

Rother District Local Plan

Affordable Housing Supplementary Planning Document

October 2006



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Glossary

Development Plan Document (DPD)	A document which sets out planning policy for the District.
Housing Corporation	The Housing Corporation is the national Government agency that funds new affordable housing and regulates Housing Associations in England.
Lifetime Homes Standards	These standards aim to ensure that new housing is designed in a way which enables people to remain in the same home for longer even though their circumstances may have changed e.g. door widths which allow for wheelchair access
Local Development Framework (LDF)	A collective term for a series of documents that together will set out the planning policies for the District. It will eventually supersede the Rother District Local Plan.
Registered Social Landlord (RSL)	An organisation, usually a Housing Association, registered with the Housing Corporation to provide and manage affordable housing.
Section 106 Agreement	This is a legal agreement which can be required as part of a planning consent. A s106 agreement will always be required for a development which provides affordable housing to confirm the arrangement for building and managing the houses.
Supplementary Planning Document (SPD)	A document which elaborates upon a policy/policies in the Local Plan or in a Development Plan Document.
Total Cost Indicator (TCI)	The TCI provides the estimated cost of developing a dwelling unit. TCIs are estimated by the Housing Corporation and are calculated for different sizes and types of dwellings being built in different parts of the country.

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1. Introduction

- 1.1 The adopted Rother District Local Plan includes policies which support the provision of affordable housing in the district.
- 1.2 The policies are set out in full in Appendix A. In summary, Policy HG1 requires 40% of the dwellings provided to be affordable on sites of 15 dwellings and above in Bexhill, Battle and Rye and on sites of 5 dwellings and above within the village development boundaries.
- 1.3 A lower percentage of provision will only be considered where the applicant can demonstrate that the 40% requirement will make the development of the whole site unviable.
- 1.4 Policy HG2 is the policy for so called 'exceptions' sites. Such sites, which lie outside defined development boundaries, are those exceptionally allowed for a development of wholly affordable housing subject to the criteria in the policy being met.
- 1.5 In line with the Town & Country Planning (Local Development) (England) Regulations 2004 and the Strategic Environmental Assessment Directive, this Supplementary Planning Document (SPD) has been subject to a process of Sustainability Appraisal.
- 1.6 Other Local Plan policies of particular relevance to proposals providing affordable housing are Policies GD1 (general development principles), HG3 (housing mix) and HG4 (layout and design).

2. Objectives of the Affordable Housing Supplementary Planning Document (SPD)

- 2.1 This supplementary guidance has the following objectives:
 - To give further guidance on the implementation of Policies HG1 and HG2 of the emerging Rother District Local Plan; and thereby
 - To increase the supply of affordable housing in accordance with local needs through the application of Policies HG1 and HG2; and
 - To help deliver mixed, balanced communities.

3. Status of the Affordable Housing Supplementary Planning Document

- 3.1 This SPD is supplementary to Policies HG1 and HG2. These policies form part of the adopted Rother District Local Plan (July 2006). The policies in the Plan have been 'saved' for at least a three year period from adoption.

- 3.2 The SPD forms part of the Council's Local Development Framework.
- 3.3 The SPD will be used in conjunction with all relevant policies in the Local Plan to assess development proposals. Also relevant to this consideration will be national guidance in the form of Planning Policy Guidance, Planning Policy Statements and Circulars, regional guidance in Regional Planning Guidance for the South East (RPG9) and the emerging South East Plan and the East Sussex and Brighton and Hove Structure Plan (see Section 4).

4. Context

Planning Context

- 4.1 **Planning Policy Guidance Note 3 – Housing** (PPG3) (March 2000) confirms the Government's intention that everyone should have the opportunity of a decent home (paragraph 10). Local planning authorities are urged to plan for the housing needs of their communities, including those needing affordable housing (paragraph 2). **Circular 6/98 – Planning and Affordable Housing**, provides further detail on providing affordable housing through the planning system.
- 4.2 Emerging guidance in **draft Planning Policy Statement 3 – Housing** (draft PPS3), which will replace both PPG3 and Circular 6/98, confirms the Government's objective of creating mixed and balanced communities. It re-states the presumption for on-site affordable housing provision, highlights a role for 'intermediate' forms of housing and gives regard to overall site viability in the delivery of affordable housing. Although this guidance is currently in draft form, its relevance relates to it being the most up to date statement of government policy on affordable housing.
- 4.3 Also relevant is **Circular 05/05** relating to planning obligations (i.e. section 106 agreements). A planning obligation must be relevant to planning, necessary to make the development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects. The circular re-states the presumption for the on-site provision of affordable housing (paragraph B14).
- 4.4 That the South East region faces a particular strong demand for affordable housing is acknowledged in **Regional Planning Guidance for the South East (RPG9) (March 2001)**. Paragraph 8.1 states that "a substantial element of the additional housing required in the South East needs to be affordable, particularly for the most vulnerable households in the Region."
- 4.5 The guidance also acknowledges that the provision of affordable housing is a component in the development of mixed and balanced communities and helps to secure the continued prosperity of the region (paragraph 8.9). It reiterates the key importance of the planning system in enabling a supply of affordable housing (paragraph 8.14).

- 4.6 The emerging **South East Plan**, the Regional Spatial Strategy for the South East, similarly recognises that affordable housing provision has not kept pace with demand. The emerging plan includes a regional target for 25% of all new housing to be social rented and a further 10% to be intermediate forms of housing.
- 4.7 Policy H4 of the adopted **East Sussex and Brighton & Hove Structure Plan** (May 2000) requires Local Plans to establish detailed requirements for affordable housing and set appropriate targets, both for overall provision and for suitable individual sites allocated for housing development. Local Plans should also include the criteria for achieving an element of affordable housing on ‘windfall’ sites. The County is faced with losses from the overall stock of affordable housing, an increasing affordability gap (ie the relationship between house prices and incomes), Housing Register increases, rising homelessness rates and significant numbers of unsuitable and unfit dwellings.

Housing Strategy

- 4.8 The Council’s Housing Strategy presents the results of the Council’s research into the housing needs of Rother’s residents and shows how the Council plans to meet those needs within the available resources. It is a business plan for the Council’s Housing Section with actions set out to deliver housing services to the community of Rother, in conjunction with our partners.

Affordable Housing Need in Rother

- 4.9 Housing need in Rother is evidenced the Council’s Housing Register and homelessness statistical data for households in the District.
- 4.10 Further evidence is provided by the Housing Needs Survey. The latest survey was undertaken in 2005 for the Council by David Couttie Associates. It assesses the scale of current and future affordable housing need for sub-areas within the District.
- 4.11 The Survey confirms that there is substantial affordable housing need across all parts of the District. Annually 256 new affordable homes are needed in Rother.
- 4.12 The main findings include:
- 91% of households live in accommodation suitable for their needs;
 - The social rented housing stock is 11.3%, much lower than the national average of 19.3%.
 - There is a requirement to develop a more balanced housing stock in both the private and social sectors with a need for more flats and terraced houses, particularly in the private sector; and
 - The retired population will increase by 35.5% by 2021. 70% of those with a support need are over 60 and over half have a walking difficulty.

4.13 A document summarising the Survey findings is available on Council's website (<http://www.rother.gov.uk/index.cfm?articleid=483>).

5. What is 'Affordable Housing'?

5.1 As recommended by the Rother Local Plan Inspector (Inspector's Report paragraph 6.46), paragraph 6.5 of the adopted Local Plan defines affordable housing as follows:

Affordable housing is regarded as that which is provided for local people (or key workers) who are unable to meet their housing needs in the housing market without a level of subsidy because to do so would require more than 25 – 30% of their net household income.

5.2 The tenures that the Council regards as being 'affordable' under the terms of Policy HG1 are as follows;

- Social rented
- Shared ownership (also called 'shared equity') specifically 'New Build HomeBuy'
- Sub-market rent

5.3 Developers should expect that social rented housing, managed by a Registered Social Landlord (RSL), will be the predominant tenure sought as it is the only option available to those in greatest affordable housing need.

5.4 Shared ownership and sub-market renting are encompassed by the generic term 'intermediate housing'.

5.5 Low cost market housing, that is housing that is sold in the general housing market at a discount, will not be accepted as a form of affordable housing (Annex A, paragraph 12 of draft PPS3 refers). The scale of the 'affordability gap' in Rother, that is the difference between incomes and house prices, is such that a discount on the price of a market home would be unlikely to make it 'affordable' for those in affordable housing need.

Social rented housing

5.6 Social rented housing is generally managed by a Registered Social Landlord (RSL). Affordable rents are set in accordance with Housing Corporation requirements.

5.7 In Rother, social rented housing which is managed by a RSL is the predominant tenure of affordable housing that will be sought as it is the only option available to those in greatest housing need. Social rented housing usually provides for affordable housing needs in perpetuity.

New Build HomeBuy (Shared ownership)

- 5.8 Shared ownership (also called 'shared equity') is a form of intermediate housing which has a role in helping people who otherwise could not afford to make the first step towards home ownership, including key workers. In general, shared ownership is a means by which the occupant partly owns and partly rents a property. The occupant purchases a proportion of the property through a mortgage or savings whilst paying rent, usually to a RSL, on the remaining part.
- 5.9 In Rother, the specific scheme name for shared-ownership on new developments is 'New Build HomeBuy'. The shared ownership houses provided on a site would usually be transferred to an RSL, or other appropriate management body, in the first instance. The RSL or other body would then sell an equity stake in the house and the RSL or other body would retain the remaining proportion. The minimum (normally 25%) and maximum initial equity stake percentages will be determined on a site-by-site basis dependent upon local income levels and affordability in the local area and will be specified in the s106 agreement. (Further information on management arrangements is set out in paragraph 7.19 onwards.) It is possible for the occupant to 'staircase' to own increasing proportions of the property. When the property is to be sold, the RSL has 'first refusal' on purchasing the equity stake back with the objective of retaining it as a shared equity property.
- 5.10 The equity in a shared-equity unit could be held by a community land trust rather than a RSL. This is a means by which the unit could be retained as affordable in perpetuity. The Council would need to be assured that the trust has the necessary resources to ensure the management and maintenance of the property and the retention of the equity stake.
- 5.11 Low cost home ownership schemes are a means by which an RSL offers a loan towards the purchase of an existing property on the open market resulting in a reduced (and hence more affordable) mortgage for the purchaser.

Sub-market rent

- 5.12 Sub-market renting is a further form of 'intermediate housing'. Paragraph 6.13 of the Local Plan acknowledges that sub-market renting can have a role as a source of affordable housing. Sub market rents are generally higher than social rents but below market rents. Sub-market rented units will be managed by a RSL.

6. When does Policy HG1 apply?

- 6.1 Policy HG1 of the Rother District Local Plan is reproduced in Appendix A. The requirements of the policy and of this SPD apply as follows:

- Within the defined development boundaries of Bexhill, Battle and Rye, on housing or mixed use sites of 15 dwellings or more or 0.5ha or more; and
 - Within the defined village development boundaries, on housing or mixed use sites of 5 dwellings or more or 0.2ha or more
- 6.2 The site size thresholds in the policy relate to the gross number of dwellings being provided. For mixed-use proposals, the site area threshold will apply to the residential element of the scheme only.
- 6.3 Proposals which meet the thresholds set out in Policy HG1 will be required to provide 40% affordable housing. Developers should expect that proposals which do not, and which do not provide compelling financial evidence to support that lack of provision, will be refused.
- 6.4 In accordance with Government guidance regarding housing densities and Local Plan Policy HG4(vi), development proposals should make the best use of the available land. The density of a proposed development will be assessed to ensure that the requirement to provide affordable housing is not being avoided or reduced.
- 6.5 Where the Policy HG1 thresholds are not met and the Council is satisfied that the application site in fact forms part of a larger site that does meet the thresholds, or that the site has been subdivided to avoid the site size thresholds, the applicant will be invited to submit a scheme for the larger area. Alternatively, affordable housing requirements will be applied to the smaller site as the first 'phase' of the larger development.

Particular forms of residential development

- 6.6 Policy HG1 applies to all forms of residential development, including flats. It applies to sheltered and extra-care schemes as specific forms of residential development (footnote 2 in Circular 6/98 refers).
- 6.7 Similarly, live/work units are a form of mixed-use development (residential and employment). Accordingly, Policy HG1 will apply. Each live/work unit will constitute a dwelling under the terms of the policy. The affordable housing requirement on such a scheme should be met with wholly residential units unless the developer can satisfactorily demonstrate a local need and funding for affordable live/work units.
- 6.8 For conversions to residential/mixed use, the gross number of residential units created is used to calculate the number of affordable units that will be required.

7. Key issues for Planning Applications

- 7.1 The following section outlines the key issues for proposals which are subject to Policy HG1. Appendix B sets out the process for progressing such an application as a flow chart.

Pre-application discussions

- 7.2 Developers are strongly advised to discuss proposals for their site with Council officers at an early stage so that as many issues as possible can be explored and resolved prior to an application being submitted.
- 7.3 In terms of affordable housing, an initial discussion with Planning Officers will confirm the requirements of Policy HG1 as they apply to the site. If the policy does apply, a subsequent discussion with Planning and Housing Officers jointly will confirm for developers the nature of local housing need, and how this translates into the requirements for the size and tenure of the affordable housing element, and the availability of funding.
- 7.4 Involving a RSL at an early stage, and preferably before a planning application is submitted, can further help to ensure a partnership approach to the development of a scheme.
- 7.5 Where developers consider viability to be an issue, pre-application discussions are an opportunity to discuss and agree costs prior to the submission of an application.
- 7.6 Contact details are given at the beginning of this document.

On-site affordable housing provision

- 7.7 In line with the Government's objective of creating mixed and balanced communities, the requirement for affordable housing will normally be met on-site as part of the proposed development (paragraph 21 of Circular 6/98 and paragraph 28 of draft PPS3 refer). This approach ensures the actual provision of the housing to address affordable housing need.
- 7.8 The requirements for off-site provision, where this is exceptionally appropriate, are set out in Section 9.

Proportion of Affordable Housing

- 7.9 On qualifying sites, 40% affordable housing will be required.

- 7.10 A lower percentage will only be acceptable where the applicant provides financial evidence that the Council can assess to demonstrate that 40% provision would make the development of the whole site unviable. More details on the application of this 'viability test' are set out in Section 8.
- 7.11 Where the 40% requirement results in a number of units which is not a whole number, the number of units required on site will be rounded down to the nearest whole figure. The 'unmet' proportion of a unit will be funded through an in-lieu contribution.

Example: A 9 unit development within a village development boundary would require the provision of 3.6 affordable units to meet the 40% requirement. To meet the terms of the policy, 3 units should be provided on site and 'in lieu' contributions will be sought towards the cost of the outstanding 0.6 unit.

Tenure/size mix

- 7.12 The nature of the affordable housing that will be sought on a particular site will be determined by the nature of the local need. Informed by the findings of the latest Housing Needs Study, the Housing Register and Homelessness statistics, officers set out the size and tenure of the affordable housing units.
- 7.13 In line with the findings of the Housing Needs Study, the most pressing needs are met through social rented units. Developers should expect that social rented units will be the predominant tenure sought. The required tenure mix will also be informed by the circumstances of individual locations and development proposals including the accessibility of local services and facilities (See Rother District Local Plan paragraph 6.13)
- 7.14 Proposals must also accord with Local Plan Policy HG3 which requires new housing developments to provide at least 30% one and two bedroom properties. Subject to the findings on housing need, a proportion of the affordable units could comprise such smaller properties.
- 7.15 It is recognised that the tenure mix of affordable units, as well as the availability of funding for those units, can have an impact on site viability. The issue of viability and how the viability test expressed in Policy HG1 will be applied is addressed in Section 8.

Funding

- 7.16 The Housing Corporation will not normally grant fund affordable housing secured on market housing sites through Section 106 agreements. Therefore developers should not presume the availability of public funding when sites are being purchased.

- 7.17 Nonetheless, the Council will support a bid to the Housing Corporation via a RSL for public funding towards the provision of affordable housing on any particular site. If such a bid is successful, this would normally make a substantial contribution towards the developers' build and land costs. Aside from a very small number of developers which have been approved by the Housing Corporation to receive funding directly, Housing Corporation grants are made to RSLs not to developers. The grants the Corporation gives to RSLs take account of the on-going property management and maintenance costs to which the RSL will be liable. In passing on the grant funding to the developer, the RSL will thereby subtract the maintenance and management element of the grant. The Housing Corporation's indicative grant levels can be found at www.housingcorp.gov.uk/server/show/conWebDoc.1298.
- 7.18 In the absence of public funding, the developer will normally be required to design and build the requisite units and provide fully serviced land at nil cost to the RSL. However, an amount of subsidy may be available towards the build costs based on the level of private finance the RSL can borrow against the built development itself. This is usually based on the amount of rental income the RSL will receive minus an amount for on-going repairs and maintenance during the loan period. This mechanism can provide subsidy for up to 50% of the build costs but make no contribution to the land costs.

Management and Transfer Arrangements

- 7.19 Details of the mechanism and timing of the transfer of the affordable units and/or serviced land to the managing body (usually a RSL) will be set out in the Section 106 agreement (see paragraphs 7.29 to 7.36). Normally, the agreement will specify that the construction of the general needs units should not proceed until the transfer of the affordable housing land and the erection of the units (or a proportion of them) has taken place.
- 7.20 Developers should expect the management of the affordable housing provided on development sites to be undertaken by RSLs.
- 7.21 The RSLs with whom the Council works most closely have existing affordable stock in the District or the surrounding area and have the appropriate property management arrangements in place. These are the Council's preferred partners.
- 7.22 Where a developer wishes to use an RSL which is not one of the Council's preferred partners, or where the affordable units are to be managed without RSL involvement, the Council will need to be satisfied that satisfactory management arrangements are in place. A minimum requirement would be that the units are managed to Housing Corporation management standards for RSLs. This will be confirmed through the Section 106 agreement.
- 7.23 The Council will normally require the developer to design and manage the construction of the affordable units with the agreed support and monitoring of the partner RSL.

- 7.24 The arrangements for payment of management and/or service charges, for example for the maintenance of landscaping, will be a matter to be agreed between the developer/freeholder and the RSL.

Design Issues

- 7.25 The layout, mix and the design of the development, including the affordable element, should accord with Local Plan Policies GD1 (general development principles), HG3 (housing mix) and HG4 (layout and design).
- 7.26 Where site characteristics and management arrangements will allow, the affordable units should be sited such that they are generally dispersed in small groups through the development ('pepper-potted') rather than concentrated in a single location. This approach is consistent with the objective of creating mixed and balanced communities.
- 7.27 The affordable units should be designed to accord with the following standards;
- Housing Corporation Scheme Development Standards
<http://www.housingcorp.gov.uk/server/show/conWebDoc.2919>
 - Lifetime Homes Standard
<http://www.lifetimehomes.org.uk/pages/home.html>
 - National House Building Council warranty standards
<http://www.nhbcbuilder.co.uk>
 - EcoHomes standard
<http://www.bre.co.uk/service.jsp?id=397>
- 7.28 The car parking standards that apply will be those adopted by the Council as Local Planning Authority.

Section 106 Agreements

- 7.29 A Section 106 legal agreement will be required for all planning permissions which provide affordable housing, including outline applications.
- 7.30 The agreement will be based on the Model Planning Obligation (section 106 agreement) issued jointly by the Law Society and the Department for Communities and Local Government in August 2006, having particular regard to the advice on affordable housing contained in Annex A of the Model Agreement.
- 7.31 The Model Agreement can be found at:
<http://www.communities.gov.uk/index.asp?id=1500832>

7.32 The issues which will normally be confirmed through such an agreement are as follows:

- The size (in terms of floorspace), type (flats, terraced etc) and tenure of the affordable units
- Timing of the construction/occupation of the affordable units relative to the rest of the site. Developers should expect to complete no more than a third of the number of market dwellings ahead of the transfer of the affordable dwellings to the managing body (usually a RSL). Developers should therefore anticipate that the Council will closely monitor the occupation of the market housing and will take firm legal action if the specified proportion is exceeded, even marginally. Such action could include Injunction Proceedings.
- Arrangements for, timing of and any payments associated with the transfer of the affordable units and/or land to the managing body (usually a RSL). This should also include whether the units and/or land is to be transferred freehold or leasehold.
- RSL details (on straightforward schemes this could be agreed at a later stage, see paragraph 7.34)
- Nomination agreement (this will usually be set out in a separate schedule – see specific clauses in Appendix C)
- Design standards for the affordable units (these will usually be set out in a separate schedule)

7.33 Where a lack of certainty over the availability of public funding for the affordable housing element of a scheme is significant to the determination of an application, the inclusion of a cascade arrangement in the s106 to take account of alternative funding scenarios may be considered.

7.34 For smaller sites (usually those providing up to 10 dwellings in total i.e. no more than 4 affordable units), it may not be necessary to specify the RSL in the agreement itself. Confirmation of the RSL partner will become a matter for later agreement before the development commences.

7.35 Where financial contributions are agreed as an exception to on-site affordable housing provision (see section 9), the Section 106 agreement will confirm:

- The amount of the contribution;
- The timing of the payment of the contribution which, at the latest, will be at the point development commences on site; and
- That the contribution will be spent on the provision of new affordable housing units.

7.36 Where a financial contribution is agreed, the provision in paragraph 3 of schedule 5 of the Model Planning Obligation requiring repayment after 5 years will be omitted. Contributions from a number of sites often need to be packaged to achieve a viable affordable housing scheme which may not be possible within a 5 year period.

8. Viability Test

- 8.1 The Council expects that developers will take account of the affordable housing requirements when negotiating the purchase of sites.
- 8.2 On qualifying sites, Policy HG1 requires the provision of 40% affordable housing. Where an applicant asserts that 40% affordable housing cannot be delivered on the site for viability reasons, clear financial evidence must be provided when the application is submitted to support the claim.
- 8.3 The details of the financial information that will be required is set out in the proforma in Appendix D. The aim is that sufficient information be provided in a clear format so that the factors influencing the site's viability can be clearly understood and appraised. The proforma can be used for both residential and mixed-use schemes. It sets out a full range of possible cost/revenue items; not every item will be relevant to any individual site.
- 8.4 The financial information will be subject to assessment by the Council's officers, or their professional advisors. The residual method of valuation will be used whereby potential land value (i.e. after development) is compared to the existing land value, taking account of the costs and revenue from development. The costs used in such an assessment should be reasonable costs adopted by the development market and not necessarily specific to the developer concerned. The financial information will be assessed for the reasonableness of the assumptions made as well as any omitted or inaccurate information. Where practicable, the aim will be for officers (or their advisors) and the applicant to agree a reasonable financial appraisal for the site.
- 8.5 Developers risk their application being refused if the information provided is insufficient or unclear.
- 8.6 Where the testing process reveals that 40% provision would indeed make development unviable, opportunities to vary the tenure mix of the affordable units will be explored in the first instance. Only after this option has been discounted will a level of affordable housing provision of less than 40% on the site be accepted.
- 8.7 Under Section 43 of the Freedom of Information Act 2000, commercially confidential information is exempt from disclosure so that negotiations etc. would not be prejudiced. Councillors will be advised of the implications of the financial evidence for affordable housing provision but the information itself will not be reproduced in publicly available Committee Reports. However, applicants should be aware that, over time, disclosure may increasingly become in the public interest. Indeed such information as the price paid for land will ultimately appear in the publicly available Land Registry anyway. Also, relevant information will be publicly available if the application is the subject of an appeal.

9. Off-site Provision

- 9.1 Developers should expect that the required affordable housing will be provided on-site as part of the development. In assessing the objections to Policy HG1 through the Local Plan Inquiry, the Local Plan Inspector confirmed that off-site provision of affordable housing should be 'a final resort' (paragraph 6.31 of the Rother District Local Plan Inspector's Report).
- 9.2 Off-site provision will only be acceptable where the applicant can demonstrate to the satisfaction of the Council that there are genuine and insurmountable reasons why on-site provision cannot be achieved satisfactorily.
- 9.3 Draft PPS3 proposes that off site provision of affordable housing, or contributions in lieu of on-site provision, must be of a broadly equivalent value and should contribute to the objective of creating mixed, balanced communities (draft PPS3, paragraph 28).
- 9.4 In the case of off-site provision being agreed, the level of provision must take account of the requirement to provide 40% affordable housing across the two sites (paragraph 6.34 of the Local Plan Inspector's Report and paragraph 6.11 of the Local Plan refer).

Example: A scheme of 60 dwellings would be required to provide 24 (40%) affordable units on-site. If off-site provision is accepted, the 'original' site will deliver 60 market houses. In order to meet the 40% requirement of the policy, and retain the 3:2 (60% : 40%) ratio of general market to affordable housing, the requirement for provision elsewhere will be 40 affordable dwellings.

- 9.5 For off-site provision, the Council's first preference will be for the applicant to provide the requisite number of affordable units elsewhere. This may either be new build units on an identified (second) site or by the purchase of the same number of existing properties. The identification of the existing properties to purchase and any upgrade requirements to meet the requirements of the RSL will be agreed between the developer, the RSL and the Council.
- 9.6 If this cannot be achieved, the Council's second preference will be for the applicant to provide sufficient funds, in the form of in-lieu contributions, to ensure the provision of the required number of units on an alternative (but not specified) site.
- 9.7 The in-lieu contributions will be calculated based on:
- The number of units that will need to be provided to comply with the 40% requirement of the policy. The number of units will be calculated using the same approach as for off-site provision (see paragraph 9.4) i.e. by taking account of the total number of market houses that will be provided on the principal site.

- The latest available Total Cost Indicators (TCIs) for Rother (inflated if necessary to accord with Housing Corporation guidance) or their replacement. In the absence of TCIs (or their equivalent) current land and build costs for the locality will be used.
- The mix of affordable unit sizes which would have been required, had the affordable housing been provided on the application site, will be used as a basis for the calculation. TCIs usually make an allowance for RSLs being able to raise an element of private finance themselves.

9.8 The calculation will also take account of:

- The prospect of an RSL being able to raise additional private finance, beyond that accounted for in the TCIs, based on the income that will be generated from rents.

9.9 Housing Corporation TCIs can be viewed at:
www.housingcorp.gov.uk/server/show/conWebDoc.1298 .

10. **Exceptions Sites**

- 10.1 Policy HG2 of the Rother District Local Plan sets out the criteria for assessing 'exceptions' sites (see Appendix A). These are sites which may exceptionally be granted consent outside the settlement development boundaries defined in the Local Plan contrary to normal planning policies, specifically to secure local needs affordable housing.
- 10.2 Developers/landowners are encouraged to make early contact with the local community, and particularly with the local parish or town council, to assess the level of local support for the release of a site 'exceptionally' for affordable housing. A partner RSL should also be identified at the earliest stage to assist in bringing appropriate exceptions sites forward.
- 10.3 All the dwellings provided on such an exceptions site must be affordable. General market housing cannot be provided as a means of cross-subsidising the affordable housing.
- 10.4 Officers can supply information on local housing need in accordance with the requirement in criterion (i) of the policy. Developers may also wish to undertake a specific survey of local need jointly with the local community. The nature of local need will also inform the size and type of dwellings that should be provided (criterion (ii)).
- 10.5 Criterion (iii) of Policy HG2 requires the resultant affordable dwellings to continue to be available to meet local needs in the future. This will usually be achieved through social rented units managed by a RSL.

- 10.6 Particular care must be taken with the scale, location and accessibility of the proposed development and its design should be sensitive to the character of the locality (criteria (iv) and (v)). Normal requirements for access, parking, retention of trees, landscape and securing the amenity of neighbours should be met (criterion (vii)).
- 10.7 Affordable housing on exceptions sites should be available in perpetuity and address local housing needs in particular (Circular 6/98 paragraph 16, draft PPS3 paragraph 33). This will be secured through a Section 106 agreement, omitting clauses 4.2 and 4.3 of the Model Planning Agreement. Annex B of PPG3 notes that a clause in the agreement that allows for the disposal of affordable housing on the open market by the lender of private finance, should the borrower (usually a RSL) get into financial difficulty, will be unacceptable for exceptions sites.

11. Monitoring and Review of the SPD

- 11.1 The monitoring of this SPD will be encompassed in the Council's Annual Monitoring Report. The factors which are particularly relevant to the subject matter of this guidance are;
- The number of affordable housing completions
 - The number of affordable housing commitments
 - The number of affordable housing commitments on exceptions sites
 - Average income compared to the average house price in Rother
- 11.2 This guidance elaborates upon the saved Policies HG1 and HG2 of the Rother District Local Plan. These policies will be reviewed as part of the preparation of Rother's Core Strategy Development Plan Document. The adoption of these replacement policies will trigger a reassessment of this guidance.

Appendix A – Policies HG1 and HG2 from the adopted Rother District Local Plan.

Policy HG1 Affordable housing

On housing or mixed-use development sites of 0.5 hectares or more or housing developments of 15 or more dwellings, within the development boundaries of the towns of Bexhill, Battle and Rye, 40% of the total number of dwellings to be provided shall be affordable housing for local people.

On housing or mixed-use development sites within the development boundaries of villages of 0.2 hectares or more, or housing developments of 5 or more dwellings, 40% of the total number of dwellings to be provided shall be affordable housing for local people.

Affordable housing provision below 40% of the total number of dwellings will only be accepted where the applicant fully and financially demonstrates that 40% provision will make the development of the whole site uneconomic based on the current housing market and all the costs of the development.

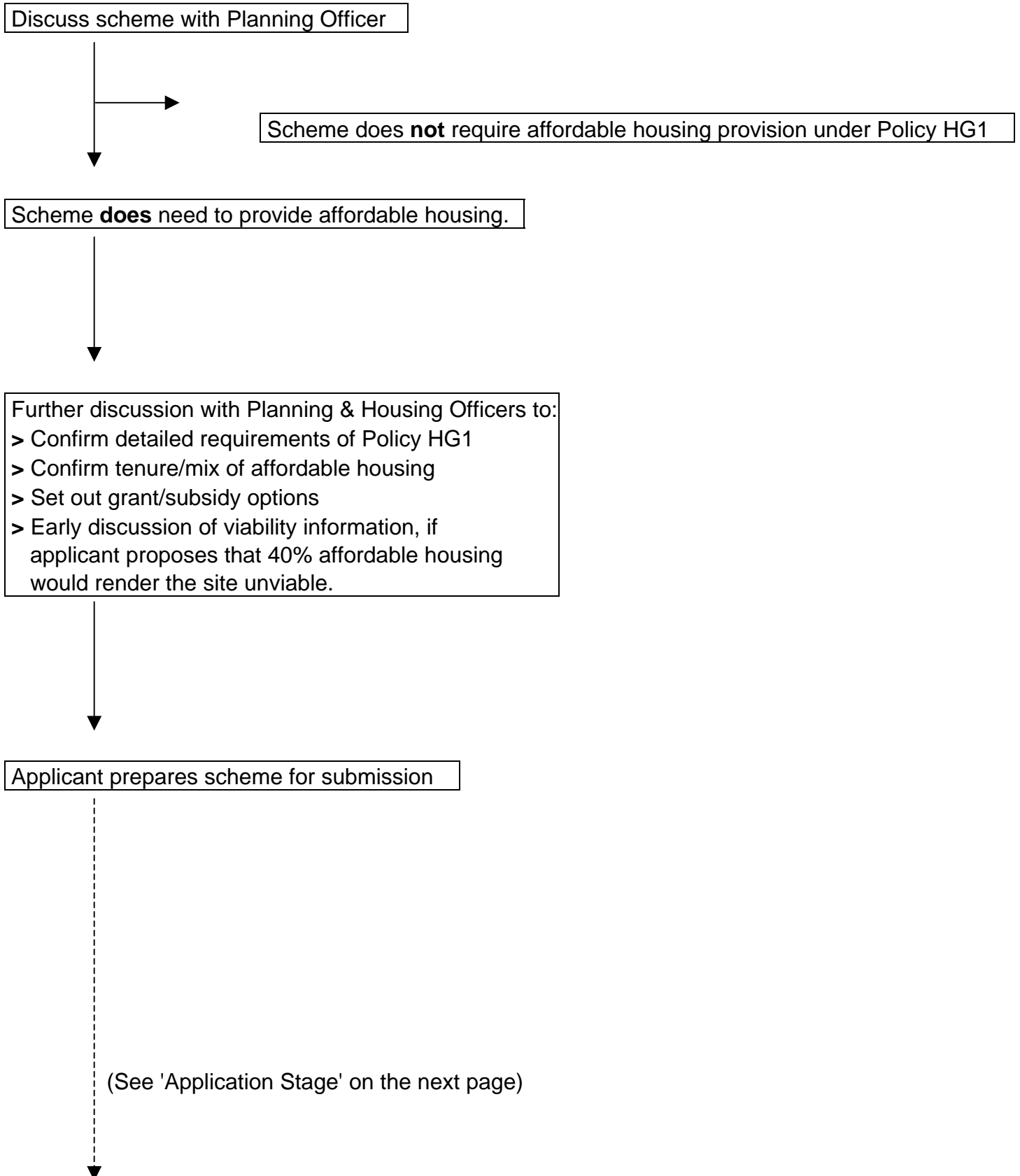
Policy HG2 In exceptional circumstances, planning permission may be granted for residential development outside development boundaries in order to meet a local housing need among those people unable to compete in the normal housing market. Proposals for development will be considered in the context of the following:

- (i) There should be clear evidence of an unsatisfied housing need in the town/village or parish that cannot be met through normal market mechanisms;**
- (ii) The proposed development should be of a size, cost and type appropriate to those people in local housing need established in (i) above;**
- (iii) Any proposal should ensure that occupation can be controlled through appropriate legal agreements to meet the local housing needs of those people unable to compete in the normal housing market in the town/village or parish both now and in the future;**
- (iv) The proposed development should be well located within or adjacent to an existing settlement and be of an appropriate scale and character in keeping with existing development in the locality and normally provide good access to local facilities, e.g. shops and schools;**

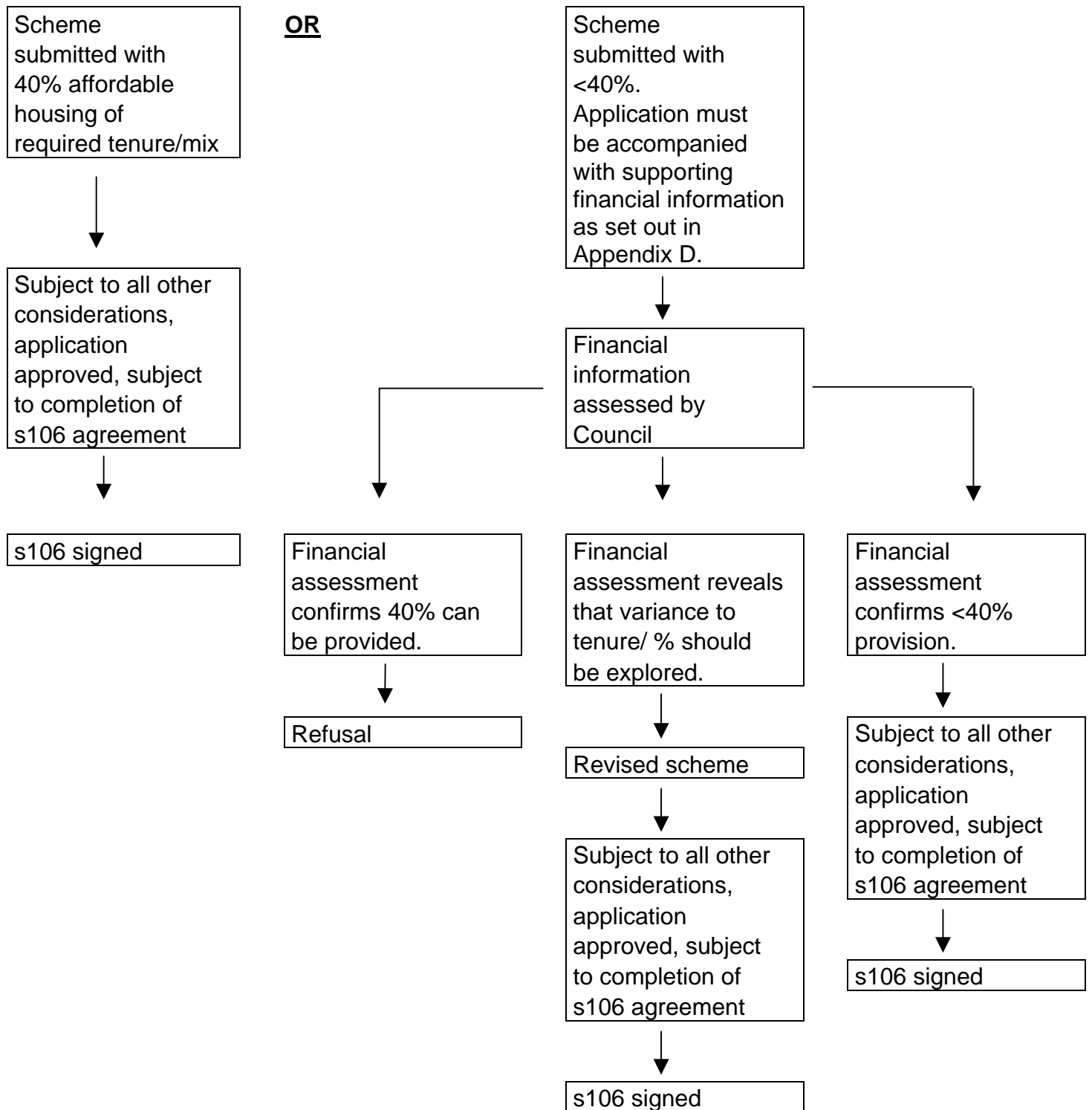
- (v) The proposed development should not be intrusive in the landscape and should be in keeping with the character of the surrounding development and locality;**
- (vi) The proposed development should meet normal local planning and highway authority criteria for access, parking, retention of trees, landscaping and impact on neighbouring properties;**
- (vii) A legal agreement will be required to secure the above objectives.**

Appendix B – Flow chart to illustrate the process for progressing a residential or mixed-use scheme which incorporates affordable housing.

Pre-application stage



Application Stage



Appendix C – *Nomination Agreement and additional clauses re nominations to be added to the Model Section 106 Agreement*

Occupation of the affordable housing units will be restricted to occupiers allocated by the Registered social landlord in accordance with the following clauses and Nomination Agreement:

“The Registered Social Landlord shall enter into a Nomination Agreement substantially in the form set out in Schedule hereto.”

“The Registered Social Landlord shall make the Affordable Housing units available to rent on assured tenancies by nomination by Rother District Council as to 100 % of initial lettings and as to 75% of subsequent lettings”

“The Registered Social Landlord shall arrange for the residential units to be constructed on the Site to be allocated in accordance with the Nomination Agreement and in nominating to tenancies the Council will act in accordance with the Nomination Agreement”

“The Registered Social Landlord shall keep their annual rent increases/reductions to no more than the set guideline limit specified by the Housing Corporation in accordance with regulatory requirements on rents and service charges”

“The Affordable Housing Land shall be used only for affordable housing and the dwelling units on the Affordable Housing Land shall be kept in good repair and shall not be used or kept in a manner that causes any nuisance or annoyance to occupants or dwellings nearby PROVIDED ALWAYS that the use of the Affordable Housing Land for affordable housing shall not in itself be a breach of this covenant”

NOMINATION AGREEMENT

THIS DEED OF NOMINATION RIGHTS is made the XXX

BETWEEN:

- (1) The Council
- (2) The Association

WHEREBY IT IS AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement where the context admits the following expressions shall have the following meanings:

1. 1.1 "the Council" Rother District Council

1. 1.2 "Association" XXX LIMITED whose registered office is at XXX

which expression shall include its successors in title to the Property or any part or parts thereof

1.1.3 "Dwellinghouse(s)" means dwelling or dwellings situate on the Property

1.1.4 "Property" means the property described in the Schedule hereto

1.1.5 "Nominated Tenant" A person nominated by the Council pursuant to its rights set out in Clause 3 of this Agreement

1 1.6 "Year" First day of April to Thirty First day of March

2. AGREEMENT

2.1 On behalf of itself and subject to Clause 5 hereof its successors in title owner or owners for the time being of the freehold interest in all or any of the said Dwellinghouses and pursuant to the provisions of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 the Association covenants with

the Council that from the date hereof it will not let any of the Dwellinghouses to be built upon the Property except by the way of Assured Tenancies (as prescribed by the Housing Act 1988) or a secure tenancy as prescribed by the Housing Act 1985 or any other form of Tenancy as the Association may grant following guidance from the Housing Corporation under S.56 Housing Act 1996 or may be required by law to grant and save only for such modifications as may be agreed between the Association and the Council or as may be made necessary under the Housing Act 1996 by changes in the law the provisions of this Deed shall govern the manner in and extent to which the Council shall be entitled to exercise the rights to nominate Nominated Tenants hereby granted

2.2 The parties hereby agree that subject to the modernisation and construction of the Dwellinghouses on the Property the Association shall grant nomination rights to be exercised in accordance with the nomination procedure set out in this Deed for a period of 60 years from the date hereof in respect of newly constructed Dwellinghouses

3. Nomination Procedure for Properties

3.1 In respect of the Dwellinghouses constructed on the Property and to be let the Association undertakes with the Council that before letting such Dwellinghouses for the first time:

3.1.1 The Association shall give to the Council at least two months' notice in writing for the anticipated date on which each Dwellinghouse will be available for occupation and the Council shall within five days of the receipt of such notice supply to the Association the name and address of at least two Nominated Tenants in respect of such Dwellinghouse

3.1.2 The Association will by notice in writing offer a Tenancy of the Dwellinghouse to the first Nominated Tenant and such Nominated Tenant shall have five working days from the date of receipt of the notice in which to accept such an offer in writing. If the first Nominated Tenant does not accept such offer in writing within five working days the Association will by notice in writing offer a tenancy of the Dwellinghouse to the second Nominated Tenant who shall have five working days from the date of receipt of the notice in which to accept such offer in writing

3.1.3 At any time after the tenancy of any Dwellinghouse has been offered to a Nominated Tenant in accordance with the preceding provisions of this clause and no written acceptance has been received within the prescribed time limit or in the event that the Council shall have failed to nominate a Tenant within the time limit prescribed in Clause 3.1.1 the Association shall in respect of each such Dwellinghouse be entitled on giving notice in writing to the Council to offer a tenancy of the Dwellinghouse to a person who is not a Nominated Tenant and that in doing so preference will be given to those to whom the Council owe a statutory duty with the greatest housing need in the lowest economic groups and in accordance with the Council's published Allocation Policy for the time being in force

3.1.4 In the event of the Association declining to accept a Nominated Tenant the Association shall give to the Council written reasons for refusal (hereinafter called "the Refusal Notice") within ten working days of the Association's receipt of the name of the Nominated Tenant and the Council shall within seven days of receipt of the Refusal Notice supply to the Association the name and address of a further Nominated Tenant and in the event that such further Nominated Tenant shall be declined by it the Association shall thereafter nominate a tenant from its own

housing list giving preference to persons with a local connection and in social housing need

4. Subsequent Lettings

The Association further grants to the Council the rights to nominate from its Housing Waiting List a new tenant or tenants in respect of three of every four Dwellinghouses which become true voids within ten working days of the Council being notified that a Dwellinghouse has become a true void. For the purpose of this Agreement the definition of true and non-true voids shall be as follows:

True voids comprise:

- Voids within new build/newly rehabilitated schemes
- Voids created through tenant moves to landlords where no reciprocal arrangements exist
- Voids created through tenant transfers to another local authority
- Voids created by the death of a tenant where there is no statutory right of succession
- Voids created by tenants buying their own property in a private sector
- Voids created by eviction or abandonment of property
- Voids created by decants

Non-true voids comprise:

- Voids created through tenant transfers where two tenants move within the local authority in which their original home was situated
- Voids created through re-housing via H.O.M.E.S. or other agreed or other mobility schemes where a reciprocal arrangement exists
- Voids created by decants who are returning
- Voids created by mutual exchanges

5. Enforcement

The Association hereby covenants with the Council that it shall cause any person or financial body intending to acquire the freehold or a lease of the Property or any part or parts thereof to enter into a direct covenant with the Council to observe and perform the provisions hereof other than a person or financial body intending to acquire or acquiring the Property or any part or parts thereof:

- (ii) by way of a periodic tenancy or an assured shorthold tenancy; or
- (iii) under a Voluntary Purchase Scheme; or
- (iv) under Section 16 Housing Act 1996 or any statutory replacement thereof;
or
- (v) from a mortgagee or chargee acting pursuant to the exercise of its powers under a charge or mortgage

6. Nomination Terms

6.1 The Council agrees to make nominations on its current Nomination Form in use at the time of Nomination in accordance with Schedule 2

6.2 The Association agrees to use the Council's Standard Forms to give notice when the vacancy has been filled

6.3 In exercising its rights of nomination the Council will do so in accordance with its obligations under the Housing Act 1996 and any statutory replacement thereof and will keep the Association fully informed of the status of any person nominated and will supply such information as the Association shall need to comply with any requirements placed on it by law

6.4 The Association will accept Clients that the Council has a duty to house under the Homelessness legislation

SCHEDULE 1

The Property

The land at XXX shown edged red on the plan annexed

SCHEDULE 2

Nominations and non-nominated tenancy offers shall be made in accordance with the Council's current Allocation Policy [to persons firstly who have for at least the six months immediately prior to such application, been ordinarily resident within the civil parish/town of XXX or secondly (if insufficient such persons make applications) after using reasonable endeavours to allocate a unit of accommodation then to a person who has a local connection with the aforesaid civil parish/town or thirdly if after using reasonable endeavours to allocate a unit to such a person the then to a person who has for at least the six months immediately prior to such application been ordinarily resident within Rother District and fourthly if after using reasonable endeavours to allocate a unit to such a person the then to a person who has a local connection with the Rother District and is registered on the Council's Housing Register provided that references to a person shall apply to a couple who are married or living together as husband and wife where at least one of the parties satisfies a relevant requirement]¹

IN WITNESS whereof etc.

¹ The wording in square brackets will be added where it is intended to give preference in the allocation of the affordable housing to persons having a local connection with a particular civil parish/town within Rother District. Exceptionally an intermediate category comprising a group of nearby civil parishes may be introduced between the specified civil parish/town and the whole of the District.

Appendix D – financial information required for the viability test

DEVELOPMENT APPRAISAL PROFORMA

SECTION ONE

Address of Development

.....
.....
.....

Area of Land (hectares)

.....

Summary of Proposed Accommodation

Total number of dwellings

.....

Anticipated Gross Internal Floor Area (where conversion is involved, state floor area separately)

Private Dwellings (ft²/m²)

.....

Affordable Dwellings:

Social Rented (ft²/m²)

.....

Intermediate (ft²/m²)

.....

- (i) Is grant available via the Housing Corporation? Yes/No
(ii) Is subsidy available via an RSL? Yes/No

If Yes to either (i) or (ii), what amount of grant/subsidy has been assumed? £.....per affordable unit

Commercial (ft²/m²)

.....

Anticipated timescale for construction of development

.....

SECTION TWO

Sales Revenue	£
Private House Sales	.....
Affordable Housing	.....
Commercial	.....
Other (e.g. capitalised ground rents) – please specify	.....
Total Revenue	_____

SECTION THREE

COSTS	£
Purchase Costs (legal/Stamp Duty etc)	.....
Construction Costs:	
Residential – Private	.....
Residential - Affordable	.....
Commercial	.....
Other	.....
Site Works	.....
Archaeological	.....
Contamination Remediation (net of surplus tax credits)	.....
Ecological	.....
Party Wall	.....
Exceptional on-site infrastructure (e.g. piling)	.....
Exceptional off-site infrastructure (e.g. services)	.....
Preliminary Costs	.....
Planning	.....
Building Regulations/Warranties	.....
Professional Fees	.....
Contingency	.....
S106 Contributions	.....
Sales & Marketing	.....
Cost of Finance	.....
Developer's Profit (state percentage return on costs or revenue)	

Payment to Tenants/Occupiers (if any) to obtain vacant possession	.....
Any Ransom/Restrictive Covenant payments to Third Party	.....
Total Costs	_____ _____

SECTION FOUR

Residual Site Value	£
(Revenue (Section Two) less Costs (Section Three))	.....

SECTION FIVE

Current use value:	£
(Comparable evidence may be sought)	
Residential	.....
Agricultural	.....
Commercial (where appropriate, state rental and capitalised yield)	.....
Other	.....
