

1. Achieve the level of affordable housing set out in Figure 8, unless it can be demonstrated that this would have an unacceptable impact on the economic viability of the proposed scheme; and

2. Provide affordable housing on site unless it can be demonstrated that an off site contribution would be more appropriate.

APPLICATION OF THE POLICY

Affordable Housing Requirement

6.2 The proportion of affordable housing required is set out in figure 8 of the Local Plan Strategy Document (page 14 of the SPD). Appendix 6 shows the requirement for each Parish in the East Riding. The different targets recognise that there is a high need for affordable housing but that market conditions vary across the East Riding. On some sites it may be difficult for developers to provide a significant proportion of affordable housing whilst ensuring the proposal remains economically viable.

Example 1

In an area where there is a requirement for 25 percent affordable housing, a 20 unit development would be required to provide 5 affordable homes, the size, type and tenure of which must agreed by the council.

Total number of units on site (20) x affordable housing requirement (25 percent) = affordable units required (5).
Economic Viability of Development Proposals

6.3 The East Riding of Yorkshire contains a number of different housing markets with considerable price variations between the lowest and highest priced parts of the area. Whilst the cost of providing affordable housing and any known abnormal costs should be accounted for in the price paid for the land, the council is conscious of the need to ensure that the provision of affordable housing does not act as a barrier to development on those sites where the market is not sufficiently buoyant to meet the requirement. The council will enter into negotiations with applicants as necessary.

6.4 It is understood that, on exceptional occasions, some sites may be subject to unavoidable and previously unknown, abnormal site development costs and/or there may be other items of agreed public benefit that are being provided as part of the development. The council supports the regeneration of urban areas and the use of previously developed land and acknowledges that such developments can sometimes involve unforeseen abnormal costs, such as the remediation of previously unknown contamination. Standard site development costs (for example, those costs involving any usual site clearance, archaeological, foundation, flood defence or landscaping works), particularly those costs that were reasonably foreseeable and should therefore have been budgeted for in the price paid for the land, will not be considered as being abnormal. The council will not consider additional infrastructure provided by the development as overriding the need for affordable housing unless there is clear agreement from the outset that this is needed and of greater public benefit.

6.5 If market conditions, extraordinary costs or items of agreed public benefit mean that there may be a case for reducing the proportion of affordable housing sought, then the onus is on the applicant to demonstrate why this is the case. In this respect, each case will be considered on its merits. In undertaking a review of viability, the council will normally disregard the nature of the applicant and benefits or disbenefits that are unique to them and will seek to adopt industry benchmarks appropriate to the site in question. The council recognises that those who typically build small schemes will often work within different financial parameters to the developers of larger volume housing sites.

6.6 Developers will be expected to submit sufficient details in support of any claim for a reduction in the affordable housing requirement to enable the council to undertake a review of the scheme’s viability. Appendix 7 sets out in detail the items of information required by the council to review the scheme’s viability. **These items must be provided before a planning application will be validated.** This requirement is set out in the council’s validation checklist (4)

6.7 Applicants may choose to submit a completed viability appraisal to support their case and this is considered acceptable. The council is not prescriptive about the format or methodology as this may depend on the circumstances of the proposed development. For smaller schemes, a relatively simple residual appraisal using current costs and values

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may be sufficient. Whatever format is adopted, the information submitted should be presented in a transparent manner with the key revenue, cost and timing and phasing variables (set out in Appendix 7) clearly stated.

**6.8** The council will not consider granting planning permission for a proposal with less than the required proportion of affordable housing without reviewing the financial viability of the proposal. The applicant must submit the information required to enable the council to carry out this review. In order to recover costs for this service, a charge will be made, as set out in Table 2. The fee is a contribution to costs based on the council’s experience of time spent on previous viability reviews, and where relevant, includes any charges made by District Valuer Services when undertaking assessments on behalf of the council. The fees are higher for larger schemes because these reviews are generally more complex and time consuming. Professional advice is also more likely to be required for larger schemes where there may be abnormal costs such as highway infrastructure or drainage works. Cheques should be made payable to East Riding of Yorkshire Council and should be enclosed when the Affordable Housing Statement (see Appendix 5) is submitted to the council. For mixed use schemes the council will consider the appropriateness of the charge and it may be varied. A separate cheque for the financial viability appraisal from that covering the application fee should be submitted.
Table 2 Fee for Viability Appraisals

<table>
<thead>
<tr>
<th>Number of Housing Units</th>
<th>Fee (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 11</td>
<td>£500</td>
</tr>
<tr>
<td>11-25</td>
<td>£750</td>
</tr>
<tr>
<td>26-50</td>
<td>£1,000</td>
</tr>
<tr>
<td>51-100</td>
<td>£1,500</td>
</tr>
<tr>
<td>101 or more</td>
<td>£2,000</td>
</tr>
</tbody>
</table>

6.9 The charge covers all affordable housing viability work including for example negotiations and seeking expert advice on abnormal costs associated with the application. It also covers the costs for any external advice the council may seek. If, following a request from the council, the applicant does not provide sufficient information for the council to carry out a viability review or does not provide a cheque for the correct amount, the council will assume that the applicant is willing to provide the required amount of affordable housing when determining the application.

6.10 The council will usually use its own appraisal model and up-to-date guidance including that produced by the Royal Institution of Chartered Surveyors (RICS) to consider the viability of proposals. The council may commission an external independent consultant to assist if it is considered necessary. When considering the viability of development the starting point will always be to consider the required amount of affordable housing, including the size and mix of affordable housing identified by the council’s housing strategy and development team. If the council accepts that the required provision of affordable housing would not result in a reasonable return to the developer and willing land owner, planning and development management will lead on negotiations with the applicant, coordinating with the council’s housing strategy and development and valuation and estates teams as appropriate (contact details set out in section 13).

6.11 The council’s aim is to engage with applicants to gain a full understanding of the scheme and work towards agreeing an acceptable outcome within the planning policy framework. Negotiations will consider changes to the percentage of affordable housing provided, to ensure an agreement is reached which can best meet the identified need for affordable housing in terms of type, size (including both the number of bedrooms and floorspace) and tenure, whilst allowing a reasonable return to a willing land owner and developer. Depending on the type, size and tenure of affordable housing needed in the locality, it may be possible to negotiate a change to the mix of affordable housing whilst providing the number of affordable units required. In other cases the number of affordable units may need to be reduced.

5 VAT is not chargeable
7 How Should Affordable Housing Be Provided on Market Development Sites?

7.1 This section sets out the wording of part B2 of Policy H2. It then explains how to apply that part of the policy.

POLICY

**Policy H2: Part B2**

B. Development that meets the thresholds in Part A should:

1. Achieve the level of affordable housing set out in Figure 8, unless it can be demonstrated that this would have an unacceptable impact on the economic viability of the proposed scheme; and

2. Provide affordable housing on site unless it can be demonstrated that an off site contribution would be more appropriate.

APPLICATION OF THE POLICY

7.2 The affordable housing requirement will usually be provided on-site and transferred to a Registered Provider. It will then be managed as affordable housing in line with Homes and Communities Agency (HCA) Guidelines. Where the entire requirement is for less than one dwelling or it is determined by the council that off-site provision would be more appropriate, for example, if there is sufficient affordable housing in the immediate locality to meet housing need, off site provision will be accepted. Provision off-site will usually be made by way of a commuted sum. In some cases the council may require a combination of on-site provision and a commuted sum.

7.3 Where the affordable housing requirement does not equate to a whole number of units, a financial contribution equivalent to the commuted sum for a partial unit will be required in addition to any whole units being provided on-site. An example is set out below:

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6 Available to view from: [https://www.gov.uk/government/collections/regulatory-framework-requirements](https://www.gov.uk/government/collections/regulatory-framework-requirements)
Example 2

Approval granted for 21 houses in an area with an affordable housing requirement of 25 percent. The requirement is for 5.25 dwellings.

The actual provision will be:

- On site - 5 affordable units (the size, type, tenure and location to be agreed with the housing strategy and development team); and
- A commuted sum, equivalent to 25 percent of 1 unit.

If the developer wishes to provide more affordable housing, by rounding up the requirement to 6 affordable units the council will consider this. However, the council will not consider rounding down the contribution.

7.4 Standard commuted sums per dwelling in each of the Housing Market Areas have been determined independently by District Valuer Services. They are set out below in Table 3. These sums should be used when a financial contribution is required for less than one affordable unit or where the council requests whole affordable units are provided as a commuted sum rather than on-site. The appropriateness of the commuted sum values will be considered every 3 years. Commuted sums will be updated through the Annual Monitoring Report if it is necessary to amend them in advance of a full review of the SPD.

Table 3 Standard Commuted Sums

<table>
<thead>
<tr>
<th>Housing Market Area (HMA)</th>
<th>Commuted Sum per affordable dwelling required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beverley HMA</td>
<td>£65,600</td>
</tr>
<tr>
<td>Bridlington HMA</td>
<td>£48,700</td>
</tr>
<tr>
<td>Goole North and South Wards</td>
<td>£47,400</td>
</tr>
<tr>
<td>Howden &amp; Howdenshire Wards</td>
<td>£55,300</td>
</tr>
<tr>
<td>Holderness HMA</td>
<td>£52,300</td>
</tr>
<tr>
<td>Hull Borders HMA</td>
<td>£61,800</td>
</tr>
<tr>
<td>Snaith, Airmyn, Rawcliffe Wards</td>
<td>£47,800</td>
</tr>
<tr>
<td>Wolds HMA</td>
<td>£57,800</td>
</tr>
</tbody>
</table>

7 The District Valuer Services Area Wide Study to Provide Indicative Transfer Values/Commuted Sums in Relation to Affordable Housing in the East Riding of Yorkshire is available to view at: [http://www2.eastriding.gov.uk/environment/planning-and-building-control/east-riding-local-plan/supplementary-planning-documents/](http://www2.eastriding.gov.uk/environment/planning-and-building-control/east-riding-local-plan/supplementary-planning-documents/)
Example 3

Approval granted in Beverley for 21 houses with an affordable housing requirement of 25 percent. The requirement is for 5.25 dwellings. 5 dwellings are required on site and a commuted sum is required for the balance of 0.25 dwellings.

Determining the amount payable for the commuted sum:

- Beverley is in the Beverley Housing Market Area.
- The commuted sum per dwelling in Beverley is £65,600.
- The commuted sum required is 25 percent of £65,600.
- The commuted sum is £16,400.

7.5 The standard commuted sum values in Table 3 will NOT be used to calculate the default commuted sums included in S106 agreements where agreement for transfer of on-site units cannot be reached (see Section 11). Default sums will be based on the size, type and tenure mix specified in the S106 agreement using the indicative transfer values shown in Appendix 8, rather than an average figure per affordable home (table 3).

7.6 The council has already established a specific account for receiving any financial contributions of this kind and developed a procedure for identifying appropriate affordable housing schemes in which to invest the funds. The monies will be used to enable the delivery of additional affordable housing in the East Riding through a variety of schemes which support the delivery of specialist, supported, rural and general needs homes in areas of identified need. Any such monies received will be paid into a council interest bearing account and the associated S106 agreement will clarify that any sum unused after a fixed period, normally ten years, will be repaid with interest. Where appropriate the council is open to partnering with Registered Providers and other organisations, for example charitable and community led organisations, to deliver affordable housing using commuted sums.
8 What Mix of Affordable Housing will be Required?

8.1 This section sets out the wording of part D of Policy H2. It then explains how to apply that part of the policy.

POLICY

**Policy H2: Part D**

D. The tenure split, size and type of affordable housing will be informed by the latest Strategic Housing Market Assessment, the housing register, housing surveys and the level and type of existing affordable housing in the locality.

APPLICATION OF THE POLICY

8.2 When considering the tenure, size and type of affordable housing, applicants should consider the need in the settlement and the wider local area. The most appropriate tenure split, size and type of affordable housing will be determined on a case by case basis and informed by the most up to date Strategic Housing Market Assessment (SHMA), the current local authority housing register, the existing affordable housing stock in the locality, any other relevant site specific information and current planning policy/guidance. Some guidance about the current need in the Local Plan Sub-areas is set out alongside Policies A1-A6 of the Local Plan Strategy Document. Applicants should approach the council's housing strategy and development team who will provide advice and guidance on a site by site basis. Applicants are expected to contact the housing strategy and development team at an early stage prior to the design of any proposal that involves affordable housing as they will be able to provide advice on the size, type, tenure, mix and location of affordable housing needed.

8.3 Where the delivery of affordable housing will unreasonably affect the economic viability of a development, the council will work with Registered Providers and the applicant to achieve a balance between meeting the requirement for affordable housing and providing the appropriate tenures, size and types of affordable dwellings.

8.4 As outlined above, information relating to housing need is drawn from a number of sources. Information from the most recent or updated SHMA and the local authority's own Housing Register and local information relating to a particular site will be considered including the number of vacancies, turnover rates, and demand for existing affordable housing in the locality. Such information will be collected from the council's own records and officers involved in housing allocations and management, and from Registered Providers who may own or manage homes in the area.
8.5 If a developer wishes to submit evidence to support the mix of affordable housing they propose to provide on a site this will be considered by the housing strategy and development team. If this relies on survey data, details would need to be provided of how, when and by whom the survey was carried out; the response rate received; and the analysis of the results.

8.6 For full or reserved matters applications an agreement should have been reached with the council on the number, types, sizes, tenure and location of the affordable housing to be provided on the particular site before an application is submitted or the applicant will be expected to enter into an agreement, to extend the time period the council has to determine the planning application. For full and reserved matters applications which meet or exceed the thresholds, applicants will be required to submit an Affordable Housing Statement (see Appendix 5), before an application will be validated. Providing this information ensures the requirements set out in the council's validation checklist are met.

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9 What Design of Affordable Housing is Appropriate?

9.1 This section sets out the wording of part E of Policy H2. It then explains how to apply that part of the policy.

POLICY

Policy H2: Part E

E. Where affordable housing is provided as part of a mixed tenure site it should be integrated into the development in terms of its design and layout.

APPLICATION OF THE POLICY

9.2 Securing high quality design is a core planning principle in the NPPF. Paragraph 56 of the NPPF seeks to achieve high quality, inclusive design in new development. In all development schemes, the council insists on high quality design and layouts; affordable housing is no exception. The same high quality design and layout is required and it is expected that developers will wish to integrate affordable and market housing to complement one another and give a visual consistency to the development.

9.3 It is important to consider affordable housing from the inception of a design concept. The requirement for affordable housing could significantly alter the potential design of a scheme depending on the percentage of affordable housing required and the size, type and tenure required.

9.4 Where possible, developers are encouraged to involve a Registered Provider at an early stage in the design and layout of any scheme involving affordable housing to ensure that their requirements can be met. Developers should also continue to involve the council's housing strategy and development team at an early stage and should refer to any Neighbourhood Plan or Village Design Statement that may have been prepared for the area.

9.5 Residential development should aim to create mixed and balanced communities, therefore, affordable housing is required to be distributed as individual houses or in small clusters throughout the development. It is accepted that in certain circumstances, particularly when developments involve flats, it may not be practical to distribute individual affordable housing units throughout the development. In such cases, smaller clusters of affordable units located throughout the development may be considered acceptable. Small clusters of affordable housing may also be more attractive to Registered Providers as they are easier to manage than isolated dwellings. Early engagement with Registered Providers will ensure the design and layout of a scheme, including the provision of affordable housing, is accepted by both parties. If early engagement is not possible, the council can provide this type of advice.
9.6 The council will not support the principle of grouping affordable units together in large numbers as this can reinforce feelings of social exclusion and can have a negative impact on the establishment of sustainable communities. The design of affordable housing it should be in keeping with housing on the rest of the site.

9.7 Whilst buyers of market housing may upsize when they outgrow a property, affordable housing generally has to accommodate larger households for longer periods of time. To ensure affordable housing is provided with appropriate floor areas and internal layouts, the council encourages the design of affordable housing to meet Homes and Communities Agency (HCA) good practice. This will help ensure transfer of a house to a Registered Provider and enable affordable housing allocations and nominations to be made in line with the council’s Housing Allocations Policy.

9.8 Paragraph 6.11 of the SPD highlights that the council will consider the impact that providing appropriately sized affordable housing has on the number of units that can be delivered as part of viability negotiations.

9.9 Where developers can reduce unit costs by care in design and ingenuity in the layout of the buildings this will be supported by the council. High density development can, when it is well designed, provide attractive living conditions and such schemes will be appropriate where they are complementary to their surroundings.
10 Section 106 Agreements and Unilateral Undertakings

10.1 Unilateral undertakings are encouraged where the required provision of affordable housing is less than 1 dwelling and the applicant intends to meet the requirement with the payment of a commuted sum. In other cases, the council prefers to use S106 agreements for the provision of affordable housing. This is because they are flexible and enable the council to negotiate the details of provision, such as size type and mix, to ensure it is the best option for meeting need. S106 agreements also allow for changes to the design of the development through the application process.

10.2 The council aims to expedite negotiations on S106 agreements in a timely manner to avoid unnecessary delay in the planning process. Signed S106 agreements and unilateral undertakings can be renegotiated by mutual consent where new evidence suggests that affordable housing is making the scheme unviable and is stalling development. In the spirit of the Minister’s letter of 9 November 2015 to local authority leaders and chief planning officers, the council will seek to renegotiate the tenure mix and look for other pragmatic solutions on schemes where overall delivery may otherwise be stalled. The DCLG has produced guidance for such circumstances, Section 106 Affordable Housing Requirements: Review and Appeal (2013).

What information should be included in a Section 106 Agreement/Unilateral Undertaking?

10.3 S106 agreements and unilateral undertakings should cover the following:

- how completed dwellings or land are to be transferred to an approved development partner, including costs and phasing of handover;
- how the occupancy of the affordable housing is to be preserved for people in housing need;
- the number, size and tenure of affordable housing or the area of land to be made available; or the level of financial contribution if it is to be provided off-site (commuted sum);
- a restriction requiring that no more than a specific proportion of the site will be sold or occupied before the affordable housing has been contractually secured;
- where applicable, the means of restricting ‘staircasing’ to full ownership on grant-funded low cost home ownership properties;
- how the dwellings completed as affordable units are retained as such to benefit future occupants;
- the level and timing of payment of any commuted sum.

10.4 The council will require that no more than an appropriate percentage (up to a maximum of 90 percent) of the open market dwellings on a site can be occupied before all of the affordable dwellings are provided.
10.5 A model S106 agreement/unilateral undertaking has been prepared for securing affordable housing (see Appendix 9). This template may be negotiable and can be adapted to suit the specific circumstances of each case. It should be treated as a starting point for negotiation with the council.

10.6 Applicants usually sign a S106 agreement for affordable housing at full or reserved matters stage. This is the council’s preferred approach to ensure affordable housing provision reflects policy and evidence available at that point in time. However, should any applicant wish to enter into a S106 agreement with the council at outline stage, and the number of dwellings and site layout is agreed, they may do so.
I1 Other Information

When should the applicant engage with Registered Providers?

I1.1 Affordable housing will usually be provided on-site and transferred to a Registered Provider. It is expected that developers will have had early discussions with Registered Providers prior to submitting a planning application. Early engagement increases the chances that the Registered Provider will be able to purchase the affordable housing. It enables them to plan to purchase the housing in their business plan and allows them to work in partnership with the applicant and the council. This is important to ensure that the right type and size of affordable housing is provided in the right locations. Early engagement also provides an opportunity for Registered Providers to influence the design and layout of a scheme, ensuring their requirements can be met. Should early engagement with a Registered Provider not be possible, the council can provide advice on the type, size, design and layout of affordable housing.

I1.2 The council has a list of Registered Providers that usually work in the East Riding\(^9\). It should be noted that the council is a Registered Provider and will work with developers to deliver new affordable housing. The council, as a Registered Provider, should be approached alongside other Registered Providers prior to submitting a planning application.

What will a Registered Provider pay for affordable housing?

I1.3 Appendix 8 sets out indicative transfer values. These have been provided by the District Valuer Services\(^{10}\) and reflect the sum a developer would usually expect to receive when transferring an affordable dwelling to a Registered Provider. The indicative transfer values are a starting point for negotiation and are included to provide clarity to developers on the amount they may expect to receive from a Registered Provider.

I1.4 Changes in rent setting and other national affordable housing policies may impact on the ability of some Registered Providers to achieve transfer values similar to the Indicative Transfer Values in Appendix 8 and on their overall capacity to acquire S106 units. In the spirit of the Minister’s letter of 9 November 2015 to local authority leaders and chief planning officers, the council will seek to renegotiate the tenure mix and look for other pragmatic solutions on schemes where overall delivery may otherwise be stalled.

I1.5 If it has not been possible to reach an agreement with a Registered Provider prior to commencing the development the developer should contact a range of Registered Providers throughout the 12 month offer period to allow them the opportunity to reconsider whether they are able to take on the affordable housing. The council's housing strategy and development team must be notified of the commencement of the 12 month

\(^9\) The current list is available to view at:
http://www2.eastriding.gov.uk/environment/planning-and-building-control/current-strategic-plans/supplementary-planning-guidance/
It can also be obtained from the council’s housing strategy and development team

\(^{10}\) The District Valuer Services Area Wide Study to Provide Indicative Transfer Values/Commuted Sums in Relation to Affordable Housing in the East Riding of Yorkshire can be viewed here:
offer period. It is expected that Registered Providers will be contacted, as a minimum, at the beginning, half-way through and towards the end of the offer period. As stated above, the council can be contacted as a potential Registered Provider and should be approached at the same time as other Registered Providers.

When will a commuted sum be accepted in lieu of affordable housing?

11.6 Where after a 12 month offer period no Registered Provider is willing to accept the affordable housing, or the offers received from Registered Providers are considered unviable, the council may consider another negotiated arrangement or, as a last resort, may accept a commuted sum in lieu of provision. Developers are expected to provide evidence of their discussions with Registered Providers (for example copies of correspondence) to demonstrate that negotiations have been handled in a timely fashion. Where necessary, the evidence provided to the council should consider the impact of any offer on the viability of a scheme.

11.7 The 12 month offer period applies in all cases as a starting point and is included in the model S106 agreement (Appendix 9) to provide consistency for applicants. In the vast majority of cases, the council expects 12 months will be an appropriate offer period. The council may accept a shorter offer period (for example 6 months) if the applicant can satisfy the council they have made every reasonable effort to secure the support of a Registered Provider and the longer period would delay progress of the whole scheme. In these instances, to allow the development to progress, the council would not necessarily wait for the 12 month offer period to expire and may find another negotiated agreement or a commuted sum acceptable.

11.8 The indicative transfer values (Appendix 8) will be used to calculate the commuted sum should it not be possible to reach an agreement with a Registered Provider. The amount payable in lieu of on-site provision is market value minus the transfer value.

11.9 These values will be updated periodically through the Local Plan Annual Monitoring Report to ensure they remain relevant and responsive to the current policy climate and market conditions.

Who determines who lives in Affordable Housing?

11.10 The council will place certain restrictions on who is eligible to purchase or rent all forms of affordable housing. The council will require 100 percent nomination rights to first lettings and sales and an agreed percentage of re-lets and re-sales, to be no less that 50 percent. Nominations (and allocations if the Registered Provider is the council) will be made in line with the council's Housing Allocations Policy.
How will Rural Exception Sites be Considered?

12.1 This section sets out the wording of part C of Policy H2. It then explains how to apply that part of the policy.

POLICY

Policy H2: Part C

C. Rural exception sites for affordable housing will be supported where they:

1. Are well related to the development limits of a Major Haltemprice Settlement, Principal Town, Town, Rural Service Centre or Primary Village; or

2. Are within or well related to the development limits of a Village; and

3. Meet an identified local need for the type and scale of development proposed; and

4. Are of a scale and design that is appropriate to the role, character and appearance of the settlement; and

5. Provide for 100% affordable housing. If it is demonstrated that this is not achievable market housing units will be allowed if they support the delivery of at least 80% of the units as affordable housing.

APPLICATION OF THE POLICY

12.2 There is a significant need for affordable housing in the East Riding. Support for rural exception housing appears in paragraph 54 of the NPPF which allows an element of market housing where this would facilitate the provision of significant additional affordable housing to meet local needs. The evidence of local housing need must be agreed with the housing strategy and development team.

12.3 Policy H2 supports the provision of sites for 100 percent affordable housing, usually provided by a Registered Provider. Where 100 percent affordable housing is not possible, a small proportion of market housing units may be allowed but only if they facilitate the provision of a high proportion of affordable housing (at least 80 percent). Proposals must demonstrate why the level of market housing proposed is necessary. It must be the minimum proportion of market housing that will allow the development to be delivered and must not exceed 20 percent. The justification for market housing will include financial information (this may be similar to that outlined in Appendix 7) which will need to be reviewed and agreed by the council. Registered Providers will need to be involved in rural exception housing schemes from a very early stage as grant or other cross-subsidy is likely to be necessary to achieve the high proportion of affordable homes required.
12.4 Rural exception sites for affordable housing should be located where there is an identified need for the type and scale of affordable housing within the parish or adjacent parishes. Affordable housing on rural exception sites will meet a local need and should be made available for:

- households normally resident within the local area of the East Riding; or
- households who have a local connection with the local area by virtue of family association or secure employment.

12.5 Normally resident means resident in accommodation for at least six out of the last twelve months or three out of the last five years. This does not include being detained in prison or resident in a bail hostel. Persons occupying holiday or other temporary accommodation (for example, hospital or student housing) are not regarded as normally resident unless they can demonstrate that this has been their sole or main home for a period of at least five years. The Local Area will usually mean the Parish, cascading to the adjacent Parishes.

12.6 Family association normally means that the applicant has parents, grandparents, adult children, grandchildren, a brother or a sister currently living within the local area of East Riding and has been normally resident within the local area of East Riding for at least five years. In exceptional circumstances and where support is required family association may include extended family, each case will be determined on its own merits.

12.7 Secure employment means the employment or self-employment of the applicant or an adult member of the household for at least one year’s duration and at least 20 hours per week. Where this employment has been for less than one year at the time of application evidence will be required to confirm that the employment is permanent.

12.8 Occupancy will be limited by the S106 agreement and a local lettings policy.

12.9 Rural exception sites for affordable housing should be well related to the development limits of a Major Haltemprice Settlement, Principal Town, Town, Rural Service Centre or Primary Village, or within or well related to the development limits of a Village, where development can provide future occupants with greater access to public transport, employment opportunities and other services and facilities. Sites that are well related to the development limit will be either, adjacent to, or very close to, the development limit. Where there is a small gap between the development limit and the proposed rural exception site, for example, because part of an existing residential curtilage extends outside the development limit, the council will normally consider the location to be appropriate. However, sites will not be considered acceptable if there is a large gap or an agricultural, horticultural or forestry use, between the development limit and the proposed site. The council strongly encourages pre-application discussions with the planning and development management team to consider the likelihood of a site being suitable for development.

12.10 Rural exception sites for affordable housing may provide more housing than would normally be considered appropriate in rural areas. The scale and design of development should however very carefully consider the role and character of the settlement and ensure
development does not undermine the overall Spatial Strategy of the Local Plan. When advising on and determining planning applications, planning officers will consider the impacts of the potential development, including:

- the impact on the role of the settlement;
- the impact on the character of the settlement;
- the impact on the landscape; and
- the sustainability of the location, including access to services and facilities within the settlement and transport routes.
13 Contacts and Links to Useful Information

Forward Planning

Forward planning should be contacted regarding general matters relevant to the interpretation of Local Plan Policy and/or the SPD.

Contact Officer: Stephanie Robson
Email: forward.planning@eastriding.gov.uk
Telephone Number: 01482 391751

Housing Strategy and Development

Housing strategy and development should be contacted regarding matters relating to the amount, type and tenure of affordable housing to be provided, potential grant funding, and Registered Provider contacts.

Contact Officer: Hilary Bardon
Email: housing.strategy@eastriding.gov.uk
Telephone Number: 01482 396112

Planning and Development Management

Planning and development management should be contacted regarding specific planning applications and sites. Planning and development management act as the main point of contact during negotiations where the affordable housing requirement is being challenged.

Email: beverley.dc@eastriding.gov.uk
Telephone Number: 01482 393647

Valuation and Estates

Valuation and estates should be contacted regarding financial viability of specific sites, following discussions with housing strategy and development and planning and development management.

Contact Officer: Neil Archbutt
Email: neil.archbutt@eastriding.gov.uk
Telephone Number: 01482 393938
Other Useful Links

East Riding Local Plan Strategy & Allocation Documents:
http://www.eastriding.gov.uk/erlocalplan

East Riding Local Plan Bridlington Area Action Plan:

East Riding Housing Strategy:
http://www2.eastriding.gov.uk/council/plans-and-policies/other-plans-and-policies-information/housing-strategy/housing-strategy-and-policy/#housing-strategy

East Riding Strategic Housing Market Assessment:
http://www2.eastriding.gov.uk/council/plans-and-policies/other-plans-and-policies-information/housing-strategy/housing-strategy-and-policy/#housing-strategy

Affordable Housing Viability Assessment:

Housing Allocations Policy:
http://www2.eastriding.gov.uk/council/plans-and-policies/all-plans-policies-and-strategies/#allplans

Homes and Communities Agency:
http://www.homesandcommunities.co.uk

Planning Portal – where planning applications can be submitted electronically:
https://www.planningportal.gov.uk

National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):
http://planningguidance.planningportal.gov.uk

East Riding Development Management:
http://www2.eastriding.gov.uk/environment/planning-and-building-control
14 Appendices

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Appendix 1: Flowchart summarising the Affordable Housing Process on Market Housing Sites

Please follow the guide below on all proposals for residential development.

1. Does the number of dwellings or sites of the application site, in itself or as part of a wider site, equal or exceed the threshold in Policy H2?
   - Yes: Alteration to determine
   - No: Proceed

2. Is the application an outline application?
   - Yes: Proceed
   - No: Proceed

3. Is the requirement for less than 1 affordable dwelling?
   - Yes: Proceed
   - No: Proceed

Before submitting an application, the applicants should inform HS&D of the site address and the number of dwellings. Advice will be given on whether on site provision, a consented sum, or a combination of both is required.

If on site provision is required advice will be given on:
- The number and percentage of dwellings.
- Registered Providers operating in the area for the applicant to make initial contact and begin negotiations.

Applicant submits application.

4. Is the applicant intending to provide the required amount and at least mix and tenure of dwellings?
   - Yes: Proceed
   - No: Planning application will not be validated.

Applicant submits application with relevant financial information (see out in Appendix 7 of the SPD) pays the appropriate fee, and enters into an agreement with the Council to remove the need to determine the application within 8 or 13 weeks. The financial information has been submitted and an agreement entered into.

5. Planning application will be validated.

P & DM informs HS&D of application. HS&D instruct VA&E to conduct a viability review. VA&E carry out the review and if necessary commission an external body to carry out work.

6. Does the viability review show that the proposed development will support the provision of the affordable housing required?
   - Yes: Proceed
   - No: Negotiations will be held between the applicant, P & DM, HS&D and VA&E. Negotiations will be led by P & DM. Considerations will include the number, size, types, and tenure mix of affordable units to be provided. The aim of negotiations is to best meet the requirement, satisfy housing need and allow for reasonable returns to the selling landowner and developer. Other relevant planning considerations will be taken into account.

Applicant agrees to comply with the affordable housing requirement, completes and submits the Affordable Housing Statement (Appendix 5 of the SPD).

7. Planning application approved or recommended for approval subject to receiving other policies in the Development Plan and there being no material considerations that indicate otherwise.
   - Yes: Proceed
   - No: Planning application refused or recommended for refusal subject to there being no material considerations that indicate otherwise.

Definitions:
P & DM – Planning and Development Management
HS&D – Housing Strategy and Development
VA&E – Valuation and Estates

* For example, if an outline application does not determine the number of units on the site.
Appendix 2: East Riding Local Plan Strategy Document Policy H4

Policy H4: Making the most efficient use of land

A. Proposals for new residential development will be supported where they make the most effective use of land or buildings. This will be achieved through encouraging the re-use of suitable previously developed land and supporting proposals that provide the optimum housing density.

B. Developments will be encouraged to achieve a density of at least 30 dwellings per hectare (dph). Proposals should seek to provide a density above 30 dph where the site is within close proximity of:

1. A Town or District Centre; or
2. A railway station or core bus route within the Major Haltemprice Settlements, Principal Towns or Towns.

C. Lower density development will be appropriate where justified. Such justification could be where:

1. It would be in keeping with the character of the surrounding area; or
2. A certain house type is needed in the area.

D. Development proposals that relate to only part of a larger allocated site will need to demonstrate how the development would form part of a comprehensive scheme for the whole site and that this will not prejudice the development of the whole site.
Appendix 3: Definition of Developable Area

The definition of developable area is taken from the Local Plan Strategy Document.

"Housing density will be calculated on the net developable area of the site recognising that in certain instances not all of the site area will be developed solely for housing. This approach is set out in the Council's Strategic Housing Land Availability Assessment and the net developable area excludes a number of land uses, such as:

- a major road, significant landscape buffer strip, public open space that serves the surrounding area, or an area necessary to make space for significant water storage;
- an existing on-site feature that limits the area that can be developed, such as the need to maintain an important landscape or wildlife site; and
- areas comprising non housing development, such as employment, commercial uses or community facilities (such as a new school or health centre)."

The net developable area therefore includes:

- access roads within the site;
- private garden space;
- car parking areas;
- incidental open space and landscaping; and
- public open space to serve the development site.
Appendix 4: Model Outline Planning Condition

The condition set out below will be applied to outline planning applications for residential development to ensure affordable housing is provided in accordance with the policy in place at the time the reserved matters application is determined.

"No development shall take place until a scheme for the provision of affordable housing as part of the development within the site (unless the developers have previously entered into a binding agreement with the Council to secure the provision of all or part of the requirement elsewhere) has been submitted to and approved in writing by the Local Planning Authority.

The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

i. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than X% of housing units;

ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

iii. the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing] (if no Registered Social Landlord involved);

iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforce.

This condition is imposed to secure the provision of affordable housing in the East Riding."
Appendix 5: Affordable Housing Statement

Where an application for residential development generates a requirement for affordable housing, the council’s Validation Checklist\(^\text{11}\) requires an Affordable Housing Statement to be submitted. The information required in the statement is set out in the Validation Checklist and is replicated below, for the purposes of the SPD.

Information required:

- The total number of residential units proposed.
- The mix of market and affordable units with details of numbers and floor space of habitable rooms and bedrooms.
- Plan(s) showing the location of affordable units in relation to the proposed market housing, with details of size and numbers of habitable rooms and bedrooms.
- Details of the proposed arrangements of tenure for the affordable units including the proposed arrangements for ensuring affordability in the long term (where more than one type of tenure is proposed, details of types should be provided and plans should clearly identify which type applies to each unit).
- Details of any Registered Provider acting as a partner in the development.
- In the event that you are seeking to justify affordable housing provision below the Council’s requirements, a full financial appraisal (or information to enable the Council to undertake a review of the scheme’s viability\(^\text{12}\)) and a separate cheque for the financial viability review. The required fees are set out below.
- A statement setting out the proposed draft heads of terms for any necessary S106 agreement is also recommended.

**Fee for Viability Appraisals**

<table>
<thead>
<tr>
<th>Number of Housing Units</th>
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<tr>
<td>less than 11</td>
<td>£500</td>
</tr>
<tr>
<td>11-25</td>
<td>£750</td>
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<tr>
<td>26-50</td>
<td>£1,000</td>
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<tr>
<td>51-100</td>
<td>£1,500</td>
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<tr>
<td>101 or more</td>
<td>£2,000</td>
</tr>
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\(^{11}\) Available to view at: http://www2.eastriding.gov.uk/environment/planning/planning-control/planning-permission/getting-planning-permission/full-planning-application-checklist

\(^{12}\) Set out in Appendix 7 of the Council’s Affordable Housing Supplementary Planning Document (2016).

\(^{13}\) VAT is not chargeable.
Appendix 6: Affordable Housing Requirements by Parish
Appendix 7: Information required to review financial viability

To justify the provision of less than the required percentage of affordable housing, the council requires financial information to be submitted with the planning application. The type of information required is set out below. Applicants may also choose to submit a completed viability appraisal to support their case and this is acceptable. The council is not prescriptive about the format or methodology as this may depend on the circumstances of the proposed development. For small schemes, a relatively simple residual appraisal using current costs and values may be sufficient. Whatever format is adopted, the information submitted should be presented in a transparent manner with the key revenue, cost and timing and phasing variables set out below clearly stated.

A cheque should be submitted with the planning application for the required amount (see Table 2 of the SPD for the relevant amount) made out to 'East Riding of Yorkshire Council'. The information will be treated confidentially, and will only be made available to planning and development management and advisors such as the valuation and estates team and the housing strategy and development team. It will not be placed on the public file nor made available to any third party (except where a third party is involved in assessing the viability of the development).

The information to be supplied should include the anticipated value of the completed development, and all costs incurred or expected to be incurred in order to achieve this value together with copies of any professional advice used in support of the figures supplied. The value of land will be determined by the council, in accordance with up to date RICS guidance\(^{(14)}\), as the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan. The council will normally disregard the nature of the applicant and benefits or disbenefits that are unique to them and will seek to adopt industry benchmarks appropriate to the site in question. The council recognises that those who typically build small scheme will often work within different financial parameters to the developers of larger volume housing sites.

Information required should include the following as a minimum guide but may also cover other items specific to the proposed development. The council may specify further information as it deems necessary in relation to specific proposals. Information required includes:

**Development Proposals**

- A brief description of the proposed development, including a site plan showing the area of the land to be developed and a development layout.

\(^{(14)}\) Currently RICS Guidance Note on *Financial Viability in Planning*
Costs/Revenue

- Gross internal area of houses excluding garages, conservatories. Habitable roof-space should be listed separately. In mixed use schemes, for industrial buildings gross internal area should be supplied and for any shops or offices net internal area should be provided.

- The value used per unit of area. Alternatively, valuations of the completed buildings and the value used per unit of area.

- The cost of sales or lettings, broken down into marketing/estate agents’ fees and legal fees.

- Affordable housing should be shown at the value to be paid by a Registered Provider. Indicative transfer values which have been provided by the District Valuer Services (15) which reflect the sum a developer would usually expect to receive when transferring an affordable dwelling to a Registered Provider are contained at Appendix 8. Indicative transfer values will be updated periodically through the Local Plan Annual Monitoring Report. Applicants and the council should consider whether the Indicative transfer values are realistic for the proposal.

- Existing Use Value of the property or land – this means the value reflecting the existing use or in the case of vacant or unused property or land, the value of its previous use.

- The date when the property or land was acquired and the price paid and/or the detailed terms of any option or conditional agreements for purchase.

- The values and physical state and uses that are authorised and require no consent to continue.

Costs

- Build costs. Give the gross external area x the unit cost per square metre. State whether this is a tendered sum or an estimate.

- Preliminaries allowed for. State what is included.

- External works where applicable. Broken down, e.g. X m road @ £Y/m. Include boundary treatment, landscaping, demolition & site preparation costs as appropriate.


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15 The District Valuer Services Area Wide Study to Provide Indicative Transfer Values/Commuted Sums in Relation to Affordable Housing in the East Riding of Yorkshire can be viewed here: http://www2.eastriding.gov.uk/environment/planning-and-building-control/east-riding-local-plan/supplementary-planning-documents/
• Professional fees - Architect, Quantity Surveyor, Construction Design and Management supervisor, etc.

• Contingency allowance.

• Cost of finance. Indicate the period and interest rate.

• Community Benefits. If the scheme includes any exceptional benefits such as the restoration of a listed building or the provision of public open space above what is required, please state the cost of providing this.

• Abnormal costs if any. What are these (for example contaminated land remediation) and what costs are anticipated?

• Developer's Profit – the amount or percentage included.

Any other relevant items should be clearly defined and costed.

**Timings and Phasing**

• A detailed phasing plan including commencement and end dates for each phase and an anticipation of the number of dwellings which will be sold per month.

• A detailed breakdown of the pre-construction phasing including an assessment of when remediation and infrastructure cost will be spent.

• A clear indication of when all revenues and costs will be received within the development cashflow.
Appendix 8: Indicative Transfer Values

The indicative transfer values below have been provided by the District Valuer Services\(^{(16)}\) and reflect the amount that a Registered Provider is likely to pay for a particular property type. They are included as a starting point for negotiation and to provide clarity to developers on the amount they may be expected to receive from a Registered Provider, should agreement for the transfer of affordable housing be achieved.

Should it not be possible to reach agreement with a Registered Provider, or offers received by Registered Providers are unviable, the amount payable in lieu of on-site provision is \textbf{market value minus the transfer value}.

Indicative transfer values will be updated periodically through the East Riding Local Plan Annual Monitoring Report to ensure they remain relevant and responsive to the current policy climate and market conditions.

The indicative transfer values show the amount that a Registered Provider is likely to pay for a particular property type. The amount payable in lieu of on-site provision is \textbf{market value minus the transfer value}.

**Beverley Housing Market Area**

<table>
<thead>
<tr>
<th>INDICATIVE TRANSFER VALUES</th>
<th>1 bed</th>
<th>% of MV</th>
<th>2 bed</th>
<th>% of MV</th>
<th>3 bed</th>
<th>% of MV</th>
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<tbody>
<tr>
<td>Market Value (MV)</td>
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<td>£135,000</td>
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<tr>
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<td>55.95%</td>
<td>£93,235</td>
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\(^{(16)}\) The District Valuer Services Area Wide Study to Provide Indicative Transfer Values/Commuted Sums in Relation to Affordable Housing in the East Riding of Yorkshire can be viewed at:

## Bridlington Housing Market Area

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<tr>
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<th>% of MV</th>
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## Goole North and Goole South Wards

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<th>% of MV</th>
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<td>£60,768</td>
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## Howden and Howdenshire Wards

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Snaith, Airmyn, Rawcliffe and Marshlands Wards

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<th>% of MV</th>
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<tbody>
<tr>
<td>Market Value (MV)</td>
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<tr>
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Holderness Housing Market Area

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<tr>
<th>INDICATIVE TRANSFER VALUES</th>
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<th>% of MV</th>
<th>1 bed (house)</th>
<th>% of MV</th>
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<th>% of MV</th>
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<td>£59,109</td>
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## Hull Borders Housing Market Area

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<th>I bed (house)</th>
<th>% of MV</th>
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## Wolds Housing Market Area

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<th>% of MV</th>
<th>I bed (house)</th>
<th>% of MV</th>
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</table>
Appendix 9: Model Section 106 Agreement/Unilateral Undertaking

A Model S106 Agreement/Unilateral Undertaking is shown on the following pages. This template is negotiable and can be adapted to suit the specific circumstances of each case. It should therefore be treated as a starting point for negotiations with the council.
DATED 2014

THE EAST RIDING OF YORKSHIRE COUNCIL

- and -

*

- and -

*

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
in respect of land at *
in the East Riding of Yorkshire

Application Reference: *

(*/*)
THIS AGREEMENT is made the day of 201*

BETWEEN

(1) THE EAST RIDING OF YORKSHIRE COUNCIL, (“the Council”) and

(2) * (“the Owner”) and

(3) * whose registered office is situate at

(“the Mortgagee”)

DEFINITIONS AND INTERPRETATION

IN this Agreement the following words and expressions shall have the following meanings

“the Act” means the Town and Country Planning Act 1990 as amended

"the Affordable Housing" means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it) to be erected on the Agency Land

“Affordable Housing Units” means [ ] Dwellings consisting of [ ] Affordable Rented Dwellings or Social Rented Dwellings and [ ] Intermediate Dwellings and reference to "Affordable Housing Unit" shall be construed accordingly;

"Affordable Rent" means an affordable rent that is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable), as defined in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it);

"Affordable Rented Dwelling or Social Rented Dwellings” means [ ] of the Affordable Housing Units consisting of [ ] no. 1 bedroom units (house type [ ] sq.ft.) to be provided on plots [ ]; [ ] no. 2 bedroom units (house
type [ ] [ ] sq.ft.) to be provided on plots [ ]; [ ] no. 2 bedroom units (house type [ ] [ ] sq.ft.) to be provided on plots [ ]; and [ ] no. 3 bedroom unit (house type [ ] [ ] sq.ft.) to be provided on plot [ ] or in such other locations that may be agreed in writing between the Council and the Owners from time to time to be constructed in accordance with the Planning Permission to be made available at an Affordable Rent or Social Rent;

“the Affordable Housing Contribution” means the sum of * hundred and * thousand * hundred and * pounds (£)

“Agency” means a Housing Association or such other appropriate organisation as may have been approved in writing by the Council

“the Agency Land” means the land to be transferred to an Agency or Agencies in accordance with Paragraph 2 of the First Schedule hereto being shown for the purpose of identification edged * on the Plan

“the Application” means the application for Planning Permission [Reserved Matters Approval] received by the Council on * and bearing the reference number * or as the same may have been amended prior to the date hereof
“Commencement of Development” means the carrying out of a material operation for the commencement of the Development as defined in section 56(4) of the Act.

“the Development” means the development described in the Application/Planning Permission.

“the Director” means the Council’s Director of Planning and Economic Regeneration for the time being or his authorised nominee.

“Dwelling” has the same meaning as in section 101 of the Housing Grants Construction and Regeneration Act 1996.

"the Homes and Communities Agency" means the Homes and Communities Agency or any bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or reenactment of such Act).

“Housing Association” means a Housing Association or registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or reenactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing.
grant as may be proposed by the Owners and approved by the Council and reference to "Housing Associations" shall be construed accordingly.

"Intermediate Dwellings" means a Dwelling for sale or rent provided at a cost above social rent, but below market levels, as defined in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it) and can include shared equity (shared ownership and equity loans) or discounted sale and shall comprise [ ] of the Affordable Housing Units consisting of [ ] no. 1 bedroom unit (house type [ ] [ ] sq.ft.) to be provided on plot [ ]; [ ] no. 2 bedroom units (house type [ ] [ ] sq.ft.) to be provided on plots [ ] and [ ] no. 3 bedroom unit (house type [ ] [ ] sq.ft.) to be provided on plot [ ] or in such other locations that may be agreed in writing between the Council and the Owner from time to time to be constructed in accordance with the Planning Permission to be made available as Intermediate Dwellings but in the event that the Agency is unable to dispose of the Intermediate Dwellings, and if first approved in writing by the Council the Dwellings may be let at an Affordable Rent as Affordable Rented Dwellings to persons in accordance with the Housing Association's policy and reference to "Intermediate Dwelling" shall be construed.
"the Land" means the land situate * in the East Riding of Yorkshire being the subject of the Application [and having the benefit of the Planning Permission] and shown for the purposes of identification edged * on the Plan.

"Mortgagee " means a mortgagee or chargee or a receiver appointed by such a mortgagee or chargee (including administrative receivers).

"Occupation" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to "Occup" and "Occupied" shall be construed accordingly.

"Open Market Dwellings" means the Dwellings excluding the Affordable Housing Units and reference to "Open Market Dwelling" shall be construed accordingly;

"the Plan" means the plan annexed hereto

"the Planning Permission" means the Planning Permission for the Development [issued by the Council on under reference number * and *]

["the Reserved Matters Approval" means the Reserved Matters Approval issued in respect of the Application]

"Social Rent" means a social rent as defined in Annex 2 of the National Planning Policy Framework (or any future
 guidance or initiative that replaces or supplements it)

WHEREAS

(A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated

(B) The Owner is seised in fee simple in possession of the Land free from incumbrances save as hereinafter mentioned and proposes to enter into the obligations contained in this Agreement in respect of the Land

(C) The Mortgagee is mortgagee of the Land under a Legal Charge dated * and made between the Owner of the one part and the Mortgagee of the other part

(D) The Owner has submitted the Application to the Council for planning permission to carry out the Development in accordance with plans specifications and particulars forming part of the Application

(E) At its meeting on the * the * Committee of the Council was satisfied that the Development disclosed by the Application was such as might be approved by the Council under the Act provided the parties hereto enter into an obligation of the type specified in Section 106 of the Act in the manner of this Agreement

NOW THIS DEED WITNESSES as follows:-

1. This Agreement is made in pursuance of the powers set out in Section 106 of the Act and all other powers enabling and is a planning obligation for the purposes of Section 106 of the Act and the Council is the Planning Authority by which the provisions of this Agreement shall be enforceable

2. IT IS HEREBY AGREED AND DECLARED as follows:

2.1 Save where the context otherwise requires references to any party in this Agreement shall include their respective successors in title but to the intent that no party shall be liable for any breach of this Agreement occurring after the date
on which they shall have parted with their interest in the Land or the part in
respect of which such breach occurs

2.2 The covenants contained in this Agreement shall come into effect only upon the
grant of the Planning Permission [Reserved Matters Approval]

2.3 This Agreement is a local land charge and shall be registered as such

2.4 Nothing contained or implied in this Agreement shall prejudice or affect the
rights powers duties and obligations of the Council in the exercise of its functions
as Local Authority and its rights powers duties and obligations under all public
and private statutes bylaws and regulations may be as fully and effectually
exercised as if the Council were not a party to this Agreement

2.5 If any provision in this Agreement shall be held to be invalid illegal or
unenforceable the validity legality and enforceability of the remaining provisions
hereof shall not in any way be deemed thereby to be affected or impaired

2.6 Covenants made hereunder if made by more than one person are made jointly
and severally

2.7 No waiver (whether express or implied) by the Council of any breach or default
by the Owner in performing or observing any of the terms and conditions of this
Agreement shall constitute a continuing waiver and no such waiver shall prevent
the Council from enforcing any of the said terms or conditions or from acting
upon any subsequent breach or default in respect thereof by the Owner

2.8 The Owner shall pay to the Council on demand the sum of £1,000 as a
contribution towards the Council’s legal costs incurred in connection with the
preparation and completion of this Agreement

2.9 Any Notice or other information required or authorised by this Agreement to be
given by any party may be given by hand or sent by first class pre paid post and if
sent by post shall be deemed to be served two days after being sent unless
returned to the sender as undelivered mail by the Post Office.
2.10 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and unless specifically provided no person other than the parties to this Agreement or their successors in title shall have any benefit or any right to enforce any term of this Agreement

3. The Owner covenants with the Council so as to bind the Land and each and every part thereof
   (i) to observe and perform the covenants set out in the First Schedule hereto; and
   (ii) that from the date of the Commencement of Development the Land will be permanently subject to the restrictions set out in the Third Schedule hereto

4. The Council agrees to accept the Owners covenants set out in the First Schedule hereto and hereby covenants with the Owner to fulfil the covenants on its behalf contained in the Second Schedule hereto

5. The Mortgagee hereby consents to the completion of this Agreement and acknowledges that (subject as hereinbefore provided) the Land shall be bound by the restrictions and obligations contained herein

6. The Owner hereby covenants to indemnify the Mortgagee in respect of any liabilities actions demands proceedings costs and expenses arising directly or indirectly as a result of the Mortgagee having entered into this Agreement

7. Any dispute arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Law Society and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

IN WITNESS whereof the parties have executed these presents as a Deed the day and year first before written

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FIRST SCHEDULE

Covenants by the Owner

1. The Owner shall give to the Council no less than seven days notification in writing prior to the Commencement of Development

2. The Affordable Housing

2.1 The Owner shall [not later than three years from the Commencement of Development] construct the [Affordable Housing Units] [Affordable Rented Dwellings] [Intermediate Dwellings] on the Agency Land together with all associated roads footpaths parking spaces and services in a good and workmanlike manner with good quality materials in accordance with the Planning Permission and in accordance with drawings approved to the standards laid down by the National Housebuilding Council and so as to secure the National Housebuilding Council’s Buildmark cover

2.2 The Owner shall not allow the Occupation of more than:

2.2.1 [ ] Open Market Dwellings until [ ] Affordable Housing Units have been constructed completed and offered for transfer to an Agency or Agencies; and

2.2.3 [ ] Open Market Dwellings until all of Affordable Housing Units have been constructed completed and offered for transfer to an Agency or Agencies

2.3.1 The Owner shall [not later than three years from the Commencement of Development] offer to transfer the Agency Land and the [Affordable Housing Units] [Affordable Rented Dwellings] [Intermediate Dwellings] erected thereon to an Agency or Agencies for a consideration which would be equivalent to the price a Housing Association would pay for the [Affordable Housing Units] [Affordable Rented Dwellings] [Intermediate Dwellings] without having to resort to grant from the Homes and Communities Agency as described below and on the following terms:

(a) the Agency Land [and the Affordable Housing Units] [Affordable Rented Dwellings] [Intermediate Dwellings] shall be offered with full
title guarantee and vacant possession free from any mortgage or charge or other third party interest for a continuous period of twelve months (“the Offer Period”) to an Agency or Agencies and the Owner shall inform the Council not less than 28 days prior to the commencement of the Offer Period. Provided that the requirement to offer the Agency Land [and the Affordable Housing Units] [ Affordable Rented Dwellings] [Intermediate Dwellings] to an Agency or Agencies for the whole of the Offer Period may be waived by the Council at the request of the Owner where contracts have been exchanged with an Agency or Agencies in accordance with the provisions contained in this Schedule:

(b) a draft contract and evidence of title shall be submitted to the solicitors acting on behalf of an Agency or Agencies within 28 days following acceptance of the Owner’s offer:

(c) the transfer of the Agency Land [and the Affordable Housing Units] [ Affordable Rented Dwellings] [Intermediate Dwellings] to an Agency or Agencies shall be completed within 28 days after exchange of contracts:

(d) the transfers to an Agency or Agencies shall contain the following provisions:

(i) the grant by the Owner to the Agency or Agencies of all rights of access and passage of services rights of entry and other rights reasonably necessary for the beneficial enjoyment of the Dwellings to be erected on the Agency Land;

(ii) a covenant not to use the Agency Land otherwise than for the purposes of Affordable Housing;

(iii) a covenant not to use any Dwellings constructed on the Agency Land other than by renting by the Agency or Agencies or by any other arrangement as may be approved in writing by the Director.
including sale by way of shared ownership equity sharing or discounted sale to the intent that all Dwellings to be constructed on the Agency Land shall be used for the purposes of providing housing to persons in need who are unable to afford to buy or rent at market values and market rates;

(iv) a covenant that unless otherwise agreed in writing by the Council the [Affordable Rented Dwellings] shall not be Occupied by any person unless they are nominated by the Council who will have ensured that such persons needs are not met by the market within 28 working days of it receiving written notification from the Agency

(v) a provision to indicate that paragraphs 2.3.1(d)(ii), 2.3.1(d)(iii) and 2.3.1(d)(iv) will not bind a Mortgagee or any successor in title of a Mortgagee

2.3.2 The Council shall have the right to nominate persons on the disposal of the [Affordable Rented Dwellings] in the following manner

(a) 100% on the first disposal

(b) on subsequent disposals as may be agreed between the Agency and the Council.

2.4.1 It is agreed that a Mortgagee seeking to dispose of the Affordable Rented Dwellings or Social Rented Dwellings and the Agency Land pursuant to its power of sale or other remedies under the terms of its mortgage or charge shall first seek to dispose of the said land to an Agency (the Council being entitled to nominate an Agency for these purposes by service of notice in writing to such Mortgagee within one month of such Mortgagee notifying the Council in writing of its intention to exercise its power of sale) provided that for the avoidance of doubt such Mortgagee shall not be under any obligation to dispose of the relevant Agency Land and Affordable Rented Dwellings
or Social Rented Dwellings for any sum less than the monies outstanding pursuant to the said mortgage or charge including all interest and costs incurred by the Mortgagee.

2.4.2 In the event of any sale not taking place in accordance with paragraph 2.4.1 of this Schedule within a period of two (2) months following the date on which the Mortgagee notified the Council in writing of its intention to exercise its power of sale as specified above any Mortgagee shall be entitled to sell such land or the relevant part thereof pursuant to its or their power of sale or other remedies under the mortgage or charge in question on the open market and from the date of actual completion the provisions of paragraph 2 of this First Schedule of this agreement shall not apply to the Agency Land and Affordable Rented Dwelling or Social Rented Dwellings as sold nor shall any successor in title to or person deriving title from such Mortgagee be so bound.

2.4.3 In the event of a Mortgagee exercising its right of sale in accordance with paragraph 2.4.2 above the Agency or Agencies shall covenant to put any monies received on the Mortgagee exercising its right of sale towards the provision of affordable housing in the East Riding of Yorkshire to fulfil the intentions of this covenant on the Mortgagee exercising its right of sale.

2.4.4 The covenants in this Schedule relating to the Affordable Housing Units shall not bind:

2.4.4.1 a tenant of an Affordable Rented Dwelling who exercises any right to buy or right to acquire such dwelling nor any Mortgagee of such a tenant nor any receiver appointed by such Mortgagee (including administrative receivers); nor
2.4.4.2 any tenant who staircases out a shared ownership property to 100% nor
any Mortgagee of such a tenant nor any receiver appointed by such
Mortgagee (including administrative receivers); nor

2.4.4.3 any persons deriving title from the tenants, Mortgagee or receivers
referred to in paragraphs 2.4.4.1 and 2.4.4.2 of this Schedule.

2.4.4.4 a Mortgagee provided that the Mortgagee has complied with paragraph
2.4.1, 2.4.2 and 2.4.3 of this First Schedule

2.5 In the event that:

(a) No such Agency or Agencies shall accept the Owner’s offer within the
Offer Period, or

(b) The Agency or Agencies shall fail to exchange contracts within twelve
weeks of a draft Contract evidence of title and replies to Enquiries before
Contract being submitted to the Agency’s solicitors

the Owner shall be entitled to pay to the Council the Affordable Housing Contribution
in lieu of the transfer of the Agency Land to an Agency or Agencies on producing
evidence of compliance with the provisions of Paragraph 2.3 above which evidence
meets with the Director’s approval in writing whereupon the Owner shall be free to use
and dispose of the Agency Land and each and every part of it free from the obligations
set out in this Paragraph 2.3 of the First Schedule
SECOND SCHEDULE

Covenants by the Council

1. The Affordable Housing Contribution
   1.1 To pay the Affordable Housing Contribution (where received) into the Council's interest earning Bank Account
   1.2 To expend the Affordable Housing Contribution (where received) and the interest accruing thereon as Local Housing Authority for the provision and enabling of housing accommodation pursuant to the Housing Act 1985 the Housing Act 1988 the Housing Act 1989 (or as any of the same may be subsequently amended) and all other enabling powers the nature of such payments being within the absolute discretion of the Council
   1.3 To repay to the Owner such sum or sums remaining from the Affordable Housing Contribution as have not been expended within ten years of the date of receipt by the Council [of the final instalment].

THIRD SCHEDULE

Restrictions on the Land

1.1 No more than * Open Market Dwellings shall be Occupied on the Land until either
   (a) the Owner shall have transferred the Agency Land [and the Affordable Housing Units] [ Affordable Rented Dwellings] [Intermediate Dwellings ] to an Agency or Agencies in accordance with Paragraph 2.3 of the First Schedule hereto;
   or
   (b) the Owner shall have paid the Affordable Housing Contribution to the Council in accordance with Paragraph 2.5 of the First Schedule hereto

1.2 Subject to the provisions of paragraphs 2.5 of the First Schedule the Affordable Housing Units shall not be used other than by renting by an Agency or Agencies or by any other arrangement as may be approved in writing by the Director including sale by way of shared ownership, shared equity, discounted sale, sub market/intermediate rent,
rent to buy, or any other sub market/intermediate type/model that meets the definition set out in the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it) to the intent that all Affordable Housing Units to be constructed on the Property shall be used for the purposes of providing housing to persons in need of Affordable Housing **PROVIDED THAT** this restriction shall not bind a Mortgagee or any successor in title of a Mortgagee.

THE COMMON SEAL of THE EAST RIDING OF

 YORKSHIRE COUNCIL was hereunto affixed in the presence of:-

THE COMMON SEAL of * was hereunto affixed in the presence of:-
THE COMMON SEAL of * 
was hereunto affixed in the presence of:-

SIGNED AND DELIVERED as a DEED
by the said *
in the presence of:-

SIGNED AND DELIVERED as a DEED
by the said *
in the presence of:-
East Riding of Yorkshire Council will, on request provide this document in braille or **large print**.

If English is not your first language and you would like a translation of this document, please telephone **01482 393939**.