

Agreement – Section 11(6) of the Local Government Act 2003

This agreement is made pursuant to section 11(6) of the Local Government Act 2003.

Parties

The Secretary of State for Housing, Communities and Local Government (“the Secretary of State”)

and

the London Borough of Haringey (“the Authority”).

Part 1 – General

1. In this Agreement—

“commencement date” means 1st July 2012;

“financial year” has the same meaning as in the Regulations;

“First Home” means a dwelling which is disposed of as a freehold or (in the case of a flat only) as a leasehold property which, on first disposal, may only be sold—

- (a) to a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 who satisfies such eligibility requirements as may be published from time to time by the Secretary of State,
- (b) at a sale price that is at least 30% below open market value,
- (c) at a sale price that does not exceed £420,000 if it is situated in Greater London or £250,000 if situated elsewhere or such other amount as may be published from time to time by the Secretary of State, and
- (d) subject to such conditions restricting disposal as may be published from time to time by the Secretary of State;

“housing land” has the meaning given by regulation 1(5) of the Regulations.

“low cost rental accommodation” has the meaning given by Part 2 of the Housing and Regeneration Act 2008 (see sections 69 and 71);

“quarter 1” means the quarter in which the commencement date falls;

“quarter” has the same meaning as in the Regulations;

a reference to a “Part” is to a Part of this Agreement;

“the permitted purpose” means—

(a) in relation to expenditure occurring before 1st April 2021, the provision of low cost rental accommodation, and

(b) in relation to expenditure occurring on or after 1st April 2021, the provision of relevant low cost rental accommodation, shared ownership accommodation and First Homes;

“prior agreements” means the agreements, dated 25th September 2012, 28th June 2013 and 22nd June 2020, entered into by the Parties pursuant to section 11(6) of the Local Government Act 2003 which relate to the retention of receipts from housing land that the Authority would otherwise be required to pay to the Secretary of State under regulation 12 of the Regulations;

“receipts” means the receipts to which the Schedule applies;

“the Regulations” means the Local Authority (Capital Finance and Accounting) (England) Regulations 2003;

“relevant expenditure” has the meaning given by Part 7;

“relevant low cost rental accommodation” means low cost rental accommodation that is not—

(a) accommodation to which the Policy Statement on Rents for Social Housing issued by the Secretary of State on 26th February 2019 does not apply (see Chapter 5 of that Policy Statement), and

(b) accommodation provided in pursuance of any function under Part 7 of the Housing Act 1996 (homelessness);

“retained amount” means the amount notified to the Secretary of State under paragraph 3(b) of Part 2;

“the Schedule” means the Schedule to the Regulations;

“shared ownership accommodation” means accommodation that satisfies the conditions in section 70(2)(a) and (3) of the Housing and Regeneration Act 2008;

“sub-liability” has the same meaning as in the Regulations.

2. The prior agreements are revoked.

3. The Authority is not required to pay to the Secretary of State the portion of the sub-liability calculated in accordance with paragraph 2 of Part 2 provided that the Authority complies with the conditions set out in this Agreement.
4. The Authority must use the retained amounts for relevant expenditure for the permitted purpose.
5. Any retained amounts not used in accordance with paragraph 4 must be paid to the Secretary of State.
6. Interest on any retained amount not used in accordance with paragraph 4 will be payable in accordance with paragraph 7 of Part 2.
7. The Authority must provide to the Secretary of State the information set out in Parts 2 and 6 in the format that the Secretary of State may from time-to-time request.
8. This Agreement may be terminated by the Secretary of State giving one quarter's notice.
9. This Agreement may be amended by further written agreement signed by the Secretary of State and the Authority.

Part 2 – Calculation of the portion of the sub-liability that the Authority may retain

1. In this part—

the terms “A”, “E”, “F”, “G”, “J”, “K” have the same meaning as in the Schedule as it had effect when the sub-liability for the relevant pooling period was calculated;

“L” —

- (a) is 2.398347729 in relation to a relevant pooling period falling in the financial year 2012-13; and
- (b) otherwise has the same meaning as in the Schedule as it had effect when the sub-liability for the relevant pooling period was calculated;

“M” is the retained amount;

“due date” has the same meaning as in the Regulations as they had effect when the sub-liability for the relevant pooling period was calculated;

“non-retained amount” has the meaning given by paragraph 5;

“pooling period” has the same meaning as in the Schedule;

“relevant pooling period” means the pooling period to which the calculation of the portion of the sub-liability that the Authority may retain relates.

2. Where in any pooling period—

$$\underline{A > ((L + 1) \times G) + E + F + J}$$

the Authority may retain an amount equal to or less than—

$$\underline{K - (L \times G)}.$$

3. The Authority must notify the Secretary of State of the following by the due date of the relevant pooling period—

(a) the value of K - (L x G);

(b) the amount the Authority has decided to retain (“M”).

4. Where—

$$\underline{K - (L \times G) > M}$$

the Authority must pay the non-retained amount to the Secretary of State by the due date of the relevant pooling period.

5. The non-retained amount is—

$$\underline{K - (L \times G) - M}.$$

6. Where the Authority fails to pay the non-retained amount by the due date of the relevant pooling period, interest calculable in accordance with Part 5 will be incurred and is payable from that date until the Authority pays the non-retained amount, and any interest due on the non-retained amount, in full to the Secretary of State.

7. The Authority may make a voluntary repayment of part or all of the retained amount (“P”).
8. Where the Authority makes a voluntary repayment in accordance with paragraph 7, interest calculable in accordance with Part 5 will be incurred and is payable from the due date of the relevant pooling period until the Authority pays P, and any interest due on P, in full to the Secretary of State.

Part 3 – Return of retained amounts – receipts received prior to 1st April 2017

1. This Part applies in respect of receipts received prior to 1st April 2017.

2. In this Part—

“due date” means the last day of the month following the relevant quarter;

“P1” is the total of relevant expenditure for the permitted purpose in the period beginning with the first day of quarter 1 and ending with the last day of the relevant quarter;

“R1” is the sum of—

- (a) the total of any voluntary repayments made to the Secretary of State under paragraph 7 of Part 2 in respect of the period beginning with the first day of quarter 1 and ending with the last day of the reckonable quarter, and
- (b) the total of the returnable amounts calculated under paragraph 3 of this Part for all quarters from quarter 1 to the quarter preceding the reckonable quarter (inclusive);

“reckonable quarter” means the quarter twelve quarters prior to the relevant quarter;

“relevant quarter” means the quarter to which the returnable amount calculation relates; and

“returnable amount” has the meaning given by paragraph 4;

“Z1” is the total of the retained amounts for all quarters from quarter 1 to the reckonable quarter (inclusive).

3. Where on the last day of the relevant quarter—

$$\underline{Z1 - R1 > (0.3 \times P1)}$$

the Authority must pay the returnable amount to the Secretary of State by the due date.

4. The returnable amount is—

$$\underline{Z1 - R1 - (0.3 \times P1)}.$$

5. Where the Authority must pay a returnable amount to the Secretary of State under paragraph 3 of this Part, interest calculable in accordance with Part 5 will be incurred and is payable from the due date of the reckonable quarter until the date the returnable amount, and any interest due on the returnable amount, is paid in full to the Secretary of State.

Part 4 – Return of retained amounts - receipts received on or after 1st April 2017

1. This Part applies in respect of receipts received on or after 1st April 2017.

2. In this Part—

“due date” means the 30th April following the relevant financial year;

“P1” is the total of relevant expenditure for the permitted purpose in the period beginning with the first day of quarter 1 and ending with 31st March 2021;

“P2” is the total of relevant expenditure for the permitted purpose from in the period beginning with 1st April 2021 and ending with the last day of the relevant financial year;

“R1” is the sum of—

- (a) the total of any voluntary repayments made to the Secretary of State under paragraph 7 of Part 2, and
- (b) the total of the returnable amounts calculated under paragraph 3 of Part 3,

for all the quarters from quarter 1 to the quarter beginning on 1st January 2017 (inclusive);

“R2” is the sum of—

- (a) the total of any voluntary repayments made to the Secretary of State under paragraph 7 of Part 2 in respect of the period beginning with 1st April 2017 and ending with the last day of the reckonable financial year, and

(b) the total of the returnable amounts calculated under paragraph 3 of this Part for all financial years falling in the period beginning with 1st April 2017 and ending with the last day of the financial year preceding the reckonable financial year;

“reckonable financial year” means, in respect of a financial year beginning on 1st April 2017 or later, the financial year five years prior to the relevant financial year;

“relevant financial year” means the financial year to which the returnable amount calculation relates;

“returnable amount” has the meaning given by paragraph 4;

“Z1” is the total of the retained amounts for all the pooling periods falling in the period beginning with the first day of quarter 1 and ending with 31st March 2017;

“Z2” is the total of the retained amounts for all the pooling periods falling in the period beginning with 1st April 2017 and ending with the last day of the reckonable financial year.

3. Where on the last day of the relevant financial year—

$$(Z1 - R1) + (Z2 - R2) > (0.3 \times P1) + (0.4 \times P2),$$

the Authority must pay the returnable amount to the Secretary of State.

4. The returnable amount is—

$$\left(\frac{Z1 - R1}{0.3} + \frac{Z2 - R2}{0.4} - (P1 + P2) \right) \times 0.4$$

5. Where the Authority must pay a returnable amount to the Secretary of State under paragraph 3 of this Part, interest calculable in accordance with Part 5 will be incurred and is payable from the due date of the reckonable financial year until the date the returnable amount, and any interest due on that amount, is paid in full to the Secretary of State.

Part 5 – Calculation of interest

1. Where interest is payable under this Agreement, it shall be calculated at the rate of 4% above the base rate on a day-to-day basis compounded with three-monthly rests until 31st July 2021 and yearly rests thereafter.

2. In paragraph 1, base rate has the same meaning as in regulation 13(6) of the Regulations.

Part 6 – Provision of information

1. The Authority is required to provide, within one month of the end of each quarter, such data relating to—
 - (a) sales of dwellings that are housing land;
 - (b) accommodation provided by the Authority, or that the Authority plans to provide, pursuant to this Agreement; and
 - (c) buy back accommodation,as the Secretary of State may reasonably require.

2. For the purposes of paragraph 1—

“buy back accommodation” means accommodation in respect of which the expenditure incurred by the Authority was accounted for as a relevant cost of buying back a relevant interest under paragraph 3 of the Schedule;

“accommodation provided by the Authority” includes accommodation provided by a body to which the Authority has paid some or all of the retained amounts (other than a body in which the Authority holds a controlling interest).

Part 7 – Relevant expenditure for the permitted purpose

1. In this Part, “development costs” means the costs specified in Part 8.
2. Subject to paragraphs 4 and 5, relevant expenditure for the permitted purpose is expenditure by the Authority for the benefit of the Authority on any of the following—
 - (a) the development costs associated with the acquisition of dwellings to be used for the permitted purpose;

- (b) the development costs associated with the acquisition of land for the construction of dwellings to be used for the permitted purpose;
 - (c) the development costs of the construction of dwellings to be used for the permitted purpose.
3. For the purposes of paragraph 1—
- (a) expenditure by the Authority includes expenditure by a body to which the Authority has paid some or all of the retained amounts (other than a body in which the Authority holds a controlling interest);
 - (b) expenditure is for the benefit of the Authority if it is expenditure on—
 - i. the provision of accommodation situated in the area of the Authority; or
 - ii. the provision of accommodation in respect of which the Authority has a nomination arrangement within the meaning of section 159(4) of the Housing Act 1996.
4. Relevant expenditure for the permitted purpose excludes any expenditure—
- (a) which reduced a capital receipt within the meaning of regulation 15(1)(c) of the Regulations as they had effect prior to the amendments made by S.I. 2013/476;
 - (b) which, for the purposes of calculating the buy back allowance are relevant costs, within the meaning of paragraph 3(1)(a) of the Schedule;
 - (c) funded by a capital receipt arising from the disposal of housing land which is not a capital receipt to which the Schedule applies;
 - (d) which was funded by an agreement made pursuant to section 106 of the Town and Country Planning Act 1990;
 - (e) on dwellings which are social housing at the time of the expenditure; or
 - (f) for the provision of housing which is wholly or partly funded by a grant provided by Homes England or the Greater London Authority.
5. Paragraph 4(f) does not apply in respect of expenditure of receipts received in the financial year beginning on 1st April 2012.

6. If S is greater than 20, the maximum number of acquisitions that may be included in relevant expenditure for the permitted purpose is limited to the number calculated as follows, rounded to the nearest whole number—
- (a) in the financial year 2022-23, $(S \times 0.5) + 10$;
 - (b) in the financial year 2023-24, $(S \times 0.4) + 12$; and
 - (c) for any subsequent financial year, $(S \times 0.3) + 14$.
7. For the purposes of paragraph 6—
- (a) “S” is the sum of the number of starts on site and number of acquisitions for the permitted purpose;
 - (b) the acquisition of new-build property is to be treated as a start on site if—
 - i. the property is acquired from a body in which the authority holds a controlling interest; and
 - ii. the property was not acquired by that body;
 - (c) the acquisition of a property for regeneration purposes is to be treated as a start on site if—
 - i. the property was, prior to the acquisition, uninhabitable and uninhabited for a continuous period of six months ending on the date of acquisition; or
 - ii. prior to the acquisition the property had never been used as a dwelling.
8. For the purposes of paragraph 7, “start on site” means the first of the following to occur at the behest of the Authority or any other body to which the Authority has paid all or part of the retained amount for the permitted purpose:
- (a) excavation for strip or trench foundations, or for pad footings;
 - (b) digging out and preparation of the ground for raft foundations;
 - (c) vibroflotation, piling, boring for piles, or pile driving; or
 - (d) drainage work specific to the buildings forming part of the relevant scheme.

Part 8 – Development costs

For the purposes of Part 7, “development costs” means the costs associated with development for the permitted purpose falling under the heads of expenditure listed below—

(a) Acquisition—

- i. Purchase price of land / site.
- ii. Stamp Duty Land Tax payable on the purchase of the land / site.

(b) Works—

- i. Main works contract costs (excluding any costs defined as “on costs”).
- ii. Major site development works. These include piling, soil stabilisation, road / sewer construction, and major demolition.
- iii. Statutory agreements, associated bonds, and Party Wall awards (including all fees and charges directly attributable to such works).
- iv. Additional costs associated with complying with archaeological works and Party Wall awards (including all fees, charges, and claims attributable to such works).
- v. Irrecoverable VAT on the above.

(c) On costs—

- i. Legal fees and disbursements.
- ii. Net gains / losses via interest charges on development period loans.
- iii. Building society or other valuation and administration fees.
- iv. Fees for building control and planning permission.
- v. Fees and charges associated with compliance with any legal requirement that it is necessary to meet before the property may be occupied.
- vi. In-house or external consultants’ fees, disbursements and expenses (where the development contract is a “design and build” contract (in respect of which, see Note 1)).
- vii. Insurance premiums including building warrant and defects / liability insurance (except contract insurance included in works costs).
- viii. Contract performance bond premiums.
- ix. Borrowing administration charges (including associated legal and valuation fees).

- x. An appropriate proportion of the development and administration costs of the Authority or the body in receipt of funding from the Authority.
- xi. Irrecoverable VAT on the above.

Note 1

Where the development contract is a “design and build” contract the on-costs are deemed to include the builder’s design fee element of the contract sum. Any amount included by the builder for design fees should be deducted from the works cost element referred to above, as should other non-works costs that may be submitted by the builder, including fees for building and planning permission, building warranty, defects liability insurance, contract performance bond, and the energy rating of dwellings.

Note 2

Some items will not qualify as development costs unless the Authority can clearly demonstrate that they are properly chargeable for the permitted purpose, i.e. for the sole use of the residents of the relevant dwellings or to comply with any statutory obligations that may have been imposed in respect of the permitted purpose.

The following are examples of development costs that are not properly chargeable for the permitted purpose—

- (a) works to any roads which do not exclusively serve the relevant dwellings;
- (b) landscaping to areas of land which lie outside the boundaries of the land on which the relevant dwellings are situated;
- (c) district heating systems;
- (d) trunk sewers and sewage disposal works;
- (e) special refuse treatment buildings;
- (f) public conveniences; and
- (g) community halls, club rooms, and recreation rooms.

In this note, “relevant dwellings” means the dwellings, the provision of which comprises the permitted purpose.

Note 3

Subject to Note 2, where any cost incurred or to be incurred by the Authority or a body in receipt of funding from the Authority is common both to the development for the permitted purpose and to any other activity, asset, or property of the Authority of such body, on such part of that cost as is attributable to the said development may be treated as a cost in respect of which the retained amount may be paid.

Signed on behalf of the Authority by

Jon Warlow

Name

Director of Finance (S151 Officer)

Position



07/10/2021

Signature

Date

Signed on behalf of the Secretary of State by

Name

Position

Signature

Date