

[REDACTED]

From: [REDACTED]
Sent: 07 February 2023 15:06
To: [REDACTED]
Subject: RE: Lesnes - viability and reviews

Hi [REDACTED]

I hope you are well.

I am wondering if there is any update on the draft S106 for this scheme, or any indicative timings of when it will be available for our review?

Many thanks,

[REDACTED] [REDACTED]

Senior Strategic Planner, Development Management, Planning
GREATERLONDONAUTHORITY
Union Street, London SE1 0LL
Mob: [REDACTED]

[REDACTED]

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From: [REDACTED] [REDACTED] <[REDACTED]@bexley.gov.uk>
Sent: 19 October 2022 16:49
To: [REDACTED] [REDACTED] <[REDACTED]@london.gov.uk>
Subject: RE: Lesnes - viability and reviews

Thanks [REDACTED]

[REDACTED] [REDACTED]
Major Projects Planning Officer / Deputy Area Manager
London Borough of Bexley

[REDACTED]

From: [REDACTED] [REDACTED] <[REDACTED]@london.gov.uk>
Sent: 19 October 2022 16:23
To: [REDACTED] [REDACTED] <[REDACTED]@bexley.gov.uk>
Subject: RE: Lesnes - viability and reviews

Hi [REDACTED]

The GLA does not have standard drafting for whole scheme reviews but I attach a rough draft example based on other schemes which hopefully will be helpful. This also includes drafting that could be used to secure the affordable

housing in the s106 including the unit and habitable room numbers – it obviously needs adapting for this scheme and would need a full legal review.

This example has already been provided to the applicant team.

Kind Regards,

From: [REDACTED] [REDACTED] <[REDACTED]@london.gov.uk>
Sent: 17 October 2022 18:54
To: [REDACTED] [REDACTED] <[REDACTED]@bexley.gov.uk>
Subject: Re: Lesnes - viability and reviews

Hi [REDACTED]
Thanks for the below - I'll come back to you re guidance for whole scheme reviews based on an open book approach.
Yes, we'll need the final draft of the s106 to progress this scheme to Stage 2.
Kind Regards,

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From: [REDACTED] [REDACTED] <[REDACTED]@bexley.gov.uk>
Sent: Monday, October 17, 2022 5:15 pm
To: [REDACTED] [REDACTED] <[REDACTED]@london.gov.uk>
Subject: RE: Lesnes - viability and reviews

Hi [REDACTED]
All of the relevant information in relation to viability is now on the website so there is nothing further which hasn't been submitted to the GLA.

We are just starting to draft the S106 so the detailed clauses are not available at this stage. I note that the GLA viability officers considered that the GLA formulae were not appropriate in this case and had suggested whole scheme reviews based on an open book approach. If there is any further guidance on the wording of the clauses that would be useful.

In terms of the timing of the Stage II referral, could you please confirm whether you wish to wait until a draft s106 is available?

If you want to discuss this further please let me know.

Kind regards

[REDACTED]
Major Projects Planning Officer / Deputy Area Manager
London Borough of Bexley

From: [REDACTED] [REDACTED] <[REDACTED]@london.gov.uk>
Sent: 17 October 2022 14:58
To: [REDACTED] [REDACTED] <[REDACTED]@bexley.gov.uk>
Subject: Lesnes - viability and reviews

Hi [REDACTED]

I hope you are well.

I've noted that the final BNPP for this scheme is showing on the Council website. Please can you advise if there any other viability information available beyond that showing the Council's website that hasn't yet been provided to the GLA?

In addition, please can you advise if there is any more detail agreed between the Council and applicant in regards to the early-stage, mid-stage and late-stage viability review mechanisms mentioned in the council's committee report for this scheme?

Many thanks in advance.

Kind Regards,

[REDACTED]

Senior Strategic Planner, Development Management, Planning
GREATERLONDONAUTHORITY
Union Street, London SE1 0LL

[REDACTED]

[REDACTED]

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1. DEFINITIONS

- 1.1 The following words and phrases shall have, unless the context otherwise requires, the following meanings:

"Additional Affordable Housing Statement" means a document to be submitted to the the Council as part of each Viability Review except the Late Stage Review if a Surplus arises under that Viability Review, containing the following information:

- (a) calculations showing what the relevant Affordable Housing Surplus is and how it will be applied to increasing the Affordable Housing Minimum or the latest previously approved Affordable Housing Enhanced Minimum in accordance with annex 1 to schedule [●];
- (b) an Affordable Housing Enhanced Minimum; and
- (c) if proposed by the Owner, variations to the Agreed Mix (Outline Phases);

"Affordable Housing" means housing (including, without limitation, London Affordable Rented Housing, London Shared Ownership Housing, Social Rented Housing, London Living Rent Housing and Discounted Market Rent Housing) provided by an Affordable Housing Provider to eligible households whose needs are not met by the market and which housing should (a) meet the needs of eligible purchasers or renters including availability at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and (b) include provision for the home (subject to the terms of this Deed where relevant) to remain at an affordable price for future eligible purchasers or renters, or, if these restrictions are lifted, for the subsidy (if any) to be recycled for alternative affordable housing provision;

"Affordable Housing Enhanced Minimum" means a minimum quantum of Dwellings (expressed as percentages by Habitable Room and by unit number of the total number of Dwellings) to be provided as Affordable Housing that is increased from the Affordable Housing Minimum or the latest previously approved Affordable Housing Minimum as a result of the application of a Affordable Housing Surplus in accordance with an Additional Affordable Housing Statement;

"Affordable Housing Minimum" means the minimum quantum of Dwellings to be provided as Affordable Housing corresponding with the larger of the following percentages:

- (a) xx per cent (by Habitable Room) of the total number of Dwellings; and
- (b) xx per cent (by unit number) of the total number of Dwellings;

"Affordable Housing Provider" means:

- (a) a provider of Affordable Housing registered under section 111 of the Housing and Regeneration Act 2008 (or such other relevant previous or amended or replacement statutory provision);
- (b) an approved development partner of Homes England (or any successor agency) which is eligible to obtain grant funding; or
- (c) any other body specialising in the provision of Affordable Housing

in each case either nominated or approved by the Council (such approval not to be unreasonably withheld or delayed);

"Affordable Housing Surplus" means, in respect of each Viability Review, the proportion of the Surplus under the relevant Updated Viability Appraisal to be used for the delivery of Affordable Housing, being:

- (a) in respect of the Early Stage Review, 100 per cent of the Surplus;
- (b) in respect of the Mid-Stage Reviews, 100 per cent of the Surplus; and
- (c) in respect of the Late Stage Review, 60 per cent of the Surplus;

"Affordable Housing Target Tenure Split" means:

- (a) the provision of a minimum of xx per cent (by Habitable Room) and xx per cent (by unit number) of the aggregate of the Affordable Housing Units as London Affordable Rented Housing or Social Rented Housing; and

"Affordable Housing Units" means the Dwellings to be provided as Affordable Housing in accordance with schedule [●] comprising not less than xx per cent of the Dwellings (by number of units) and not less than xx per cent of the Dwellings (by Habitable Room) and

"Affordable Housing Unit" shall be construed accordingly;

"Agreed Mix (Outline Phases)" means, for each Outline Phase, the following minimum and maximum thresholds for the mix [of tenures and] sizes of the Dwellings in that Outline Phase, as may be amended under an Additional Affordable Housing Statement approved by the Council:

- (a) [in respect of tenures]

	London Affordable Rented Housing Units (minimum and maximum expressed as percentage of total Dwellings in the relevant Outline Phase)	London Shared Ownership Housing Units (minimum and maximum expressed as percentage of total Dwellings in the relevant Outline Phase)	Market Housing Units (minimum and maximum expressed as percentage of total Dwellings in the relevant Outline Phase)
TBC	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]
	[●] – [●]	[●] – [●]	[●] – [●]

(b) in respect of sizes:

	London Affordable Rented Housing Units (minimum and maximum expressed as percentage of total London Affordable Rented Housing Units in the relevant Outline Phase)	London Shared Ownership Housing Units (minimum and maximum expressed as percentage of total London Shared Ownership Housing Units in the relevant Outline Phase)	Market Housing Units (minimum and maximum expressed as percentage of total Market Housing Units in the relevant Outline Phase)
Studio	0-5	0-10	0-15
1-2 bed	35-55	50-70	60-80
3-bed	35-50	25-35	15-25
4-bed	0-10	0-5	0-5

"Application Stage Viability Appraisal" means the viability assessment submitted with the Application titled "[●]" and dated [●] a copy of which is appended at annex 4 of schedule [●];

"Charge" means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units and/or the Additional Phase 1 Affordable Housing Units (or any number of them) in favour of the Chargee;

"Chargee" means any mortgagee or chargee of the Affordable Housing Provider of the Affordable Housing Units and/or the Additional Phase 1 Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;

"Date of Deemed Service" means, in each instance where a Chargee has served a Default Notice under paragraph 3.1(a) of schedule [●], the later of the following two dates:

(a) the following date in respect of service on the Council:

(i) in the case of service by delivery by hand to the Council's offices

"Default Notice" means a notice in writing served on the Council by the Chargee under paragraph 3.1(a) of schedule [●] of the Chargee's intention to enforce its security over the relevant Affordable Housing Units and/or Additional Phase 1 Affordable Housing Units;

"Development Viability Information" means:

(a) in respect of the Early Stage Review, an Updated Viability Appraisal and an Additional Affordable Housing Statement;

(b) in respect of the Mid-Stage Reviews an Updated Viability Appraisal and an Additional Affordable Housing Statement; and

(c) in respect of the Late Stage Review, an Updated Viability Appraisal;

"Discounted Market Rent Housing" means housing offered to Eligible Renters at a rent that is not more than 80 per cent of market rent and on the basis that average annual housing costs, including rent and Service Charges:

(a) must not exceed 28 per cent of the relevant annual gross income upper limit (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income) specified in the London Plan Annual Monitoring Report; and

(b) in respect of the following sizes of units, must not exceed 28 per cent of the corresponding annual gross income upper limit below (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income):

(i) one-bedroom: £[●];

(ii) two-bedroom: £[●];

(iii) three-bedroom: £[●]; and

(iv) four-bedroom: £[●];

"Discounted Market Rent Housing Units" means the Affordable Housing Units to be made available for Discounted Market Rent Housing in accordance with schedule [●];

"Disposal" means:

(a) a Sale;

(b) the grant of a lease of a term of less than 125 year; or

(c) the grant of an assured shorthold tenancy agreement or a short term let

and **"Dispose"**, **"Disposals"** and **"Disposed"** shall be construed accordingly;

"Early Stage Review" means a review of the viability of the Development in accordance with part 1 of schedule [●];

"Eligible Purchaser" means a purchaser or purchasers whose Household Income at the date of purchasing the relevant London Shared Ownership Housing Unit does not exceed the relevant upper limit specified in the latest London Plan Annual Monitoring Report such amount at the date of this Agreement being £90,000;

"Eligible Renter" means an existing private or social tenant or tenants without sufficient combined current savings to purchase a home in the local area and whose Household Income at the date of renting the relevant Additional Phase 1 Affordable Housing Unit to be provided as London Living Rent Housing or Discounted Market Rent Housing (as appropriate) does not exceed the relevant upper limit specified in the latest London Plan Annual Monitoring Report such amount at the date of this Agreement being £60,000 and who meets the other criteria (if any) specified in the latest London Plan Annual Monitoring Report;

"Family Housing" has the same meaning as in the latest adopted version of the London Plan or the latest relevant development plan documents adopted by the Council from time

to time or, if the term is not defined in that document, means a Dwelling with three or more bedrooms;

"Family Housing Requirements" means all of the following requirements:

- (a) at least xx per cent (by unit) of the Dwellings to be Family Housing;
- (b) at least xx per cent (by unit) of the London Affordable Rented Housing Units to be Family Housing; and
- (c) at least xx per cent (by unit) of the Dwellings to be three-bedroom units;

Gross Development Value []

"Habitable Room" means any room within a Dwelling the primary use of which is for living, sleeping and/or dining and which expressly includes any room which is used as a kitchen with a floor area of 13 square metres or more, a living room, a dining room or a bedroom but expressly excludes any room which is used as a kitchen with a floor area of less than 13 square metres, a bathroom, a toilet, a corridor or a hall;

"Household" means, in relation to a person "A", A and all other persons who would, after renting an Affordable Housing Unit or Additional Phase 1 Affordable Housing Unit to be provided as London Living Rent Housing or Discounted Market Rent Housing (as appropriate) share that unit with A and one another as the residence of both A and such other persons;

"Household Income" means:

- (a) in relation to a single Eligible Renter, the gross annual income of that Eligible Renter's Household; and
- (b) in relation to joint Eligible Renters, the combined gross annual incomes of those Eligible Renters' Household;

"Intention Notice" means a notice in writing served on the Chargee by the Council under paragraph 3.2 of schedule [●] that the Council (or the Council's nominated substitute Affordable Housing Provider) is minded to purchase the relevant Affordable Housing Units;

"Intermediate Housing" means London Shared Ownership Housing, London Living Rent Housing and Discounted Market Rent Housing;

"Late Stage Review" means a review of the viability of the Development in accordance with part 5 of schedule [●];s

"Late Stage Review Date" [practical completion of 75 per cent of the Market Housing Units]

"Late Stage Review Cap" [should be *based on GLA standard Formula 4*]

"Late Stage Review Contribution" means a financial contribution for the provision of off-site Affordable Housing in the Council's administrative area, the value of which is equivalent to the Affordable Housing Surplus arising from the Late Stage Review subject to the Late Stage Review Cap;

"Local Area" means the administrative area of the Council;

"London Affordable Rented Housing" means rented housing provided by an Affordable Housing Provider that has the same characteristics as Social Rented Housing except that it is not required to be let at Target Rents but is subject to other rent controls that require it

to be offered to eligible households on an assured tenancy in accordance with Part VI of the Housing Act 1996 at a rent that is:

- (a) including Service Charges, not more than 80 per cent of the market rent (where the market rent of a tenancy at any time is the rent which the tenancy might reasonably be expected to fetch at that time on the open market); and
- (b) excluding Service Charges, no higher than the relevant benchmark rents published by the GLA annually in accordance with the Mayor's Funding Guidance or, in the event that such benchmark rents are no longer published, such other rental caps as may be agreed between the GLA and the Affordable Housing Provider of the relevant London Affordable Rented Housing Units or of the relevant Additional Phase 1 Affordable Housing Units provided as London Affordable Rented Housing (if any);

"London Affordable Rented Housing Units" means the Affordable Housing Units to be made available for London Affordable Rented Housing in accordance with schedule [●];

"London Housing Design and Quality Standards" means the design standards for new homes set out in the London Plan and the Mayor of London's Housing Supplementary Planning Guidance published in March 2016;

"London Living Rent Housing" means rented housing provided by an Affordable Housing Provider that is required to be offered to Eligible Renters on a time-limited tenancy:

- (a) with a minimum term of three years unless a shorter term is requested by the prospective tenant;
- (b) with a break clause allowing the tenant to end the tenancy any time after the first six months of the tenancy with one month's notice;
- (c) at rents not exceeding the relevant benchmark London Living Rent level published by the GLA that applies at the date of the letting; and
- (d) under which rent increases (in percentage terms) within the term of the tenancy in question will not be more than the percentage increase in the Consumer Prices Index for the relevant period PROVIDED THAT initial rents for subsequent lettings will reset in accordance with sub-paragraph (c) above;

"London Living Rent Housing Units" means the Affordable Housing Units to be made available for London Living Rent Housing in accordance with schedule [●];

"London Plan" means the London Plan published in [March 2016] as revised from time to time;

"London Plan Annual Monitoring Report" means the monitoring report published annually by the Mayor of London reviewing the progress being made in implementing the policies and addressing the objectives of the London Plan or any replacement GLA guidance or policy;

"London Shared Ownership Housing" means housing offered to Eligible Purchasers to be occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the Housing and Regeneration Act 2008 (or any amended or replacement provision) where the shared ownership lessee for the time being has the right to carry out Staircasing and dispose of the unit on the open market and on the basis that average annual housing costs, including Service Charges and mortgage payments (assuming reasonable interest rates and deposit requirements):

- (a) must not exceed 28 per cent of the relevant annual gross income upper limit (such 28 per cent being equivalent to 40 per cent of net income, with net income being

assumed to be 70 per cent of gross income) specified in the London Plan Annual Monitoring Report; and

- (b) in respect of the following sizes of units, must not exceed 28 per cent of the corresponding annual gross income upper limit below (such 28 per cent being equivalent to 40 per cent of net income, with net income being assumed to be 70 per cent of gross income) PROVIDED THAT this restriction shall apply only to the first letting of each London Shared Ownership Housing Unit and only if such letting is secured by an Eligible Purchaser within the first three months of the London Shared Ownership Housing Unit being marketed:
 - (i) one-bedroom: XXX;
 - (ii) two-bedroom: XXX; and
 - (iii) three-bedroom: XXX; and
 - (iv) four-bedroom: xxx

and **"London Shared Ownership Lease"** and **"London Shared Ownership Lessee"** shall be construed accordingly;

"London Shared Ownership Housing Units" means the Affordable Housing Units to be made available for London Shared Ownership Housing in accordance with schedule [●];

"Market Housing Unit" means any Dwelling forming which is not an Affordable Housing Unit or Additional Phase 1 Affordable Housing Unit;

"Market Value" means the price at which the sale of the relevant Affordable Housing Units and/or Additional Phase 1 Affordable Housing Units would have been completed unconditionally for cash consideration on the Relevant Review Date based on detailed comparable market evidence, including evidence of rental values achieved for any Affordable Housing Units and/or Additional Phase 1 Affordable Housing Units which have been Disposed but not Sold, to be assessed by the Council and assuming:

- (a) a willing seller and a willing buyer;
- (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale;
- (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion;

"Mayor's Funding Guidance" means "Homes for Londoners: Affordable Homes Programme 2016-21 Funding Guidance" published by the Mayor of London in November 2016 or any update or replacement guidance;

"Mid-Stage Review" means a review of the viability of the Development in accordance with part 2 of schedule [●]; [on submission of each RMA]

"Moratorium Period" means, in each instance where a Chargee has served a Default Notice under paragraph 3.1(a) of schedule [●], the period from (and including) the Date of Deemed Service to (and including) the date falling three months after such Date of Deemed

Service (or such longer period as may be agreed between the Chargee, the X and the Council);

"Nominations Agreement" means the Council's standard form nominations cascade arrangements for units being let as Affordable Housing that provide for 100 per cent of first lets to be provided to nominees of the Council and 75 per cent of all subsequent lets to be provided to nominees of the Council;

"Option" means the option to be granted to the Council (or its nominated substitute Affordable Housing Provider) or to the GLA (or its nominated substitute Affordable Housing Provider) in accordance with paragraph 3.3 of schedule [●] for the purchase of the relevant Affordable Housing Units and/or the Additional Phase 1 Affordable Housing Units;

"Public Subsidy" means funding from the Council and/or the GLA together with any additional public subsidy secured by the Owners to support the delivery of the Development;

"Regulator of Social Housing" means the Regulator of Social Housing established under Part 2 of the Housing and Regeneration Act 2008 and responsible for the regulation of private registered providers of social housing in Enxnd, or any successor body or organisation;

"Relevant Review Date" means:

- (a) in relation to the Early Stage Review, the date on which the Development Viability Information is submitted pursuant to paragraph 2 of schedule [●];
- (b) in relation to the Mid-Stage Review, the Mid-Stage Review Date;
- (c) and
- (d) in relation to the Late Stage Review, the Late Stage Review Date;

"Rent Guidance" means the Guidance on Rents for Social Housing and the Direction on the Rent Standard 2019 issued by the Ministry of Housing, Communities and Local Government in February 2019 or such other replacement guidance or direction or legislation;

"Rent Standard" means the standard relating to rent set by the Regulator of Social Housing from time to time having regard to the Welfare Reform and Work Act 2016 and the Rent Guidance together with the Rent Standard Guidance published by the Department for Communities and Local Government in April 2015 or such other replacement guidance or direction or legislation;

"Review Stage Return" is, in respect of each Updated Viability Appraisal, the percentage profit on Gross Development Value shown in that appraisal;

"Sale" means:

- (a) the sale of the freehold; or
- (b) the grant of a lease with a term of 125 years or more and subject to nominal rent

and **"Sold"** shall be construed accordingly;

"Service Charge Cap" means, for each Phase, a cap on the Service Charges for each Affordable Housing Unit and Additional Phase 1 Affordable Housing Unit to be agreed between the Owner, the Council and the relevant Affordable Housing Provider(s) in accordance with paragraph 4 of schedule [●] and that may comprise an absolute maximum figure, a maximum figure per square foot (net internal area) or both;

"Service Charges" means all amounts payable by a tenant of the relevant London Affordable Rented Housing Unit, London Shared Ownership Housing Unit or Additional Phase 1 Affordable Housing Unit provided as London Affordable Rented Housing, London Shared Ownership Housing, Social Rented Housing, London Living Rent Housing or Discounted Market Rent Housing (as the context requires) as part of or in addition to the rent and directly or indirectly for services, repairs, maintenance, improvements, insurance and/or the landlord's costs of management in relation to that unit;

"Social Rented Housing" means rented housing owned and managed by local authorities or Affordable Housing Providers and let at Target Rents;

"Social Rented Housing Units" means the Affordable Housing Units to be made available for Social Rented Housing in accordance with schedule [●];

"Staircasing" means the acquisition by a London Shared Ownership Lessee of additional equity in a London Shared Ownership Housing Unit up to a maximum of 100 per cent equity and **"Staircased"** shall be construed accordingly;

"Substantial Implementation" means the occurrence of all of the following in respect of the Development:

- (a) [completion of all ground preparation works in Phase 1;]
- (b) [completion of the foundations for the core of Building A;]
- (c) construction to the first floor slab of Building xxx; and
- (d) [letting of a contract for the construction of Phase 1;]

"Substantial Implementation Target Date" means, subject to paragraph 1.9 of schedule [●] the date falling 24 months from but excluding the date of grant of the Planning Permission;

"Sums Due" means all sums due to a Chargee of the Affordable Housing Units and/or the Additional Phase 1 Affordable Housing Units pursuant to the terms of its Charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses;

"Surplus" means, in relation to each Updated Viability Appraisal, the amount in pounds sterling that the Residual Land Value exceeds the Benchmark Land Value

"Target Return " means an return on Gross Development Value of XX per cent, being the target return for the Development;

"Target Rents" means rents for Social Rented Housing conforming with the pattern produced by the rents formula set out in the Rent Guidance and subject to the limit on rent changes and rent caps set out therein and subject to indexation as permitted by the Rent Standard or Rent Guidance from time to time;

"Updated Viability Appraisal" means, as part of each Viability Review, an update to the Application Stage Viability Appraisal which must meet the requirements in annex 1 to schedule [●];

"Viability Review" means the Early Stage Review, the Mid-Stage Reviews or the Late Stage Review, as the context requires;

SCHEDULE 1

AFFORDABLE HOUSING

1. AFFORDABLE HOUSING MINIMUM AND MAXIMUM PROVISION

- 1.1 The Owners shall provide the Affordable Housing Units in accordance with the remaining paragraphs of this schedule 5.
- 1.2 The Affordable Housing Units shall together not exceed 50 per cent (by Habitable Room) of the Dwellings PROVIDED THAT the tenure split of the Affordable Housing Units accords with the Affordable Housing Target Tenure Split.

2. PROVISION OF AFFORDABLE HOUSING

- 2.1 The Owner hereby covenants with the X and the Council:

Outline Sub Phases

- (a) as part of an application for reserved matters approval for each Outline Sub Phase to submit details of the location, sizes and tenures of the Affordable Housing Units in that Outline Sub Phase in accordance with the Agreed Mix (Outline Phases);
- (b) not to Implement each Outline Phase until details of the location, sizes and tenures of the Affordable Housing Units in that Outline Phase in accordance with the Agreed Mix (Outline Phases) have been approved by the Council;
- (c) to construct and complete the Affordable Housing Units in each Outline Sub Phase in accordance with the Planning Permission and the details approved pursuant to paragraph 2.1(d);
- (d) not to First Occupy or permit or suffer First Occupation of more than xxx per cent of the Market Housing Units in each Outline Sub Phase until:
 - (i) xx percent of the Affordable Housing Units in that Outline Phase have been completed and are ready and available for Occupation as Affordable Housing; and
 - (ii) the Owner has transferred the unencumbered freehold of or granted a leasehold interest of not less than 125 years at a peppercorn rent of all the Affordable Housing Units in that Outline Phase to an Affordable Housing Provider;

General

- (e) to ensure that all of the Affordable Housing are designed and built to meet the relevant London Housing Design and Quality Standards to the extent compatible with the Planning Permission;
- (f) not to Occupy or permit or suffer the Occupation of any London Affordable Rented Housing Units to be provided as London Affordable Rented Housing until nomination arrangements are in place between the Council and the relevant Affordable Housing Provider(s) in accordance with the Newham Nominations Agreement;
- (g) not to Occupy or permit the Occupation of the Affordable Housing Units and for any purpose other than for Affordable Housing;
- (h) to provide the London Affordable Rented Housing Units as London Affordable Rented Housing and not to Occupy these units to be provided as London Affordable Rented

Housing other than as London Affordable Rented Housing for the life of the Development;

- (i) to provide the London Shared Ownership Housing Units as London Shared Ownership Housing and not to Occupy these units other than as London Shared Ownership Housing for the life of the Development;
- (j) to provide the Social Rented Housing Units as Social Rented Housing and not to Occupy these units to be other than as Social Rented Housing for the life of the Development;
- (k) to provide the London Living Rent Housing Units as London Living Rent Housing and not to Occupy these units other than as London Living Rent Housing for the life of the Development; and
- (l) to provide the Discounted Market Rent Housing Units as Discounted Market Rent Housing and not to Occupy these other than as Discounted Market Rent Housing for the life of the Development.

2.2 The Owner covenants with the Council:

- (a) as part of an application for reserved matters approval for each of Sub Phase to submit a statement setting out the mix of the tenures of the Dwellings in the previous Sub Phases and an updated indicative mix of the tenures of the Dwellings in future Phases demonstrating how the latest Affordable Housing Enhanced Minimum approved by the Council and the Affordable Housing Target Tenure Split will be delivered;
- (b) to ensure that no applications for reserved matters approval will prejudice the ability of the Development to comply with the latest Affordable Housing Enhanced Minimum approved by the Council and the Affordable Housing Target Tenure Split; and

2.3 The obligations, restrictions and covenants contained in this schedule [●] shall not be binding on and shall cease to apply to:

- (a) any Occupier of any Affordable Housing Unit or Additional Phase 1 Affordable Housing Unit who has exercised a statutory right to acquire the whole of the freehold or of a leasehold estate of that Affordable Housing Unit or Additional Phase 1 Affordable Housing Unit under section 180 of the Housing and Regeneration Act 2008 or any other statutory right in force from time to time entitling tenants of an Affordable Housing Provider to purchase their homes and that Affordable Housing Unit or Additional Phase 1 Affordable Housing Unit shall thereafter be free of the obligations, restrictions and covenants contained in this schedule [●]; and
- (b) any Chargee from time to time who seeks to dispose of any Affordable Housing Unit or Additional Phase 1 Affordable Housing Unit pursuant to its power of sale exercised pursuant to default of the terms of its Charge (and any successors in title thereto or persons deriving title under such Chargee) and who has first complied with the provisions of paragraph 3 below.

3. **CHARGE IN POSSESSION**

3.1 In order to benefit from the protection granted by paragraph 2.3(b) above, a Chargee must:

- (a) prior to seeking to dispose of the relevant Affordable Housing Units or Additional Phase 1 Affordable Housing Units serve a Default Notice:
 - (i) on the Council by delivery by hand to the Council's offices at between [9.30 a.m. and 5 p.m.] [**Council to confirm address and opening hours**] on a

Working Day or using first class registered post to the Council's offices at [London Borough of Newham, Newham Dockside, First Floor West Wing, Dockside Road, London E16 2QU] in either case addressed to the Director Regeneration and Planning of the Council; and

- (b) when serving the Default Notice, provide to the Council official copies of the title registers and plans for the relevant Affordable Housing Units or Additional Phase 1 Affordable Housing Units; and
 - (c) subject to paragraph 3.6 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units or Additional Phase 1 Affordable Housing Units before the expiry of the Moratorium Period except in accordance with paragraph 3.3 below.
- 3.2 From (and including) the first day of the Moratorium Period to (but excluding) the date falling one calendar month later (the "**Intention Notice Period**"), the Council may serve an Intention Notice on the Chargee.
- 3.3 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Chargee and the party who first served the Intention Notice (or that party's nominated substitute Affordable Housing Provider) ("**the Buyer**")), the Chargee will grant to the Buyer an exclusive option to purchase the relevant Affordable Housing Units which shall contain the following terms:
- (a) the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed in writing between the parties to the Option (acting reasonably));
 - (b) the price for the sale and purchase will be agreed in accordance with paragraph 3.4(b) below or determined in accordance with paragraph 3.5 below;
 - (c) provided that the purchase price has been agreed in accordance with paragraph 3.4(b) below or determined in accordance with paragraph 3.5 below, but subject to paragraph 3.3(d) below, the Buyer may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing Units or Additional Phase 1 Affordable Housing Units at any time prior to the expiry of the Moratorium Period;
 - (d) the Option will expire upon the earlier of:
 - (i) notification in writing by the Buyer to the Chargee that it no longer intends to exercise the Option PROVIDED THAT the Buyer (if not the X) has first obtained the X's written approval; and
 - (ii) the expiry of the Moratorium Period; and
 - (e) any other terms agreed in writing between the parties to the Option (acting reasonably).
- 3.4 Following the service of the Intention Notice:
- (a) the Chargee shall use reasonable endeavours to reply to enquiries raised by the Buyer in relation to the Affordable Housing Units as expeditiously as possible having regard to the length of the Moratorium Period; and
 - (b) the Buyer and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units which shall be the higher of:

- (i) the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing Units or Additional Phase 1 Affordable Housing Units contained in this schedule [●]; and
- (ii) (unless otherwise agreed in writing between the Buyer and the Chargee) the Sums Due.

3.5 On the date falling 10 Working Days after service of the Intention Notice, if the Buyer and the Chargee have not agreed the price pursuant to paragraph 3.4(b)(i) above:

- (a) the Buyer and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;
- (b) if, on the date falling 15 Working Days after service of the Intention Notice, the Buyer and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute;
- (c) the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 3.4(b)(i) above, due regard being had to all the restrictions imposed upon the relevant Affordable Housing Units or Additional Phase 1 Affordable Housing Units by this Deed;
- (d) the independent surveyor shall act as an expert and not as an arbitrator;
- (e) the fees and expenses of the independent surveyor are to be borne equally by the parties;
- (f) the independent surveyor shall make his/her decision and notify the Buyer and the Chargee of that decision no later than 14 days after his/her appointment and in any event within the Moratorium Period; and
- (g) the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).

3.6 The Chargee may dispose of the relevant Affordable Housing Units free from the obligations, restrictions and other provisions contained in this schedule [●] which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:

- (a) the Council has not served an Intention Notice before the expiry of the Intention Notice Period; or
- (b) the Chargee has executed an agreement to grant the Option in accordance with paragraph 3.3 above and has delivered and unconditionally released that agreement to the Buyer for dating and completion but the Buyer has not entered into that agreement with the Chargee on or before the date on which the Moratorium Period expires; or
- (c) the Buyer has not exercised the Option and completed the purchase of the relevant Affordable Housing Units on or before the date on which the Moratorium Period expires; or

- (d) the Buyer has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option PROVIDED THAT the Buyer (if not the X) has first obtained the X's written approval.
- 3.7 The Council (or the Council's nominated substitute Affordable Housing Provider) (as appropriate) and the Chargee shall act reasonably in fulfilling their respective obligations under paragraphs 3.1 to 3.6 above (inclusive).
- 3.8 If TfL or the Council notifies the Owner in writing of any change of its address to which a Default Notice must be delivered by hand or by first class registered post under paragraph 3.1, references to the old address in paragraph 3.1 and the definition of "Date of Deemed Service" in clause 1.1 shall be read as references to the new address.

4. **SERVICE CHARGES**

The Owner hereby covenants with the Council:

- (a) [to ensure that the design and construction of the Development is carried out in such a way as to minimise any Service Charges for the Affordable Housing Units
- (b) not later than three months before First Occupation of the Affordable Housing Units in each Phase, to agree with the Council and the relevant Affordable Housing Provider(s) a Service Charge Cap for that Phase;
- (c) not to First Occupy any Affordable Housing in each Phase until the Service Charge Cap for that Phase has been agreed with the Council and the relevant Affordable Housing Provider(s);
- (d) to ensure that the Service Charges for each Affordable Housing Unit do not exceed the Service Charge Cap for that Phase Indexed unless the Council agrees otherwise in writing;
- (e) to ensure that the amount of the Service Charges shall not be more than the actual costs of the services provided.

5. **PUBLIC SUBSIDY**

Nothing in this Deed shall prejudice any contractual obligation on the Owner to repay or reimburse any Public Subsidy using any surplus profit that is to be retained by the Developer following [a viability review].

Any Public Subsidy provided will be used in its entirety to support the delivery of Additional Affordable Housing.

6. **MONITORING**

The Owner covenants with the Council to provide annual returns to the Council the first of such return to be submitted not later than one month after First Occupation of the Affordable Housing Units with details of the tenant of each Affordable Housing Unit or Additional Phase 1 Affordable Housing Units and its tenure which shall include, where consented to by the individual concerned:

- (a) the Household Income of such purchaser or tenant;
- (b) the ethnicity of such purchaser or tenant (where available);
- (c) the total initial monthly housing costs for each London Affordable Rented Housing Unit, including service and estate charges, but showing such charges as separate figures;

- (d) the location of the purchaser or tenant's previous accommodation by local authority (where available);
- (e) the tenant's present occupation (where available); and
- (f) for each London Shared Ownership Housing Unit, the purchase price of the unit and the percentage equity share bought, and details of all staircasing receipts during that period

PROVIDED THAT such obligation shall not be required where it would be unlawful for the Owner to provide or process the information.

7. **FAMILY HOUSING**

The Owner covenants with the X and the Council:

- (a) as part of an application for reserved matters approval for each Outline Phase to submit a statement setting out the mix of the sizes of the Dwellings in the previous Phases and an updated indicative mix of the sizes of the Dwellings in future Phases demonstrating how the Family Housing Requirements will be met;
- (b) to ensure that no applications for reserved matters approval will prejudice the ability of the Development to meet the Family Housing Requirements; and
- (c) not to Implement Phase 11 unless the delivery of the Dwellings in Phase 11 will enable the Development to meet the Family Housing Requirements.

SCHEDULE 2

VIABILITY REVIEWS

PART 1: EARLY STAGE REVIEW

1. EARLY STAGE REVIEW TRIGGER

- 1.1 The Owner shall the Council in writing of the date on which it considers that Substantial Implementation has been achieved no later than 10 Working Days after such date and such notice shall be accompanied by full documentary evidence on an open book basis to enable the Council to independently assess whether Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 1.2 No later than five Working Days after receiving a written request from the X or the Council, the Owner shall provide to the Council any additional documentary evidence reasonably requested by the Council to enable the Council to determine whether Substantial Implementation has been achieved on or before the Substantial Implementation Target Date.
- 1.3 Following the Owner's notification pursuant to paragraph 1.1, the Owner shall afford the Council access to the Site to inspect and assess whether or not the works which have been undertaken achieve Substantial Implementation PROVIDED ALWAYS THAT the Council shall:
 - (a) provide the Owner with reasonable written notice of its intention to carry out such an inspection;
 - (b) comply with relevant health and safety legislation; and
 - (c) at all times be accompanied by the Owner or its agent.
- 1.4 No later than 20 Working Days after the Council receives
 - (a) notice pursuant to paragraph 1.1; or
 - (b) if the Council makes a request under paragraph 1.2, the additional documentary evidence,

the Council) shall inspect the Site and thereafter provide written confirmation to the Owner within 10 Working Days of the inspection date as to whether or not the Council (and, if the X has inspected the Site, the X) considers that Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 1.5 Subject to paragraph 1.6 below, if the Council or the X notifies the Owner that the Council or the X considers that Substantial Implementation has not been achieved then paragraphs 1.1 to 1.6 (inclusive) shall continue to apply mutatis mutandis until the Council (and, if the X has elected to inspect the Site, the X) has notified the Owner pursuant to paragraph 1.4 that Substantial Implementation has been achieved.
- 1.6 If the X elects to inspect the Site, its decision as to whether Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date (as notified to the Owner under paragraph 1.4 above) shall override the Council's decision in relation to the same (if any).

- 1.7 The Owner shall not Occupy the Development or any part thereof until:
- (a) the X (or, only if the X has not elected to inspect the Site, the Council) has notified the Owners pursuant to paragraph 1.4 that Substantial Implementation has been achieved on or before the Substantial Implementation Target Date;
 - (b) the X has confirmed in writing pursuant to paragraph 3.9 its agreement with the Council that no Surplus has arisen; or
 - (c) if the X has confirmed in writing pursuant to paragraph 3.9 that a Surplus has arisen, the X has confirmed pursuant to paragraph 3.9 its approval of an Enhanced Mix (Phase 1) and Additional Phase 1 Affordable Housing Scheme.

2. **SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION**

Where Substantial Implementation has not occurred before the Substantial Implementation Target Date (as determined by the Council under paragraph 1.4 (subject to paragraph 1.6 above):

- (a) the Owner shall submit to the Council the Development Viability Information no later than 20 Working Days after the date on which the Owner is notified pursuant to paragraph 1.4 that Substantial Implementation has been achieved, on the basis that the Council and the X may make such information publicly available; and
- (b) paragraph 3 shall apply.

3. **ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION**

- 3.1 The Council shall assess the Development Viability Information and assess whether in its view a Surplus has arisen and whether the Development Viability Information is approved and for the avoidance of doubt the Council (acting reasonably) will be entitled to rely on its own evidence subject to such evidence also being provided to the Owner.

- 3.2 The Council may appoint an External Consultant to assess the Development Viability Information PROVIDED THAT:

- (a) the Council shall not appoint any External Consultant without first consulting the X as to the identity of such External Consultant and the terms of his/her appointment;
- (b) the External Consultant(s) must be appointed not later than 10 Working Days after submission of the Development Viability Information; and
- (c) any External Consultant(s) so appointed will report to the Council:
 - (i) not later than 20 Working Days after the date of receipt by the External Consultant(s) of the Development Viability Information, if no request is made under paragraph 3.3 below; or
 - (ii) not later than 20 Working Days after the date of receipt by the External Consultant(s) of the information submitted pursuant to paragraph 3.4 below, if a request is made under paragraph 3.3 below.

- 3.3 Not later than 20 Working Days after submission of the information under paragraph 2(a) above, the Council and/or an External Consultant may request in writing from the Owner further information or supporting evidence for the relevant Development Viability Information.

- 3.4 The Owners shall provide any reasonably required information to, the Council or the External Consultant(s) (as applicable and with copies to the other parties) within 10 Working Days of receiving a request under paragraph 3.3 above.
- 3.5 The process in paragraphs 3.3 and 3.4 may be repeated until the X, the Council and/or the External Consultant(s) (as applicable) has all the information it reasonably requires to assess whether in their view a Surplus has arisen, with the periods in 3.2(c)(ii), 3.3, 3.4 and 3.6(b) restarting accordingly.
- 3.6 Not later than:
- (a) 35 Working Days from the Development Viability Information above, if no request is made under paragraph 3.3 above; or
 - (b) 25 Working Days from the date of receipt by the Council of the information submitted pursuant to paragraph 3.4 above, if a request is made under paragraph 3.3 above
- the Council shall notify the Owners in writing of the Council's intended decision as to whether any Surplus has arisen and whether the Development Viability Information is approved.
- 3.7 Where the Council concludes that a Surplus has arisen but the Owner's initial submission concluded otherwise or if any part of the Additional Affordable Housing Statement or Additional Phase 1 Affordable Housing Scheme submitted is not approved by the Council, the Owner shall provide an Additional Affordable Housing Statement and/or Additional Phase 1 Affordable Housing Scheme (as appropriate) to the Council (with a copy to the X) for approval (such approval not to be unreasonably withheld or delayed) within 15 Working Days of the date on which it receives the Council's notice pursuant to paragraph 3.6.
- 3.8 If an Additional Affordable Housing Statement and/or Additional Phase 1 Affordable Housing Scheme is submitted to the Council pursuant to paragraph 3.7 above, the Council shall notify the X and the Owners in writing of the Council's intended decision as to whether the submitted Additional Affordable Housing Statement and/or Additional Phase 1 Affordable Housing Scheme is approved within 15 Working Days of receipt of the submission and, if the Additional Affordable Housing Statement and/or Additional Phase 1 Affordable Housing Scheme is not approved, paragraph 3.7 and this paragraph 3.8 shall continue to apply mutatis mutandis.
- 3.9 Not later than 15 Working Days after receipt of the Council's notification under paragraph 3.6 above or, if later, the Council's notification under paragraph 3.8 above, the X shall confirm in writing to the Council and the Owner whether it agrees with the Council's intended decision in paragraphs 3.6 and/or 3.8 as soon as reasonably practicable after receiving notice of that intended decision and the X (acting reasonably) will be entitled to rely on its own evidence subject to such evidence also being provided to the Owners and the Council and:
- (a) if the X agrees with the Council's intended decision, paragraph 3.10 below shall apply (if relevant); and
 - (b) if the X disagrees with the Council's intended decision:
 - (i) it shall provide reasons to which the Owner and the Council shall have regard;
 - (ii) the Owner shall submit, or re-submit, an Additional Affordable Housing Statement and/or Additional Phase 1 Affordable Housing Scheme for approval by the Council, if required by the X, not later than 20 Working Days after the X's confirmation pursuant to this paragraph 3.9;
 - (iii) the Council shall notify the X and the Owner in writing of its intended decision as to whether the re-submitted Additional Affordable Housing Statement

and/or Additional Phase 1 Affordable Housing Scheme are approved not later than 20 Working Days after the Owner's submission pursuant to paragraph 3.9(b)(ii) above; and

(iv) this paragraph 3.9 shall apply mutatis mutandis.

3.10 If the Council's assessment pursuant to paragraph 3.6 concludes, and the X has confirmed in writing its agreement with such conclusion in accordance with paragraph 3.9(a) above, that:

- (a) a Surplus arises but the Affordable Housing Surplus is insufficient to enable an Affordable Housing Enhanced Minimum; or
- (b) a Surplus arises but the Affordable Housing Surplus cannot deliver a whole number of Additional Phase 1 Affordable Housing Units

then the Owner shall pay the Affordable Housing Surplus or, in the case of paragraph 3.10(b), the remainder of the Affordable Housing Surplus that is insufficient to provide a whole Additional Phase 1 Affordable Housing Unit to the Council as a financial contribution towards offsite Affordable Housing not later than 30 Working Days after the X's confirmation.

3.11 The Owner shall not First Occupy or permit or suffer First Occupation of the Market Housing Units in Phase 1 until it has paid any remaining Affordable Housing Surplus pursuant to paragraph 3.10 to the Council towards the delivery of offsite Affordable Housing within the Local Area.

3.12 The Owners shall pay the Council's costs which are reasonably and properly incurred in assessing the Development Viability Information including those of the External Consultant(s) within 20 Working Days of receipt of a written request for payment.

PART 2: MID-STAGE REVIEWS

4. MID-STAGE REVIEW TRIGGERS

[submission of each RMAs].

5. SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION

Not later than 10 Working Days after the Mid-Stage Review Date notified to the Council pursuant to paragraph 4, the Owner shall submit to the Council the Development Viability Information on the basis that the Council may make such information publicly available.

6. ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION

6.1 The Council shall assess the Development Viability Information and assess whether in its view a Surplus has arisen and whether the submitted Development Viability Information is approved and for the avoidance of doubt the Council (acting reasonably) will be entitled to rely on its own evidence subject to such evidence also being provided to the Owner.

6.2 The Council appoint an External Consultant to assess the Development Viability Information PROVIDED THAT:

- (a) the External Consultant(s) must be appointed not later than 10 Working Days after submission of the Development Viability Information; and
- (b) any External Consultant(s) so appointed will report to the Council:

- (i) not later than 20 Working Days after the date of receipt by the External Consultant(s) of the Development Viability Information , if no request is made under paragraph 6.3 below; or
 - (ii) not later than 20 Working Days after the date of receipt by the External Consultant(s) of the information submitted pursuant to paragraph 6.4 below, if a request is made under paragraph 6.3 below.
- 6.3 Not later than 20 Working Days after submission of the Development Viability Information, , the Council and/or an External Consultant may request in writing from the Owner further information or supporting evidence for the relevant Development Viability Information.
- 6.4 The Owners shall provide any reasonably required information to the Council or the External Consultant(s) (as applicable and with copies to the other parties) within 10 Working Days of receiving a request under paragraph 6.3 above.
- 6.5 The process in paragraphs 6.3 and 6.4 may be repeated until the Council and/or the External Consultant(s) (as applicable) has all the information it reasonably requires to assess whether in their view a Surplus has arisen, with the periods in 6.2(c)(ii), 6.3, 6.4 and 6.7(b) restarting accordingly.
- 6.6 If the Council and/or the External Consultant(s) determines following receipt of the Development Viability Information that the Mid-Stage Review Date has not occurred, the Council (each acting reasonably) may require the Owner to promptly submit additional Development Viability Information or to re-submit the the Development Viability Information upon the occurrence of the Mid-Stage Review Date (as determined by the X and/or the Council).
- 6.7 Not later than:
 - (a) 35 Working Days from the latest submission of the Development Viability Information, if no request is made under paragraph 6.3 above; or
 - (b) 25 Working Days from the date of receipt by the Council of the information submitted pursuant to paragraph 6.4 above, if a request is made under paragraph 6.3 above

the Council shall notify the Owners in writing of the Council's intended decision as to whether any Surplus has arisen and whether the submitted Development Viability Information is approved.
- 6.8 Where the Council concludes that a Surplus has arisen but the Owner's initial submission concluded otherwise or if any part of the Additional Affordable Housing Statement initially submitted is not approved by the Council, the Owner shall provide the Additional Affordable Housing Statement to the Council for approval (such approval not to be unreasonably withheld or delayed) within 15 Working Days of the date on which it receives the Council's notice pursuant to paragraph 6.6.
- 6.9 If an Additional Affordable Housing Statement is submitted to the Council pursuant to paragraph 6.7 above, the Council shall notify the X and the Owners in writing of the Council's intended decision as to whether the submitted Additional Affordable Housing Statement is approved within 15 Working Days of receipt of the submission and, if the submitted Additional Affordable Housing Statement is not approved, paragraph 6.7 and this paragraph 6.8 shall continue to apply mutatis mutandis.
- 6.10 Not later than 15 Working Days after receipt of the Council's notification under paragraph 6.6 above or, if later, the Council's notification under paragraph 6.8 above, the X shall confirm in writing to the Council and the Owner whether it agrees with the Council's intended decision in paragraphs 6.6 and/or 6.8 as soon as reasonably practicable after receiving notice of that intended decision and the X (acting reasonably) will be entitled to rely on its

own evidence subject to such evidence also being provided to the Owners and the Council and:

- (a) if the X agrees with the Council's intended decision, paragraph 6.11 below shall apply (if relevant); and
- (b) if the X disagrees with the Council's intended decision:
 - (i) it shall provide reasons to which the Owner and the Council shall have regard;
 - (ii) the Owner shall submit, or re-submit, an Additional Affordable Housing Statement for approval by the Council, if required by the X, not later than 20 Working Days after the X's confirmation pursuant to this paragraph 6.9;
 - (iii) the Council shall notify the X and the Owner in writing of its intended decision as to whether the re-submitted Additional Affordable Housing Statement is approved not later than 20 Working Days after the Owner's submission pursuant to paragraph 6.9(b)(ii) above; and
 - (iv) this paragraph 6.9 shall apply mutatis mutandis.

6.11 If the Council's assessment pursuant to paragraph 6.6 concludes, and the X has confirmed in writing its agreement with such conclusion in accordance with paragraph 6.9(a) above, that a Surplus arises but the Affordable Housing Surplus is insufficient to enable an Affordable Housing Enhanced Minimum, the Owner shall pay the Affordable Housing Surplus to the Council as a financial contribution towards offsite Affordable Housing not later than 30 Working Days after the X's confirmation.

6.12 The Owner shall not First Occupy or permit or suffer First Occupation of the Market Housing Units in Phase 5 until:

- (a) the X has approved the Council's intended decision under paragraph 6.9(a); and
- (b) it has paid any remaining Affordable Housing Surplus pursuant to paragraph 6.11 to the Council towards the delivery of offsite Affordable Housing within the Local Area.

6.13 The Owners shall pay the Council's costs which are reasonably and properly incurred in assessing the Development Viability Information including those of the External Consultant(s) within 20 Working Days of receipt of a written request for payment.

7. LATE STAGE VIABILITY REVIEW TRIGGER

The Owner shall notify the Council in writing of the anticipated Late Stage Review Date not less than 20 Working Days in advance of that date.

8. SUBMISSION OF DEVELOPMENT VIABILITY INFORMATION

No later than 20 Working Days after the Late Stage Review Date notified to the Council, the Owner shall submit to the Council the Development Viability Information on the basis that the Council may make such information publicly available.

9. ASSESSMENT OF DEVELOPMENT VIABILITY INFORMATION

9.1 The Council shall assess the Development Viability Information and assess whether a Late Stage Review Contribution is payable subject to the Late Stage Review Cap and, if so, how much and the Council (both acting reasonably) will be entitled to rely on its own evidence subject to such evidence being relevant and also being provided to the Owners.

9.2 The Council may appoint an External Consultant to assess the Development Viability Information PROVIDED THAT:

- (a) the Council shall not appoint any External Consultant without first consulting the X as to the identity of such External Consultant and the terms of his/her appointment;
- (b) the External Consultant(s) must be appointed not later than 10 Working Days after submission of the Development Viability Information; and
- (c) any External Consultant(s) so appointed will report to the Council or the X (as appropriate, with a copy to the other) or both (if the External Consultant is jointly appointed by the Council and the X):
 - (i) not later than 20 Working Days after the date of receipt by the External Consultant(s) of the Development Viability Information, if no request is made under paragraph 15.3 below; or
 - (ii) not later than 20 Working Days after the date of receipt by the External Consultant(s) of the information submitted pursuant to paragraph 15.4 below, if a request is made under paragraph 15.3 below.

9.3 Not later than 20 Working Days after submission of the Development Viability Information, the X, the Council and/or an External Consultant may request in writing from the Owners further information or supporting evidence of the Development Viability Information.

9.4 The Owner shall provide any reasonably required information to the X, the Council or the External Consultant(s) (as applicable and with copies to the other parties) within 10 Working Days of receiving a request under paragraph 15.3 above.

9.5 The process in paragraphs 15.3 and 15.4 may be repeated until the X, the Council and/or the External Consultant(s) (as applicable) has all the information it reasonably requires to assess whether in its view any Late Stage Review Contribution is required subject to the Late Stage Review Cap, with the periods in paragraphs 15.2(c)(ii), 15.3, 15.4 and 15.7(b) restarting accordingly.

9.6 If the X, the Council and/or External Consultant(s) determines following receipt of the Development Viability Information that the Late Stage Review Date has not occurred, the X and/or the Council (each acting reasonably) may require the Owner to promptly submit additional Development Viability Information or to re-submit the Development Viability Information upon the occurrence of the Late Stage Review Date (as determined by the X and/or Council).

9.7 Not later than:

- (a) 35 Working Days from the latest submission of the Development Viability Information, if no request is made under paragraph 15.3 above; or
- (b) 25 Working Days from the date of receipt by the Council of any information provided to the Council pursuant to paragraph 15.4 above, if a request is made under paragraph 15.3 above

the Council shall notify the X and the Owners in writing of its intended decision as to whether any Late Stage Review Contribution is required and, if so, how much.

9.8 Not later than 15 Working Days after receipt of the Council's notification under paragraph 15.7 above, the X shall confirm in writing to the Council and the Owner whether it agrees with the Council's intended decision in paragraph 15.7 as soon as reasonably practicable after receiving notice of that intended decision, such confirmation to include, if the X disagrees with the amount of the Late Stage Review Contribution determined by the Council,

the X's decision as to the amount of the Late Stage Review Contribution and the X (acting reasonably) will be entitled to rely on its own evidence subject to such evidence being relevant and also being provided to the Owner and the Council.

9.9 If the X notifies the Owner pursuant to paragraph 15.8 a Late Stage Review Contribution is required:

- (a) the Owner shall pay the Late Stage Review Contribution (as determined by the X) to the Council within 40 Working Days of the date on which such notice is received; and
- (b) the Owner shall not Occupy more than [●] per cent of the Dwellings until the Late Stage Review Contribution (as determined by the X) has been paid in full to the Council.

9.10 The Owners shall pay the Council's costs which are reasonably and properly incurred in assessing the Development Viability Information including those of the External Consultant(s) within 20 Working Days of receipt of a written request for payment.

9.11 The Owners shall not Occupy more than [●] per cent of the Dwellings until the X has notified the Owner in writing of its decision pursuant to paragraph 15.8 as to whether any Late Stage Review Contribution is required.

9.12 The Late Stage Review Contribution shall not be higher than the Late Stage Review Cap, and in the event that the Affordable Housing Surplus is greater than the Late Stage Review Cap then the Late Stage Review Contribution shall be deemed to be reduced to a sum that is equal to the Late Stage Review Cap (but shall not be less than zero).

10. **MONITORING**

10.1 The Council covenants with the X to report to the X through the Planning London Datahub the information in paragraph 16.2 below (to the extent applicable) as soon as reasonably practicable after each approval by the X of an Additional Affordable Housing Statement pursuant to paragraphs 3.9, 6.10, 9.10 and 12.9.

10.2 The information referred to in paragraph 14.1 above is:

- (a) the number and tenure of the Additional Phase 1 Affordable Housing Units (if any) and the number of Habitable Rooms in the Additional Phase 1 Affordable Housing Units (if any);
- (b) any changes in the tenure or affordability of the Affordable Housing Units; and
- (c) the amount of any financial contribution payable towards offsite Affordable Housing pursuant to paragraphs 3.10, 6.11, 9.11 and 12.10.

11. **DISPUTE RESOLUTION**

11.1 [*referral to arbitration*]

ANNEX 1 TO SCHEDULE [●]

REQUIREMENTS FOR UPDATED VIABILITY APPRAISALS AND APPLICATION OF SURPLUS

1. BASIS OF EACH REVIEW

- 1.1 Each Updated Viability Appraisal will re-run the base appraisal in the Application Stage Viability Appraisal using the same software with "Day 1" being the date of this Deed.
- 1.2 Each Updated Viability Appraisal will reflect actual costs incurred, current values and actual areas at the Relevant Review Date which will be substituted for the forecasts in the Application Stage Viability Appraisal.
- 1.3 All costs and revenues will be reviewed other than land costs which will be fixed.
- 1.4 The minimum level of Affordable Housing is the Affordable Housing Minimum, or if an Additional Affordable Housing Statement has been approved, the latest previously approved Affordable Housing Enhanced Minimum.

2. GENERAL ASSUMPTIONS

- 2.1 Benchmark land value will be fixed at £xxx subject to indexation by reference to an average of the changes in the House Price Index and the BCIS All-in Tender Price Index.apportioned for each RMA application based on £xxx per market residential unit and treated as though incurred at the date of approval of the RMA.
- 2.2 Overall programme length will be [xx years from Commencement to the Occupation of the last Dwelling].
- 2.3 Target rate of return is fixed xxx % (based on blend)
- 2.4 Assumptions regarding gross external areas, gross internal areas, net internal areas and net saleable areas will be as set out in the Application Stage Viability Appraisal unless otherwise agreed in writing by the X and the Council.

3. COSTS

- 3.1 Non-eligible plot and site-wide costs are set out in annex 2 to schedule [●].
- 3.2 Costs that are both site-wide and plot-specific must not be double counted.
- 3.3 Development management fees, overheads and joint venture costs are excluded.
- 3.4 Actual costs will be supported by evidence to the X's and the Council's satisfaction including (but not limited to) details of payments made or agreed to be paid in a building contract, receipted invoices and costs certified by the Owner's quantity surveyor, costs consultant or agent.

4. VALUES

- 4.1 The revenues and timings of receipts for Affordable Housing Units and Additional Phase 1 Affordable Housing Units will be evidenced through Market Value where the relevant units are not disposed to an Affordable Housing Provider through an arms-length transaction between the Affordable Housing Provider and the Owner.

5. AREAS

To the extent Phases and/or Buildings have reserved matters approval, actual floor areas should be substituted for estimated areas.

6. **APPLICATION OF SURPLUS**

- 6.1 This paragraph explains how the Affordable Housing Surplus will be used to increase the Affordable Housing Minimum or the latest previously approved Affordable Housing Enhanced Minimum.
- 6.2 In the case of the Early Stage Review, the increase to the Affordable Housing Minimum is equivalent to the number of Affordable Housing Units that must be added to the approved Updated Viability Appraisal for the developers return to reduce to the Target Return .
- 6.3 In the case of the Mid-Stage Reviews the increase to the Affordable Housing Minimum is equivalent to the number of Affordable Housing Units that must be added to the approved Updated Viability Appraisal for the developer's return to reduce to the Target Return.

7. **APPLICATION OF PUBLIC SUBSIDY**

- 7.1 As part of each Viability Review, any Public Subsidy will be added as income to the Updated Viability Appraisal after completion of the processes set out at 6.2 and 6.3.
- 7.2 The Affordable Housing Minimum or the Enhanced Affordable Housing Minimum will be increased by the number of Affordable Housing Units that must be added to the Updated Viability Appraisal for the developer's return to reduce to the Target Return.

ANNEX 2 TO SCHEDULE [●]

INELIGIBLE COSTS

The following costs are considered to be included within the Developer's Return and cannot be included within the Updated Viability Appraisal as Development Costs.

This list is not exhaustive but serves to illustrate the type of costs that cannot be included as they are considered Developer's Overheads. For a cost to be considered 'ineligible', must not directly relate to the delivery of the construction of the development.

- Staff salaries (apart from that directly relate to the supervision and delivery of construction work if carried out by the Developer's staff rather than external surveyors).
- Supervision of staff and contractors (where this is an internal staff supervisory role, not an external consultant).
- Staff Training (apart from construction related training).
- Insurance (apart from any necessary insurance relation to the development site).
- Office costs (rent, maintenance, refurbishments or alterations, security, lighting, heating, cooling, telephone and internet services, couriers, equipment, general office supplies).
- Taxes.
- Finance costs or interest payments.
- Accounting costs.
- Legal fees (apart from legal fees that relate to the construction, demolition or delivery of the development).
- Depreciation.
- Advertising
- Consulting services (apart from any consulting services incorporated within the professional fees that relate planning or construction of the development).

ANNEX 3 TO SCHEDULE [●]
SITE-WIDE INFRASTRUCTURE COSTS

Example

ANNEX 4 TO SCHEDULE [●]

APPLICATION STAGE VIABILITY APPRAISAL

[GLA FORMULA 4]FOR CALCULATING LATE STAGE REVIEW CAP BASED ON 50% OF THE UPLIFT IN UNITS BEING PROVIDED AS AFFORDABLE HOUSING

X = Late Stage Review Cap

$$X = (((A * D) - (B * D)) * E) + (((A * D) - (C * D)) * F)$$

Where:

A = Average Market Housing Value (£)

B = Average Low Cost Rented Housing Value (£)

C = Average London Shared Ownership Housing Value (£)

D = 23 m², being the average Habitable Room size for the Development

E = [●]¹ Habitable Rooms, being the shortfall in London Affordable Rented Housing (by Habitable Room) to be provided against the target requirement to provide 30 per cent (by Habitable Room) of the Dwellings as London Affordable Rented Housing

F = [●]² Habitable Rooms, being the shortfall in London Shared Ownership Housing (by Habitable Room) to be provided against the target requirement to provide 20 per cent (by Habitable Room) of the Dwellings as London Shared Ownership Housing

¹ To be calculated as at the Late Stage Review Date. The number of Habitable Rooms of London Affordable Rented Housing "to be provided" is the number required to be provided under this Deed as calculated by reference to the Affordable Housing Minimum and Affordable Housing Target Tenure Split.

² To be calculated as at the Late Stage Review Date. The number of Habitable Rooms of London Shared Ownership Housing "to be provided" is the number required to be provided under this Deed as calculated by reference to the Affordable Housing Minimum and Affordable Housing Target Tenure Split.

[REDACTED]

From: [REDACTED] <[REDACTED]@bexley.gov.uk>
Sent: 15 February 2023 11:36
To: [REDACTED]
Subject: RE: Lesnes Estate, Thamesmead - Policy D12 Fire Safety Update (GLA ref: 2021/0853/S2, LPA ref: 21/01948/OUTEA)

Hi [REDACTED]
The S106 is currently with our Legal team and I'm expecting a draft to review shortly. Unfortunately there have been delays with this, for various reasons, but hopefully we can move forwards with this soon.
Kind regards

[REDACTED]
Major Projects Planning Officer / Deputy Area Manager
London Borough of Bexley
[REDACTED]

From: [REDACTED] <[REDACTED]@london.gov.uk>
Sent: 15 February 2023 11:33
To: [REDACTED] <[REDACTED]@bexley.gov.uk>
Subject: RE: Lesnes Estate, Thamesmead - Policy D12 Fire Safety Update (GLA ref: 2021/0853/S2, LPA ref: 21/01948/OUTEA)

Hi [REDACTED]
Many thanks for confirming the below, that's useful.
Do you have any update in terms of progress on the draft S106?
Kind regards,
[REDACTED]

From: [REDACTED] <[REDACTED]@bexley.gov.uk>
Sent: 15 February 2023 11:30
To: [REDACTED] <[REDACTED]@london.gov.uk>
Subject: RE: Lesnes Estate, Thamesmead - Policy D12 Fire Safety Update (GLA ref: 2021/0853/S2, LPA ref: 21/01948/OUTEA)

Hi [REDACTED]
Thank you for this.
We will include the Grampian condition in our draft decision notice as suggested in your email dated 8 February.
Kind regards

[REDACTED]
Major Projects Planning Officer / Deputy Area Manager
London Borough of Bexley
[REDACTED]

From: [REDACTED] <[REDACTED]@london.gov.uk>
Sent: 14 February 2023 16:23
To: [REDACTED] <[REDACTED]@bexley.gov.uk>
Subject: RE: Lesnes Estate, Thamesmead - Policy D12 Fire Safety Update (GLA ref: 2021/0853/S2, LPA ref: 21/01948/OUTEA)

Hi [REDACTED]
Further to the below, for your information and reference, please be advised that the GLA's position in relation to fire safety has been published on our website, at the following link: <https://www.london.gov.uk/programmes-strategies/planning/planning-applications-and-decisions/referral-process-lpas>
Kind regards,
[REDACTED]

From: [REDACTED]
Sent: 08 February 2023 15:17

To: [REDACTED] [REDACTED] <[REDACTED]@bexley.gov.uk>

Subject: Lesnes Estate, Thamesmead - Policy D12 Fire Safety Update (GLA ref: 2021/0853/S2, LPA ref: 21/01948/OUTEA)

Dear [REDACTED]

I hope you are well.

Further to our correspondence in regards to the Lesnes Estate scheme in Thamesmead, I emailing to provide an update in regards to Stage 2 referrals.

As you will be aware, the government have issued a consultation

(<https://www.gov.uk/government/consultations/sprinklers-in-care-homes-removal-of-national-classes-and-staircases-in-residential-buildings/sprinklers-in-care-homes-removal-of-national-classes-and-staircases-in-residential-buildings>) which will mandate two staircases in residential buildings over 30 metres in height. The consultation makes it clear that there will be a very short transition period and that developers should start preparing for this now. Given this clarity on direction of travel on the forthcoming amendment to Approved Document B (predicted to come into force October 2023), with immediate effect, the Mayor is not accepting any proposals being referred at Stage 2 which include residential buildings over 30 metres in height with single staircases as they will not be able to demonstrate the highest standards of fire safety in accordance with LP Policy D12.

The Lesnes Estate scheme includes residential building over 30 metres in height. The submitted fire statement sets out that "The buildings are provided with single stairs and associated lifts that connect all levels to ground". As the scheme is in outline, a Grampian condition can be used to ensure the highest standards of fire safety in accordance with LP Policy D12. Please see example wording, below:

• Example Condition

No Reserved Matters Application, for any phase of development shall be submitted unless it is accompanied by a full updated fire statement for the relevant phase/building of the development that shall demonstrate full compliance with London Plan policies D5 and D12. The Fire Statement shall be produced by a suitably competent and qualified person which shall detail the building's construction methods, products and materials used; the means of escape for all building users including those who are disabled or require level access together with the associated management plan; features which reduce the risk to life including fire alarm systems, passive and active fire safety measures and associated management and maintenance plans; access for fire service personnel and equipment; ongoing maintenance and monitoring and how provision will be made within the site to enable fire appliances to gain access to the building. Specific Provisions shall be included for the following

Xxxxxxx (requirements dependent on scheme but should specify which buildings are included)

Reason: To ensure full compliance with Policies D5 and D12 of the London Plan (2021) having regard to the need to meet the highest standards of fire safety for tall buildings in accord with the functional requirement B5 of the Building Regulations.

In addition to submitting revised drawings and/or using grampian condition, the applicant will also need to submit a revised fire statement (prior to Stage 2) to include the amendments regarding cores and how the scheme will meet policy D12 together with any other relevant changes in documentation

I note that if these revisions to the scheme result in changes in the affordable housing position, then revised information in respect of this element of the proposals will also be required prior to Stage 2.

Please let me know if the above email requires any further clarification as I am available to have a discussion regarding next steps.

Kind Regards,

[REDACTED] [REDACTED]

Senior Strategic Planner, Development Management, Planning

GREATERLONDONAUTHORITY
Union Street, London SE1 0LL

[REDACTED]

www.london.gov.uk/what-we-do/planning

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NHS health information and advice about coronavirus can be found at nhs.uk/coronavirus