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Securing Mortgage Access for Affordable Housing: A good practice note for planning and housing practitioners

February 2013

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Welsh Local Government Association

The WLGA's primary purposes are to promote a better local government, its reputation and to support authorities in the development of policies and priorities which will improve public service and democracy.

The WLGA represents the 22 local authorities in Wales with the 3 fire and rescue authorities and 3 national park authorities as associate members.

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Published: February 2013
Copyright: Welsh Local Government Association
ISBN: 978-1-906423-97-1

Introduction

This guidance note has been prepared by the Welsh Local Government Association (WLGA), Welsh Government, the Council of Mortgage Lenders (CML) and the Chartered Institute of Housing (CIH) and Community Housing Cymru (CHC) as a response to the difficulties being encountered by all parties in providing affordable housing in perpetuity. This guidance note draws heavily from guidance prepared by the Chartered Institute for Housing and the Homes and Communities Agency.

This guidance note is aimed at planning and housing practitioners to assist in the delivery of affordable housing. The purpose of the document is to offer examples of good practice for planning and housing professionals which can be referred to when considering drafting Section 106 agreements for affordable housing. It brings together the experience of retail mortgage lenders, Local Authorities and providers in the delivery of affordable housing to customers. Application of these principles should lessen the need for recurrent renegotiation of S106 obligations.

This guidance note does not offer a 'one size fits all' solution to the differing circumstances faced by local authorities and the differing views offered by lenders but it does highlight some of the more common issues that can act as a barrier to delivery and sets out suggestions for addressing these issues.

Strategic Context

Planning Policy Wales Chapter 9 and Technical Advice Note 2 (Planning and Affordable Housing) set out the planning policy framework for the delivery of affordable housing through land use planning in Wales.

The definition of affordable housing offered in both these documents is:

"Housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers. However, it is recognised that some schemes may provide for staircasing to full ownership and where this is the case there must be secure arrangements in place to ensure the recycling of capital receipts to provide replacement affordable housing."

Affordable housing includes social rented housing and intermediate housing. Social rented housing is that provided by local authorities and registered social landlords. Intermediate housing is that where prices or rents are above those of social rent but below market housing prices or rents."

TAN 2 states that:

Development plans and/or Supplementary Planning Guidance (SPG) should set out the circumstances where local planning authorities will use planning conditions or planning obligations to ensure that the affordable housing provided is occupied in perpetuity by people falling within particular categories of need."

Roles and Responsibilities

Local authorities have key strategic and enabling roles in the provision of affordable housing. Housing and planning authorities must work together to create the policy framework for the provision of affordable housing and should adopt a collaborative approach to preparing, co-ordinating and implementing local housing strategies, development plans and Supplementary Planning Guidance (SPG).

Registered Social Landlords (RSLs) and private developers have a key role to play in the provision of affordable housing, offering a mix of tenure and the sale of properties once completed. RSLs and private developers may also become involved in resale of affordable homes.

Mortgage lenders have a role in financing RSLs and private developers in addition to providing finance to individuals for low cost home ownership. It is the latter that is the focus of this guidance note.

Background to this document

In preparing this guidance note, a survey was sent to Local Planning Authorities (LPAs) and retail mortgage lenders in September 2010 to obtain information on s106 clauses that are being used by LPAs and any difficulties arising from the use of these obligations. The results from this survey are set out in Appendix 1 and reinforce the need for guidance on this topic.

The issues raised are equally applicable to conditions that may be applied by LPAs as part of s106 agreements or through planning conditions (e.g. on affordable housing exception sites or to achieve other planning policy aims).

In the current economic climate lenders are now taking a more cautious view towards properties that are subject to certain conditions or restrictions. It would be imprudent to believe these views are temporary given the emergent legislation within the banking sector which is driving the sector to hold higher levels of capital for certain types of lending – this could challenge the economics of providing certain specialist mortgage products. Consideration of current market lending practices needs to therefore form an integral part of the whole planning process in order to maximise mortgage availability for prospective customers.

Summary of good practice

A set of guidelines on lending on affordable homes has been agreed based on discussions with mortgage lenders, planning authorities and housing practitioners. As stated earlier these are suggestions based on experience of what works but the decision on what to include in Section 106 agreements remains with the local planning authority. These guidelines cover the following:

- Adopt standard clauses where possible
- Use cascades to restrict marketing of properties but avoid narrow definitions and time periods of more than three months
- Set up a mechanism to offer affordable housing back to RSLs
- Develop a Low Cost Home Ownership (LCHO) register
- Flag any restrictive covenants at the earliest possible stage
- Set a time limit for Mortgagee in possession clauses to three months or less
- Avoid clauses that restrict value with reference to something other than open market value
- Keep it simple
- Avoid time related policies in the LDP
- Re-examine historic S106 schemes as required
- Retail mortgage lenders require a Mortgagee Protection Clause (MPC) for shared ownership

Adopt standard clauses where possible

The number of mortgages on properties with section 106 agreements or other restrictive covenants is very small compared with the overall size of the market. Different approaches adopted by local authorities and the lack of use of a standard agreement means that mortgage lenders active in this market

are finding lending increasingly time consuming and resource intensive which could render the economics of certain specialist mortgage products unworkable.

Mortgage lenders accept that in some cases there will be a need for some variation. However, unnecessary

variation should be reduced. Suggested template clauses are included in Appendix 2.

Use cascades to restrict marketing of properties but avoid narrow definitions and time periods of more than three months

Where there is a need to place restrictions on the future occupancy of affordable homes, this can be achieved through a clear and time-limited cascade of typically three months. A cascade initially restricts marketing of a property to qualifying purchasers within a very small local market and gradually widens the net. It is not generally recommended that local market areas are made too small as it can be difficult to find eligible occupiers, but in rural areas local may

be restricted to a relatively restricted area. A town or community council area together with adjoining town and community council areas is often considered acceptable.

An example of a qualifying purchaser that would be rejected by mortgage lenders would be *"A person who has lived in xxxxx parish continuously for at least ten years prior to the time of purchase."* This clause presents a very narrow restriction on who the properties can be sold to on first sale or resale and would therefore be rejected. If the local authority wishes to target such a group then they could utilise a cascade which would allow marketing to a wider group if insufficient purchasers could not be found in the initially identified group.

An effective cascade should be time-limited commencing at the start of the sales process. Mortgage lenders usually require a maximum of three months. Such a mechanism protects the property to ensure that, **where there is demand**, it will remain as affordable in perpetuity but also ensures that the lender has access to an asset whose value can be realised. However, at the time of writing, the slow down in the economy has led to some mortgage lenders reassessing this timeframe. For example, the Principality Building Society originally required a restricted property to be sold within 12-16 weeks, however this has been extended due to the slowdown in the housing market, to a period of 16-20 weeks.

It is also important that pro-active marketing takes place and that there is not an incentive to the seller not to accept any offer in the 3 month period if there is a chance of realising greater value through a market sale. With

Shared Equity Sales the Provider will have a registered interest in the property as a second charge. If the Provider does not wish to repurchase the property in a "mortgagee in possession" situation, any balance of the sale above the repayment of the Lender's charge will return to the Provider to reinvest into future affordable homes.

In the event of a Shared Equity purchaser reselling their property, the cascade process will be followed and at the end of the cascade period, the property may be sold on the open market and the contracted % equity share will be paid to the Provider under the second charge. This fund will be reinvested into future affordable homes.

An example of a cascade which would be rejected by retail mortgage lenders would be *"Providing that the vendor can provide evidence that every Qualifying Purchaser is not willing to purchase the Low Cost Home Ownership Unit and a period of six months has elapsed then the Registered Provider, may market the Low Cost Home Ownership Unit to any purchaser who meets the eligibility criteria of the Homes and Communities Agency"*. In this example the process is involved and would be difficult to complete within the time period. It would therefore be rejected by the lender. In order to be effective, rather than specifying a process, a cascade should use a time period as the reference point.

Set up a mechanism to offer affordable housing back to RSLs

RSL led developments - If the property was purchased from an RSL then the

seller is to advise the RSL in writing of their intention to sell. A property valuation must be obtained in order to establish the property's full open market value (OMV) at the time of sale.

RSLs then have up to 8 week period (known as the 'nomination period'), from receipt of the valuation report, to introduce a purchaser from the LCHO register or agree to buy back the property. If no purchaser is identified then the property can be sold at its full open market value and the housing association's percentage equity share will be repaid upon completion of the sale.

Private developer led developments - Should an affordable home fail to attract a suitable qualifying purchaser within the specified time period (as above), then the property should be offered (via the local authority) to RSLs active in the area. It is good practice to allow 6-8 weeks for a response to this offer. Should the RSL not be interested in purchasing the property then the property can be offered for sale on the open market.

Develop a Low Cost Home Ownership register

Low Cost Home Ownership (LCHO) registers could assist local authorities with the identification of people interested in intermediate home ownership. It will provide a pool of potential eligible clients interested in the initial or re-sale of intermediate affordable housing. Following a survey of local authorities in July 2012, 19 of the 22 local authorities have or participate in the operation of a LCHO register with details included in Appendix 3.

The information held varies between local authorities but the common information held includes name, address, contact details, family size, income, property type (ie affordable rent/LCHO/Shared Ownership) preferred location, preferred property size.

As part of formulating and administering LCHO registers a high degree of responsibility is placed on both the Local Authorities and Housing Associations to ensure that any person registered on such a list is only done so on condition that he or she is (a) fully aware of the financial implications associated with intermediate affordable home ownership and (b) is able to financially sustain such options.

Flag any restrictive covenants at the earliest possible stage

It is helpful if lenders and purchasers are made aware of any restrictive clauses, including any potential difficulties, early in the sales or nomination process. This could be flagged by the Local Authority and/or the affordable housing provider. A number of Local Authorities log this information with their Land Charges section so that this information is provided at the search stage of a sale. It is however accepted that this is a relatively late stage for identifying restrictive clauses.

Early identification will reduce problems that could occur at a later stage in the sales process, reducing the potential for surprises for purchasers, vendors and mortgage lenders.

Lenders have stated that they find it helpful when scheme papers are

accompanied by a brochure or leaflet that highlights the main features of any affordable housing scheme. Examples are included in Appendix 4. This is also advantageous for purchasers who will then know at the outset whether or not they are eligible rather than having to wait until their solicitors have read through any Section 106 or Transfer of Lease to then realise there is an eligibility issue. This saves time and money and avoids disappointment.

Set time limit for Mortgagee in possession clauses to three months or less

These are clauses that allow a (commercial or retail) lender who has repossessed the property to operate free of restrictions which are placed upon individual properties. These are required by commercial lenders and an increasing number of retail lenders.

Many Local Authorities allow these clauses to be activated immediately, recognising that repossessions are rare events. In order to be accepted by a lender any time limit set will need to be three months or less, however more lenders are increasingly requiring these to be activated immediately.

An example of an unacceptable mortgagee in possession clause would be *"The mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than nine months' prior notice to the Council of its intention to dispose"* – The time period after possession is too long and included within Acceptable Costs Guidelines.

therefore would be rejected by a retail mortgage lender.

If a lender has to take a property into possession, it seeks to get the best price for the property and sell at the earliest opportunity. If only a very limited number of people are able to buy the property and no suitable buyer is available, the lender will not be able to sell and the borrower's debt will continue to increase. The shorter the period of re-sale the greater the help it is to those in financial difficulty. The banking sector's emphasis on treating its customers fairly will receive even more prominence under the guise of the newly formed Financial Conduct Authority ["FCA"] and the sector will be alert to testing any product under emergent guidance / thinking. Providing mortgage funding to a property which may have a very limited market could prove a challenge in this context.

Avoid clauses that restrict value with reference to something other than open market value

Clauses that restrict value without reference to the open market value are not currently supported by retail mortgage lenders.

Examples given include: values that are fixed at a multiple of local wages; those that rise or fall in relation to certain chosen indices; values fixed at levels identified in an automated valuation system such as Hometrack; values fixed in any House Price Index; and values restricted to values

The lender requires the realisable value of their security to be based upon the specific value of the property

they are lending upon; property valuations should be conducted by RICS Chartered Surveyor or a District Valuer. Proof of valuation should be provided although it should be noted that such valuations are normally only valid for 3 months. The lender must be able to instruct the surveyor to value the property on the basis of open market value. In addition to this, other provisions are often not compatible with lenders accounting procedures and credit rating modules are not designed to deal with such formulae.

As such, affordable homes for local needs for outright sale should be subject to a % discount of open market value as set out in Technical Advice Note 6 (Planning for Sustainable Rural Communities) - *In the case of unsubsidised affordable*

housing the initial and resale value of the affordable home is capped at an affordable level linked either to a fixed multiple of local incomes, or discount from market value (paragraph 4.2.4).

The Section 106 agreement should only specify % discount and not include details of methodology used to calculate % discount.

An example of a clause that would not be accepted by mortgage lenders would be '*Low Cost Home Ownership Units – 5% of the total Residential Units shall be sold to Qualifying Purchasers at a price which shall be no more than two times the Average Local Income*' – This clause does not use open market value to determine the value of the property and would therefore be rejected by a retail mortgage lender.

Keep it simple

Complexity in drafting clauses is likely to lead to retail mortgage lenders refusing to support schemes. Examples given include cross-referral to other documents, including multiple appendices, the use of non-standard agreements and difficulty in identifying which restrictions apply to which properties. The conveyancer will be asked to check as part of their general undertaking that the lender's requirements are being met by the document. Any doubt in this is likely to result in the withdrawal of the mortgage offer.

A Section 106 agreement which is clear as a stand-alone document can help to avoid such difficulties. Lenders may not have the resources to cope with a large number of differing documentation and with a simpler document it is possible to only take a short time for schemes to be vetted by an underwriting department. However, complex drafting means that the paperwork will inevitably have to be referred to a Legal Department which can add considerably to timescales. As stated earlier, it is helpful if any major issues or unusual restrictive covenants are highlighted at the outset.

Avoid time related policies in the LDP

Do not specify marketing requirements or time-periods relating to planning policy on affordable housing in the development plan. This is too restrictive as the lending environment and housing market is likely to change during the plan period and therefore such matters should be addressed through guidance in policy supporting text or Supplementary Planning Guidance (SPG) where SPG is regularly updated.

Re-examine historic S106 schemes as required

Some local authorities have found it useful to establish task and finish groups involving development management, monitoring officers and legal departments to re-examine historic schemes whose restrictions render the properties subject to them unmortgageable. Local Authorities may be alerted to such problems upon first-sale, upon a subsequent resale or through stalled development. The Welsh Government has published guidance on the renegotiation of S106 planning obligations which were negotiated in different economic conditions requiring a review of scheme viability.

Bringing restrictions into line with current good practice will be beneficial to individual purchasers and their communities. Where such revisions take place it will be helpful, as far as possible, to cover all of the affected homes in one exercise.

Conclusion

Local Authorities, developers and affordable housing providers are encouraged to carefully consider this guidance note before entering into a Section 106 agreement that places a restriction upon affordable homes for sale. At all times an approach that ensures simplicity and consistency will be beneficial.

Retail mortgage lenders require a Mortgagee Protection Clause (MPC) for shared ownership

Whilst shared ownership is not currently capital funded by the Welsh Government, it is recognised that a number of affordable housing providers manage shared ownership leases and also provide their own shared ownership schemes.

For the purposes of this guidance it is recognised that generally lenders will not accept a new shared ownership lease without an MPC in place. Under the Mortgagee Protection Clause, losses that may reasonably be incurred by the lender through repossession of a shared ownership property are covered by the provider. It provides the lender with a form of additional security in case of losses on repossession. The Mortgagee Protection Clause is different from a Mortgagee in Possession clause. A form of wording is offered in Appendix 5.

It should be remembered that there is little point in the pursuit of the creation of affordable housing for local occupation or otherwise that is so burdened with restrictions that those for whom it is intended are unable to raise the required finance to access it.

It may be beneficial for authorities to use this guidance note for member training and wider dissemination to include applicants.

Appendix 1

Summary of Responses from LPAs and Lenders

Position in 2010 based on the responses from 18 LPAs and from lenders:

Local Planning Authorities

- 4 LPAs have 'mortgagee in possession' clauses that would be rejected by lenders as the period of time before they could dispose of the property free of restrictions is longer than 3 months.
- In addition, a further 3 LPAs include a requirement that on disposal the mortgagee must pay the authority the difference between the 'affordable price' and the 'sale price'. It is unclear how lenders view such requirements. The arrangements for one further authority are unclear.
- 7 LPAs have 'occupancy cascades' that would be rejected by lenders as the period of time before a property could be sold on the open market exceeds 6 months.

Lenders

Lenders are likely to refuse to offer mortgages where:

- Mortgagee in possession clauses do not allow lenders who have repossessed a property to operate free of restrictions until more than three months have elapsed;
- Occupancy cascades exceed six months (an optimal 'cascade' will generally operate over three months);
- The period of time living in an area that qualifies someone as being in local need of affordable housing (e.g. 10 years) is considered to be too restrictive;
- Provisions that restrict value with reference to something other than open market value;
- Overly complex section 106 clauses.

Appendix 2

Examples of Section 106 Clauses acceptable for the Principality Building Society

Affordable housing re-sales cascade and mortgagee in possession procedures

Procedures in relation to selling, disposing of, or the transfer of affordable properties within the Sub-regional Centre or Centres

Affordable housing for purchase - procedures for home owners to conform to:

If a dwelling subject to an affordable housing restriction is to be sold, the home owner must notify the Council of any such intention in writing and at the same time include the valuation details as required in 1.2 below.

In order to determine the affordable price of the Affordable Dwelling, the home owner must obtain a formal written valuation of the property, certified by a suitably qualified chartered surveyor, and present the information to the Council or its nominee. The financial costs in relation to obtaining the valuation will be borne by the home owner. The valuation must state that the open market value is to the Royal Institute of Chartered Surveyors definition of Open Market Value ignoring all Section 106 restrictions relating to affordable housing. The Council or its nominee will calculate the affordable selling price, by multiplying the prevailing open market valuation by the resale

percentage of open market value the property can be sold for as stated in the Section 106 Planning Obligation attached to the Affordable Dwelling in question, and subsequently inform the seller in writing of the affordable selling price.

Once the provisions of paragraph 1.1 have been adhered to, the home owner can proceed to market the property, to be sold at the affordable price, to person(s) as defined by the relevant UDP policy or qualifying person as defined in the Section 106 Planning Obligation.

If the property has subsequently been adequately marketed and that no exchange of contracts has taken place within a period of 20 consecutive weeks (from the date at which the Council is notified of any intention to sell in accordance with 1.1 above) at the affordable price between the seller and a qualifying person(s), then it can be offered for sale at the agreed sale price without the Council's consent, to any purchaser free from all qualifying restrictions but not free of restrictions regarding the sale price.

If sold on the open market under the provisions of paragraph 1.4, the Council, would require that the restrictions as to who may occupy, and the sale value, will still apply in all subsequent future resales of the dwelling in question.

Mortgage in Possession Clause

Notwithstanding the provisions of this Agreement a mortgagee or chargee in possession of an Affordable Housing Dwelling and having a first mortgage or charge over it may dispose of the estate or interest mortgaged to it on the open market in exercise of its statutory power of sale under the terms of the mortgage or charge and the covenants restrictions and obligations contained in this Agreement shall not apply to that sale and the Affordable Dwelling sold in exercise of the said statutory power of sale and shall thereafter cease to be subject to the said covenants restrictions and obligations to this Agreement PROVIDED THAT any Disposal by a mortgagee in possession of an Affordable Dwelling shall require that any surplus of the capital received after recovery of the mortgage or charge and any attendant costs shall be repaid by the mortgagee or chargee to the Council in repayment of the Council's Legal Charge.

Nomination Rights Clause including provider buy back option

Where a Mortgage Lender has obtained possession of the affordable dwelling by virtue of their charge or mortgage, they are required to offer the Council the opportunity either to purchase or to nominate a purchaser for the affordable dwelling. The Council shall have 15 working days from the date of receipt of the written offer to confirm whether to accept or decline the offer. Where the offer is accepted contracts relating to the purchase of the property must be exchanged within 20 weeks of the

date of the written offer. No other restrictions will apply.

Local occupancy - this normally appears in Definitions of Qualifying Persons.

Means a person in need of Affordable Housing who immediately prior to taking occupation of the Affordable Housing Unit falls within the following category:

has resided in the Local Community continuously for at least three consecutive years

Local Area – this normally appears in Definitions of Local Area/Community

Means the Community of xxxxxxxx and the Community or Town Council areas immediately adjoining the Community of xxxxxxx

Procedures in relation to selling, disposing of, or the transfer of affordable properties within Local Centres, Villages and Rural Villages

Affordable housing for purchase - procedures for home owners to conform to:

If a dwelling subject to an affordable housing restriction is to be sold, the home owner must notify the Council of any such intention in writing and at the same time include the valuation details as required in 2.1 below.

In order to determine the affordable price of the Affordable Dwelling, the home owner must obtain a formal

written valuation of the property, certified by a suitably qualified chartered surveyor, and present the information to the Council or its nominee. The financial costs in relation to obtaining the valuation will be borne by the home owner. The valuation must state that the open market value is to the Royal Institute of Chartered Surveyors definition of Open Market Value ignoring all Section 106 restrictions relating to affordable housing. The Council or its nominee will calculate the affordable selling price, by multiplying the prevailing open market valuation by the resale percentage of open market value the property can be sold for as stated in the Section 106 Planning Obligation attached to the Affordable Dwelling in question, and subsequently inform the seller in writing of the affordable selling price.

Once the provisions of paragraph 2.1 have been adhered to, the home owner can proceed to market the property, to be sold at the affordable price, to person(s) as defined by the relevant UDP policy or qualifying person as defined in the Section 106 Planning Obligation.

If the property has subsequently been adequately marketed and that no exchange of contracts has taken place within a period of 12 consecutive weeks from the date at which the Council is notified of any intention to sell in accordance with 2.1 above) at the at the affordable price between the seller and an initial qualifying person(s), then it can be offered for sale at the agreed sale price to secondary qualifying persons(s) as defined by the Section 106 Planning Obligation attached to the house in question.

If after a further consecutive period of 8 weeks the property has been adequately marketed and that no exchange of contracts has taken place at the affordable price between the seller and either an initial qualifying person(s) or secondary qualifying person(s), then it can be offered for sale at the agreed sale price without the Council's consent, to any purchaser free from all qualifying and geographical restrictions but not free of restrictions regarding the sale price.

If sold on the open market under the provisions of paragraph 2.5, the Council would require that the restrictions as to who may occupy, and the sale value, will still apply in all subsequent future resales of the dwelling in question.

Mortgagee in Possession procedures

Mortgagee in Possession Clauses for affordable dwellings located within development boundaries of the Sub-regional Centre, Centres, Local Centres, Villages, Rural Exception Sites or in Rural Villages

In the case of all Affordable Dwellings developed, if a purchaser defaults on their mortgage and the Mortgagee "takes possession" or assumes control of the property (directly or through an agent) that Mortgagee must adhere to the following procedures:

The Mortgagee must inform the Council in writing that the Mortgagee has taken possession or assumed control of the Affordable Dwelling and

at the same time include the valuation details as required in 3.4 below.

The Mortgagee must first offer to sell the Affordable Dwelling to the Council or its Nominee at the Affordable Price.

In order to determine the affordable price of the Affordable Dwelling, the Mortgagee must obtain a formal written valuation of the property, certified by a suitably qualified chartered surveyor, and present the information to the Council. The financial costs in relation to obtaining the valuation will be borne by the Mortgagee. The valuation must state that the open market value is to the Royal Institute of Chartered Surveyors definition of Open Market Value ignoring all Section 106 restrictions relating to affordable housing. The Council will calculate the affordable selling price, by multiplying the prevailing open market valuation by the resale percentage of open market value the property can be sold for as stated in the Section 106 Planning Obligation attached to the Affordable Dwelling in question, and subsequently inform the Mortgagee in writing of the affordable selling price.

If no exchange of contracts has taken place at the affordable price, within a period of 12 weeks (from the date that the Mortgagee notifies the Council in accordance with 3.2 above), between the Council (or its Nominee) and the Mortgagee, the Mortgagee (or its agent) can dispose of the Affordable Dwelling for sale at Open Market Value and to any purchaser free from qualifying restrictions but subject to payment (after recouping first the mortgage debt and costs) by the Mortgagee in Possession to the Council of all the difference between the sale price and the Affordable Price (subject to the sale price exceeding the Affordable Price) which sum the Council will use towards the provision of affordable dwelling(s) elsewhere in the relevant Gwynedd Unitary Development Plan catchment area.

Following completion of the sale by the Mortgagee in Possession in accordance with clause 3.5 of this Schedule the Council shall remove the provisions of this Agreement from the local land charges register in connection with the Land and if required to do so consent to removal of the Restriction at Land Registry.

Appendix 3

Results of LCHO register survey

Anglesey	Anglesey and Gwynedd Councils have recently launched a web based Affordable Housing Register, see www.Taiteg.org.uk	Designed to enable people with an interest in initiatives leading to home ownership to register quickly providing an overview of their housing requirements. Reports are then generated to provide relevant 'intelligence' to assist the planning process and ensure that affordable homes are being provided in the areas where they are most needed. Work is ongoing to populate the web site with opportunities as they arise, eg Section 106 homes and the register will be used to identify applicants for Intermediate Rental and Home Buy schemes. A 'matching' process is used to identify people when homes become available and it is at this point that more detailed housing need assessments are undertaken.
Blaenau Gwent	Do not currently operate a register	Initial information from general waiting list - if applicant is interested in purchasing then extra checks, financial assessment undertaken at that time.
Bridgend	LCHO will form part of the new housing register in the future	Previously operated a LCHO separate register but because of the downturn in the economy etc., and the development of the CHR the list has dwindled and the majority of those in housing need currently can only afford social or intermediate rent.
Caerphilly	The LA does not currently hold its own LCHO register but operates a register in partnership with Fairlake and UWHA	
Cardiff	Cardiff Council operate an assisted home ownership scheme and hold a register that is separate to the common waiting list.	<p>We hold the following information on applicants that have registered with the scheme:</p> <ul style="list-style-type: none"> • Basic information on applicants - name, address, contact numbers, email address, DOB, marital status • Number of people in proposed household • Mortgage in principle amount if sought by applicants • Income and occupation • Savings • Areas and size of property they are

		<p>interested in</p> <ul style="list-style-type: none"> How they heard about the scheme <p>This information would then be verified once they complete an application for a development or property that comes through the scheme. At this stage they would need to provide us with evidence.</p>
Carmarthens hire	We have a low cost home ownership register, which is kept on the same IT system as our main Housing Choice Register.	<p>People can apply either by ticking the 'affordable housing' box when they complete a traditional application form or by applying direct on-line: http://www.carmarthenshire.gov.uk/english/housing/affordablehousing/pages/registerforaffordablehousing.aspx</p> <p>For people who only apply for affordable housing (and not social rented as well) we only ask for family composition, address, means of contact and where in the county they would like to live. We ask for information on income, savings and ability to get a mortgage around 4-5 months before a development of affordable homes is likely to be ready, so we know this information is up to date.</p>
Ceredigion	In Ceredigion we currently have both a Common Housing Register and an Affordable Housing (Supplementary) Register.	<p>The Common Housing Register is a points based scheme used by all RSL's operating within Ceredigion, however we are currently looking at a new allocations policy which may be based on a new banding system to be implemented sometime in the coming 12 months or so. The current application form includes a "tick box" which indicates that the applicant is also interested in other types of affordable housing such as either Intermediate Rent or Discounted For Sale (30% to 50% discount) - We are currently looking into introducing a shared equity model also.</p> <p>We will then send the applicant an affordable housing register app form which asks for names/addresses and preferred areas, approximate income levels and the maximum price they could afford - We also get enquiries directly about the affordable housing register which usually results in an application form and guidance being sent out.</p>
Conwy	Tai Clwyd holds it for: Flintshire, Denbighshire, Wrexham and Conwy	Please contact Gwenan Parry Jones on 03452303140 or Gwenan Jones [Gwenan.Jones@taiclwyd.com]

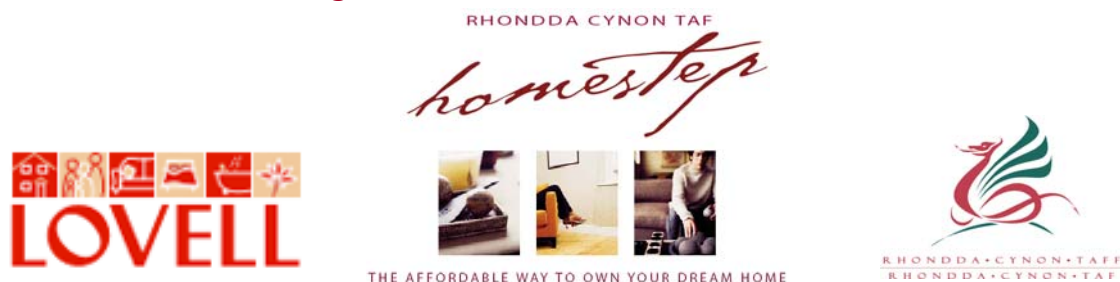
Denbighshire	Tai Clwyd holds it for: Flintshire, Denbighshire, Wrexham and Conwy	Please contact Gwenan Parry Jones on 03452303140 or Gwenan Jones [Gwenan.Jones@taiclwyd.com]
Flintshire	Tai Clwyd holds it for: Flintshire, Denbighshire, Wrexham and Conwy	Please contact Gwenan Parry Jones on 03452303140 or Gwenan Jones [Gwenan.Jones@taiclwyd.com]
Gwynedd	We have developed a website called Tai Teg with Ynys Mon Council www.TaiTeg.org.uk	
Monmouthshire	We don't have separate register.	We are looking at developing a separate web page for LCHO on our Homeseach site. People will then be able to see easily where properties are available and they will also be able to complete an online application form. We hope to have that up and running soon. We operate CBL so they bid for all properties on Homeseach but being able to fill in the application form with financial details etc will speed up the process for both the applicant and the RSL.
Neath Port Talbot	We maintain an Affordable Housing Database which details anyone interested in Affordable Housing - be it LCHO, Intermediate Rent or Try Before You Buy products.	<p>Those listed will have either come through as direct requests around AH or former applicants to new schemes (applied to schemes and were unsuccessful - due to the number of units available / interest outnumbered the units available). We also contacted those at the bottom of the housing waiting list and gave them info on AH - as another housing option and several came back through interested in schemes.</p> <p>Also hold contact details of those who indicated they would be interested in AH - as per what was the Councils housing application form (and now used by NPT Homes).</p> <p>The information we hold used to be very detailed but because AH schemes are few and far between, we send out information to all those on the list - so that they can consider whether they wish to apply.</p> <p>The main details we hold include (not all questions</p>

		<p>are answered);</p> <p>Basic contact details</p> <ul style="list-style-type: none"> • Family Make up • Type of property requested • Current property type • How did they hear about the scheme • Household Income • Areas of Interest • Any additional comments <p>Where an individual has been contacted via the housing application form we have;</p> <ol style="list-style-type: none"> 1. Family composition 2. Homes By Choice Category coding 3. Date of housing application 4. D.O.B
Merthyr	We operate a low cost home ownership register – Merthyr Living.	It holds name, DOB, family members who will be living at the property, gender, address, nationality and whether they indefinite leave to remain in the UK, email address, contact number income, savings, details of benefits, area and house preference, debts/loans, whether they're a first time buyer or have a stake in another property, any CCJ's, current housing provision, details of a 'local' connection and current employers details.
Newport	Our common housing register and common allocations policy accommodate all tenures	WG didn't want us to have separate registers for different tenures. System is web based www.homeoptionsnewport.co.uk
Pembrokeshire	No current LCHO register	Something we're considering at the moment, as we start to get more LCHO's coming through.
Powys	We have a "Housing Needs Register" which asks what type of accommodation the applicant is seeking.	However we are in the process of devising a Common Housing Register with our partner HAs and this will be more specific
RCT	We have a Homestep register	An online system which can be accessed at www.rhonddacynontafhousing.gov.uk .

Swansea	No current LCHO register	Currently in discussion with partnering RSLs to explore setting up and holding a register for intermediate properties which would include LCHO.
Torfaen	Operate LCHO Register	<p>We record the following information on our LCHO database –</p> <ul style="list-style-type: none"> ➤ Registration Number ➤ Date of Registration ➤ Prime Applicant & Joint Applicant <ul style="list-style-type: none"> - Title, Name, Surname ➤ Address ➤ Contact <ul style="list-style-type: none"> - Home number, mobile & e-mail address ➤ Joint Application ➤ Affordability <ul style="list-style-type: none"> - Annual income, savings, annual outgoings, total income, total affordability ➤ Family Composition <ul style="list-style-type: none"> - No of adults, no of children, household ➤ Area Preference ➤ Comments
Vale of Glamorgan	We take Expressions of Interest and keep them on a register	<p>1. We keep:</p> <ul style="list-style-type: none"> a. Name b. Address c. Family size d. Income e. Preferred location f. Preferred size
Wrexham	Tai Clwyd holds it for: Flintshire, Denbighshire, Wrexham and Conwy	Please contact Gwenan Parry Jones on 03452303140 or Gwenan Jones [Gwenan.Jones@taiclwyd.com]

Appendix 4

Examples of brochures that highlight the main features of affordable housing schemes



Bryn Celyn , Llanharry , Rhondda Cynon Taf Retained Equity Scheme

What is Retained Equity and how does it work?

This retained equity scheme has been developed by Lovell Partnerships Ltd. and Rhondda Cynon Taf County Borough Council, as part of *Homestep*, the Council's Low Cost Home Ownership scheme. We are working together to help new purchasers, nominated by the Council, into sustainable home ownership.

Under this scheme the purchaser buys the house, but at 75% of its full market value. Rhondda Cynon Taf CBC retains the remaining 25% share of the freehold value of the house. You do not pay any rent on the 25% equity share retained by the Council, however, if you sell the property in the future, you would pay the Council 25% of the market value at the time of sale. Alternatively, you could purchase the Council's share of the property (after a minimum 12 month period) for 25% of the open market value of its share at that time.

How do I know if I qualify for *Homestep*?

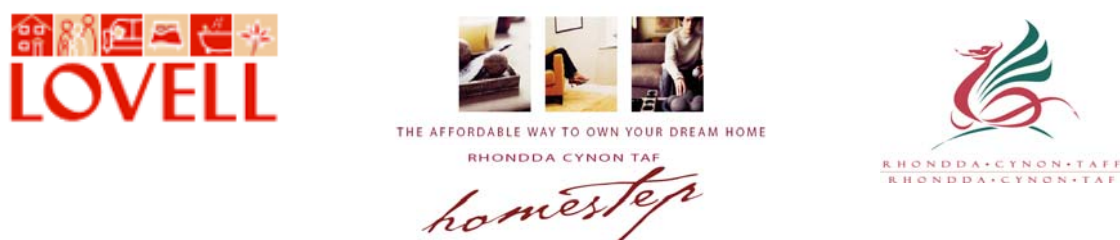
In the first instance, you must complete an application form to join the *Homestep* register and to enable us to determine your eligibility for the scheme. You will only be able to purchase a property under *Homestep* if you meet the eligibility criteria for affordable housing within Rhondda Cynon Taf.

How will the properties be allocated?

Once all eligible applicants have been identified for Bryn Celyn, you will be prioritised. After your eligibility and priority group has been established, you will be invited to attend an Affordability Interview, where your ability to raise and sustain a mortgage will be assessed. Only after this interview has taken place, can you be made a firm offer of a property at Bryn Celyn.

Further information

You can apply to join the Homestep register online at www.rhonddacynontafhousing.co.uk and further information may be obtained by contacting the Affordable Housing Officer on 01443 425388, or mail to homestep@rhondda-cynon-taff.gov.uk.



THIS IS A SHARED EQUITY SCHEME

Re-Sale Restrictions

There are no restrictions on disposal of the property purchased under this scheme.

If the property is leasehold Grŵp Gwalia Cyf's consent may be required but cannot be unreasonably withheld or delayed

As a Shared Equity Scheme

- The Purchaser pays only a percentage of the full purchase price (70%) but acquires ownership of 100% of the property.
- The balance of the purchase monies (30%) are provided by Grŵp Gwalia Cyf as an interest free loan (secured by a subsequent or second charge).
- Any future change in the value of the equity in the property on disposal or sale will be shared in the relative percentages (70% for the purchaser / 30% for Grŵp Gwalia Cyf). The right of Grŵp Gwalia Cyf to share in the equity, will be secured by the terms of the second charge.
- No rent is paid in respect of Grŵp Gwalia Cyf's percentage.
- The subsequent charge will be repaid on disposal or sale or if the Purchaser wishes to repay the equity share earlier.
- The First Mortgagee can sell the property as a mortgagee in possession without any consent from Grŵp Gwalia Cyf.
- No further lending can be made by the First Mortgagee without the agreement of Grŵp Gwalia Cyf. Grŵp Gwalia Cyf will only give agreement to postpone their charge where further lending is for home improvements/repairs and the additional borrowing for home improvements/repairs does not exceed the additional value created by undertaking the works together with 70% of any increase in the market value.
- There is no interest charged or payable during the term of the loan.
- There is no provision to repay a part of the equity by repaying part of the monies due under the second charge.
- On sale/disposal of the Property by the Purchaser/Mortgagee in Possession in ascertaining the amount due to Grŵp Gwalia Cyf the

definition of “open market value” disregards any increase in the overall value of the Property as a direct result of improvements made by the Purchaser. Grŵp Gwalia Cyf is only entitled to a percentage of the open market value in relation to the percentage share secured by the second charge.

- The scheme accepts that at the time of disposal by the Borrower or the acquisition of the 30% the amount due to Grŵp Gwalia Cyf may be less than the amount originally advanced.
- In the case of flats the Purchaser has a leasehold interest under a lease but owns 100%. Grŵp Gwalia retains the freehold.
- In the case of flats the lease provides for the rent to be a peppercorn.

Appendix 5

Example of a Mortgagee Protection Clause (source: Halifax)

If a mortgagee of the Leaseholder (who shall have been approved and the terms of the mortgage to such mortgagee shall have been approved by the Landlord in writing prior to the Mortgage) exercises the right to complete the final Staircasing (pursuant to Paragraph 2 of the Fifth Schedule) and assigns the Lease and the sale price obtainable upon such assignment after adding the amount realised or realisable by the said mortgagee from any collateral security (in aggregate in this clause called "the Sale Price") is insufficient to meet:-

- (a) total principle (which shall not include any capitalised interest) and not exceeding 12 months unpaid interest due to the mortgagee under the terms of the mortgage
- (i) disregarding
- A any part of the mortgagee's initial advance to the Leaseholder which was in excess of the Premium or in the case of an assignment was in excess of the Market Value (as defined in the Fifth Schedule hereto) of the Percentage of the Premises assigned to the Leaseholder as at a date no more than twelve weeks prior to the date of exchange of contracts for the assignment and for the purposes of this clause the Market Value shall be assessed by the Valuer and evidenced by a Certificate in writing in such a form as may be approved from time to time by the Housing Corporation which shall be sent to the Landlord with the details for the assignment pursuant to Clause 3(17) hereof: and
- B any further advances made by the mortgagee of the Leaseholder at his request unless such further advance is made to enable the leaseholder to pay for a Portioned Percentage (as hereinafter defined) pursuant to the provisions of Clause 2 and the Fifth Schedule hereto and does not exceed the amount paid by the Leaseholder for such Portioned Percentage or such further advance is made to enable the Leaseholder to comply with his covenants contained in this Lease and accordingly to preserve the mortgagee's security or such further advance is made to enable the joint leaseholder to purchase the interest in this lease of the other joint Leaseholder and the further advance does not exceed the Market Value (as defined in the Fifth Schedule hereto) of the interest assigned as at a date no more than twelve weeks prior to the date of exchange of contracts for the assignment and for the purposes of this Clause the Market Value shall be assessed by the Valuer and evidenced in writing in the same manner as described in paragraph A above; but
- (ii) including any payment of Specified Rent, Service Charge or other monies due hereafter by the Leaseholder to the Landlord and including any monies outstanding in respect of any premiums paid or provided by the mortgagee

by way of a loan or otherwise under a mortgage protection life policy or an endowment policy and secured by the mortgage

- (b) any reasonable legal charges incurred by the mortgagee in recovering or attempting to recover any sums due under the mortgage or in respect of completion of the Final Staircasing and the assignment of this Lease Except if the relevant work shall be undertaken by an employee of the mortgagee in which case a reasonable allowance for such work
- (c) any reasonable agent's commission in such sale Except if the relevant work shall be undertaken by an employee of the mortgagee (which expression shall not include any employee of an estate agency owned by the mortgagee) in which case a reasonable allowance for such work
- (d) any other costs or expenses (other than the mortgagee's internal costs of administration) reasonably incurred by the mortgagee in connection with the protection of the security or the completion of the Final Staircasing and the assignment of the Lease except if the relevant work shall be undertaken by an employee of the mortgagee in which case a reasonable allowance for such work
- (e) the price payable upon completion of the Final Staircasing under the provisions of the Fifth Schedule hereto

The said price payable upon completion of the Final Staircasing shall be such sum as equals the amount of the Sale Price less the aggregate of the sums referred to in sub-clauses (a) (b) (c) and (d) hereto

PROVIDED ALWAYS the person primarily liable for the moneys due to the mortgagee as above referred to shall pay to the Landlord on demand with interest calculated in accordance with the provision of Clause 3(1) hereof such amount by which the said sum payable under the provisions of Paragraph 2 of the Fifth Schedule hereto has been reduced

Further Reading

- **Planning Policy Wales**
<http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>
- **TAN 2**
<http://wales.gov.uk/topics/planning/policy/tans/tan2/?lang=en>
- **TAN 6**
<http://wales.gov.uk/topics/planning/policy/tans/tan6/?lang=en>
- **Section 106 Guidance**
<http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/s106guidance/?lang=en>
<http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/affordablehousing/?lang=en>