

**ROYAL BOROUGH
OF
KENSINGTON & CHELSEA**

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PDD



Date 14 January 2003
 Our ref 596/939/N17679.1
 Your ref
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EX DIR	HDC	TP	CAC	AD	CLU	AO AK
R.B. K.C.		63 FEB 2003			PLANNING	
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Dear Mr Shorland

**Appeals by Notting Hill Home Ownership
 Site at 7 Swanscombe Road, London W11
 Your Refs: APP/K5600/A/02/1104578 & 1104580**

Please find enclosed the Appellant's comments on the statement of case submitted by the Royal Borough of Kensington and Chelsea, and on third party objections.

Please could you let me know the name of the appointed Inspector and the date of the site visit, as soon as possible.

Yours sincerely

Eleanor Penn

- cc Mr Nigel Lane: Notting Hill Home Ownership
- Mr John Allen: Avanti Architects
- Ms Anne O'Neill: Coudert Brothers
- Mr Derek Taylor: Royal Borough of Kensington & Chelsea
- Mr Finlayson: London Borough of Hammersmith & Fulham

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COMMENTS OF THE APPELLANT ON THE STATEMENT OF THE LOCAL PLANNING AUTHORITY
AND ON THIRD PARTY OBJECTIONS

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1 Statement of Case by the Royal Borough of Kensington and Chelsea ("RBKC")

1.1 RBKC's submissions in its statement of case are largely addressed in the Appellant's statement of case. The Appellant makes the following specific comments on RBKC's statement of case:

Paragraph 1.2

1.2 RBKC did not object to the demolition of the pre-existing public house including open car park and beer garden, which was a post-war building that led to uncontrolled parking, and gave rise to local amenity issues (record photograph of the public house are available if required). The building was demolished because of vandalism and to ease disturbances and concerns of local neighbours.

1.3 Demolition of the public house was pursuant to a conservation area consent dated 21 December 2001, which was, unusually, unconditional on any redevelopment proposal. This perhaps is an indication that RBKC has not previously considered this part of the Norland Estate Conservation Area to constitute a sensitive part of the conservation area.

Paragraphs 1.3 and 1.5

1.4 RBKC's description (in paragraph 1.3 of its statement) correctly identifies that the appeal site is partly situated on the former public and vehicular highway of Norland Road, which has been realigned westwards since the original road was laid out. The fact that the appeal site is now situated within the conservation area owes to the realignment of Norland Road and the alignment of the borough boundary rather than to the character and appearance of the area for which the Norland Estate Conservation Area was designated. The historical maps contained in Appendix 6 of the Appellant's statement of case illustrate this point clearly.

Paragraph 2.5

1.5 In accordance with PPG15 paragraph 4.17 (see paragraph 6.11 of the Appellant's statement of case), the Appellant does not seek to reproduce the features of particular buildings within either the Edward Woods Estate, or within the conservation area, but has taken account of all the various and contrasting qualities that make up its surroundings. This is after careful consideration and analysis of the appeal site surroundings. The analysis undertaken is set out in Appendix 5 of the Appellant's statement of case.

Paragraph 2.6

1.6 The Appellant intends to submit a completed Section 106 Agreement, which has been submitted to RBKC in draft form. This unilateral undertaking is not yet completed, and will follow under separate cover.

Paragraph 3.3

1.7 RBKC states that in the Planning Services Committee meeting on 23 July 2002, members instructed their officers to negotiate with the Appellant, in order to seek a reduction in the scale of the development, and that the "... Applicants declined to this because of the impact a significant reduction would have upon the viability of the development". This is not a correct interpretation of the Appellant's position, and we comment as follows:

- (i) The appeal scheme had already been progressively evolved throughout the application process, and specifically in response to RBKC planning and conservation officers' comments on design, amenity, parking and density issues, resulting in the scheme that

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RBKC officers were satisfied that they could recommend for approval (see paragraph 4.4 of the Appellant's statement of case).

- (ii) The Appellant's position is set out in two letters to Derek Taylor dated 7 August and 23 August 2002 respectively; only one of which (dated 7 August 2002 and focusing on financial viability) was included in and referred to in the Committee report (see paragraph 4.9 and Appendix 6 of the Appellant's statement of case).
- (iii) Following the Planning Service Committee meeting on 23 July 2003, the Appellant's architects met with RBKC planning officers, in order to review the reasons for the Committee's decision to defer a decision on the application. Out of this discussion came the suggestion from officers that it would be helpful for the Committee to view further explanatory and visual material, in order to better understand the proposal.
- (iv) The Planning Services Committee in the event declined to view the explanatory and visual material that the Appellant's architect had prepared. The sample board is still available for viewing should the Inspector wish to do so during the site visit.
- (v) The Appellant notes that RBKC members were not provided with a copy of the report of its conservation officer (Helena Benes) dated 17 May 2002. The Appellant has only been allowed to view it on the planning register, and was not allowed to make a copy. In summary, the report provided that:
 - "the scheme takes into account all of [Ms Benes'] comments".
 - "the scheme is of high quality modern idioms".
 - "there is a sufficient distance between the [appeal] site and the listed buildings, and there are a number of intervening buildings in between".
 - "the scheme includes interesting geometry, modelling and detail".

Paragraph 5.4

1.8 Every recommendation on a planning application will involve an assessment of issues that will be "on balance".

In relation to each of the issues, officers did not consider that there were sufficient grounds to justify a refusal of planning permission. This is made explicit in paragraph 6.1 of the officers' Committee report.

Paragraphs 5.7 – 5.15

1.9 RBKC states that "...the fact that the site is included within the conservation area strongly supports the stance that it should take more from the scale and character of the conservation area...". Similar arguments are advanced in paragraphs 5.9 and 5.11 of RBKC's statement of case. The Appellant has several comments in respect of the submissions, and in respect of RBKC's submissions in paragraphs 5.9 – 5.15 of its statement of case, as follows:

- (i) RBKC acknowledges that the surroundings of the appeal site are of extremely varied character (paragraph 1.4 of its statement of case); that it rests on an urban fault line; that a degree of flexibility and design approach is possible in relation to the appeal site; and that the appeal site needs to address the contrasting environments (paragraph 5.7 of its statement).
- (ii) The character and appearance of the Norland Estate Conservation Area is derived from the original boundaries of the area when it was first designated in 1969, and not to the character and appearance of the extension of the conservation area, within which the

appeal site is situated. The Appellant has already referred in its statement to the way in which this part of the conservation area was added at a later stage. The varied character and appearance of buildings in this extended part of the conservation area is evidenced to the south of the appeal site.

- (iii) The anomalous character of this part of the conservation area, compared to the area covered by its original designation, will be evident on site. In particular the anomaly will be evident in view south along Norland Road and east along Swanscombe Road towards St Anne's Villas, as compared to views along St Anne's Villas itself, Queensdale Road and Norland Square (all located within the originally designated conservation area).

Paragraphs 5.7 and 5.9

- 1.10 The Appellant wishes to draw attention to the officers' opinion that in terms of views along Swanscombe Road, the site *"requires a building of some townscape presence to balance the shops above on the northern side and to properly terminate this side of the road"*, and that the scheme achieves this more successfully than the previous permission for a development of three storeys (see paragraph 4.13 of the officers' Committee report, at Appendix 7 of the Appellant's statement of case).

Paragraph 5.10

- 1.11 The assertion that the appeal building is slightly taller than the building opposite is factually incorrect. The lower half of drawing no. 0112-P-GA08 and Section B-B in drawing no. 0112-P-GA10 illustrates that the appeal building is lower than the building opposite.

Paragraph 5.13

- 1.12 The Appellant disputes RBKC's assertion in relation to Policy CD53. The "Aerial View Towards St Anne's Road" and elevations seen behind Section B-B (drawing no. 0112-P-GA12) shows that the proportion, height and scale of the appeal building closely matches those of St Anne's Villas and the Organ Factory.
- 1.13 Moreover, all three elevations in drawing no. 0112-P-GA10 illustrate how well the proportion, height and scale of the appeal building relates to the nearby buildings in the same street block, contrasting with the dominant 24-storey blocks of the Edward Woods Estate.
- 1.14 In relation to the proposed use of render, the Appellant refers to the western elevation of No.33 St Anne's Villas, which faces the appeal building and employs render. Render is also used on the building adjacent to the gatehouse building, and is a design feature of other significant buildings in the conservation area.

Paragraph 5.15

- 1.15 There are limited public view points from which it is possible to read the appeal site in relation to St Anne's Villas. This will be evident on site, and in particular from views along Swanscombe Road looking both east and west. The appeal site is situated to the rear of St Anne's Villas, and beyond intervening buildings which do not resemble St Anne's Villas, and will therefore not affect the setting of these buildings, or views from within this part of the conservation area.
- 1.16 The purpose of conservation area designation is not to protect private views of the area from within buildings.

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Paragraph 5.28

- 1.17 The Appellant makes the following comments in relation to RBKC's assertions on parking.
- (i) The Appellant disagrees with RBKC's views on there being little alternative public transport available in the area, and refers to the two underground stations located within 500m of the site (Shepherd's Bush and Holland Park) and to the several bus routes in the area (see paragraph 9.3 of the Appellant's statement of case). Other parts of the borough may be even better served, but that is not a reason to require the maximum provision under Policy TR46. Close to the maximum (11 compared with a maximum of 14, a figure which is itself rounded up from 13.3) is provided.
 - (ii) The number of proposed car parking spaces is the result of a careful consideration of accessibility from the site and its surroundings, occupancy requirements and market research, which has led to the conclusion that 11 spaces are appropriate for this location.
 - (iii) The planning officer assessed all of these factors, and on this basis did not consider that the maximum in Policy TR46 need be applied.

2 Third party representations

2.1 In relation to these appeals the Appellant has seen copies of three letters received from third parties. The Appellant considers that any substantive points raised in these letters are dealt with above (and in the Appellant's statement of case). However, the Appellant makes the following additional comments:

2.1.1 Letter dated 3 January 2003 from Mr & Mrs Wade (33 St Anne's Villas)

- (i) Paragraph 2, item 3: The appeal scheme easily meets the required UDP planning standard for natural lighting impact (figure 2.2), and would not reasonably worsen natural daylighting for No.33 (see paragraphs 4.29-4.31 of the officers' Committee report at Appendix 7 of the Appellant's statement of case).
- (ii) Paragraph 2, item 4: In the originally designed scheme, the only windows which the planning officer considered would result in overlooking were south facing windows which would have had a marginal effect on the courtyard area between the "gatehouse" and the former Organ Factory. In response to this concern, the scheme was revised. In addition, the Appellant's architect agreed to obscured glazing to all windows on the east elevation.
- (iii) Paragraph 3: The Appellant proposes eight semi-mature trees across the site (shown in drawing 0112-P-GA02), which would provide a higher level of amenity than that provided by the existing tree.
- (v) Paragraph 3, item 1: The appeal scheme has been designed to ensure that there is a range of unit sizes (including three family-sized town houses with private gardens and a mixture of 1, 2 and 3-bedroomed flats) in order to comply with UDP policies H14 and H19 (housing mix). Unit sizes also exceed the minimum floor space requirements contained in the UDP. The Appellant has also ensured that there is a ground floor flat dedicated for use by disabled persons with its own access to the communal garden and dedicated parking space.
- (vi) Paragraph 3, item 3: In relation to sense of enclosure, the Appellant is entirely satisfied that there will be no detrimental sense of enclosure suffered by the occupants of No. 33 St Anne's Villas. In relation to security, the Appellant considers that the built form of the

appeal scheme will improve security for the occupiers of No. 33 St Anne's Villas, and it accepts the proposed condition for approval of details.

- (vii) Paragraph 5: "Caranday Villas" are located immediately behind the main properties fronting Norland Road. The Appellant considers that the modest scale of this development, replacing former garages, is appropriate to the character of its mews location and for this reason is not an applicable reference in terms of scale for the appeal site.

2.1.2 Letter dated 9 January 2003 from Mr & Mrs Lamont (The Organ Factory)

- (i) In relation to loss of light, the Appellant has carefully designed the appeal scheme so that none of the habitable rooms of the former Organ Factory would be affected.
- (ii) The sense of enclosure that the residents of the former Organ Factory would experience is a significant improvement on that which previously existed with the former public house, and that which would be the case with the extant permission, which obtrudes significantly further behind the rear building line of the gate house that does the appeal scheme (see paragraphs 7.15 of the Appellant's statement of case; and paragraphs 4.35 of the officers' Committee report, at Appendix 7 of the Appellant's statement of case).
- (iii) The Appellant has addressed the issue of overlooking to the former Organ Factory by designing angled windows in the 3-storey part of the development fronting Swanscombe Road (see drawing nos. 0112-GA03/A and 04/A in Appendix 4 of the Appellant's statement of case) to turn views away from the former Organ Factory, as well as obscured glazing in the kitchen and landing windows facing the former Organ Factory in the east flank of the appeal scheme.

SJ Berwin

31 January 2003

① PC + LB NO. 8267 P. 1
② Copy Hazel (Regat)
JK
MOR.

COUDERT BROTHERS

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14 February 2003

Our Ref: AON/100008.377

By Fax and Post
7361-3463

Derek Taylor
Room 322
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Dear Sir,

7 Swanscombe Road, London, W11

Thank you for your letter of 31st January 2003 but only received here on the 5th February. I would comment on your proposed amendments as follows:

- ✓ 1. Clause 2 of the Schedule – we have no objection to this.
- ✓ 2. Definition of affordable housing – again this is acceptable.
- X 7 3. Affordable housing flats – we cannot proceed on any basis other than as currently drafted. In particular the new reference to "for rent" is not acceptable. The previous completed section 106 agreement dated the 23rd June 1999 did not specify affordable housing for rent. We note that the recently adopted UDP policy H22 has not materially altered the Council's position such as to impose this requirement.
- e-mail Stan 4. Definition of registered social landlord – the only distinction between the drafting we can see is that you assume that a registered social landlord will always be registered by the Housing Corporation. As long as the RSL is registered pursuant to the Housing Act, is this a concern? We would prefer our drafting to remain.

gives greater comfort and certainty as there could always be housing associations not registered by Housing Corporation

THIS FIRM IS REGULATED BY THE LAW SOCIETY
A LIST OF THE PARTNERS AND THEIR PROFESSIONAL QUALIFICATIONS IS OPEN FOR INSPECTION AT THE ABOVE OFFICE

for the avoidance of doubt pref. is that the Undertaking should explicitly state that the RSL is registered by the Housing Corporation

14. FEB. 2003 14:47

NO. 8267 P. 2

14 February 2003
Page 2

COUDERT BROTHERS

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We look forward to hearing from you.

Yours faithfully



COUDERT BROTHERS

cc Nigel Lane - NHHG - By Fax and DX - 8357-4459
Eleanor Penn - S J Berwin - By Fax and DX - 7533-2000

PLANNING AND CONSERVATION

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Web: www.rbkc.gov.uk
Mr.: D. Taylor

26th February 2003

THE ROYAL
BOROUGH OF



**KENSINGTON
AND CHELSEA**

My reference: DPS/DCN/PP/02/ Your reference: AON/100008.377 Please ask for: Mr D. Taylor
0901

Dear Madam,

Town and Country Planning Act 1990
7 Swanscombe Road W11

I write in reference to your letter of 14th February 2003, in which you make comment upon the letter of 31st January from this authority.

Firstly, relating to Clause 2 (page 3 of your draft), it seems that we have now agreed to use our standard wording, namely:

“The developer hereby covenants not to occupy nor permit the occupation of any of the Affordable Housing Units other than by a tenant or tenants of a Registered Social Landlord”.

In point 2 of your letter you agree to the definition of “Affordable housing” as being:

“residential accommodation which meets the objectives of a Registered Social Landlord”.

In Point 3 of your letter, you correctly point out that the earlier agreement did not specify that the housing should be for rent. This Council has thus, accepted the principle of development on this site as a shared ownership scheme, although there is certainly no objection to the provision of flats for rent if a Registered Social Landlord wished to do so in the future. I therefore propose the following wording for “Affordable Housing Flats” which would be compatible with the previous agreement, namely:

“eleven of the units of residential accommodation to be provided as Affordable Housing for rent or shared ownership on the Land as part of the Development”.

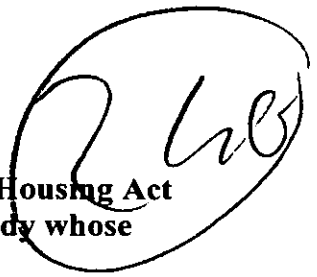
Turning to Point 4 of your letter, I still strongly recommend that you do include the reference to the Housing Corporation. The view of this Council is that this provides greater comfort and certainty as there could always be housing associations not registered by the Housing Corporation; for the avoidance of doubt our preference is that the Undertaking should explicitly refer to the RSL in question being registered by the Housing Corporation.




INVESTOR IN PEOPLE

Therefore, I recommend again that the wording for "Registered Social Landlord" is:

"an organisation registered by the Housing Corporation in accordance with the Housing Act 1996 or, if such bodies cease to exist or are superseded, the nearest equivalent body whose objectives include the provision of Affordable Housing"



Yours faithfully,



Derek Taylor,
Area Planning Officer
For
Executive Director, Planning & Conservation

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5 March 2003

Our Ref: MGC/100008.377

Derek Taylor
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Dear Sir,

7 Swanscombe Road, London, W11

Thank you for your letter of the 26th February. We think your letter sets out the position as per our previous correspondence. Our clients will also agree the reference to the Housing Corporation in the definition of registered social landlords. We enclose a clean copy of the unilateral undertaking which we are arranging to have executed and will be submitted to the planning inspectorate in due course.

Yours faithfully

COUDERT BROTHERS

cc Eleanor Penn - S J Berwin

DATED

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THE DEVELOPER: NOTTING HILL HOME OWNERSHIP LIMITED

**UNILATERAL SECTION 106
UNDERTAKING**

relating to
the former Sheepshank Public House
now known as
7 Swanscombe Road
London W11

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Coudert Brothers
60 Cannon Street
London
EC4N 6JP

Ref: AON/0100008/0377

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DEED dated

BY:

- (1) NOTTING HILL HOME OWNERSHIP LIMITED whose registered office is at Grove House 27 Hammersmith Grove London W6 OJL ("the Developer")

TO:

- (2) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA (the "First Council")

RECITALS:

- (A) The First Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") for the majority of the area within which the Land is situated. The London Borough of Hammersmith and Fulham (the "Second Council") is the other local planning authority for the purposes of the Act for the remainder of the area within which the Land is situated.
- (B) The Developer owns the freehold interest in the piece or parcel of land registered at H M Land Registry under title number NGL378781 ("the Land") at the former Sheepshank Public House now known as 7 Swanscombe Road shown edged red on the annexed plan free from incumbrances. A copy of the title is annexed.
- (C) The Developer applied to the First Council by written application reference number PP/02/0901 dated 19 April 2002 and to the Second Council by written application reference 2002/1161/P dated 10 May 2002 for permission to develop the Land by the construction of a residential development of 17 units comprising 1, 2 and 3 bedroom units (including 11 units of Affordable Housing) and the provision of 11 off street parking spaces ("the Development").
- (D) At a meeting of the First Council's Planning sub-Committee on the 3 September 2002 the First Council resolved to refuse planning permission for the Development.
- (E) The Second Council has failed to determine the application for the Development within the statutory period for determination.
- (F) The Developer has appealed to the Secretary of State by two appeals against the refusal and the failure to determine respectively.
- (G) The Developer is willing to give this Unilateral Undertaking to the First Council to make provision for 11 affordable flats forming part of the Development in the event of the Secretary of State granting planning permission for the Development envisaged in the applications.



NOW THIS DEED WITNESSES as follows:

- 1 In this Deed "the Act" means the Town and Country Planning Act 1990
- 2 This Deed is made pursuant to Section 106 of the Act (and is a planning obligation for the purposes of that Section) and the First Council is the local planning authority by which the provisions of this Deed are intended to be enforceable
- 3 No person shall be liable for any breach of the planning obligations contained in this Deed occurring after he has parted with his interest in the Land or the part in respect of which such breach occurs
- 4 This Deed shall come into effect only upon the date upon which the Secretary of State grants the planning permission for the Development PROVIDED ALSO THAT
 - 4.1 unless and until the Developer implements the planning permission by the carrying out of a material operation (as defined in Section 56(4) of the Act) nothing in this Deed shall oblige the Developer to comply with the undertaking on the Developer's part contained in clause 6 of this Deed and
 - 4.2 for the purpose of determining whether or not a material operation has been carried out there shall be disregarded such operations as demolition site clearance site preparation diversion and laying of services and construction of access or service roads
- 5 If the Permission is quashed or is revoked or otherwise withdrawn or (without the consent of the Developer) is modified by any statutory procedure or expires before the Development has been implemented this Deed shall cease to have effect
- 6 The Developer undertakes to observe and perform the restrictions and obligations set out in the Schedule hereto
- 7 This Deed is a Local Land Charge and shall be registered as such
- 8 Save where the context otherwise requires:
 - 8.1 references to any person shall include the successors in title of that party
 - 8.2 any person deriving title from the Developer shall only be bound by the Planning Obligations which are contained in this Deed to the extent that such person has a legal interest in the Land (or part of it) at the time when such obligations arise

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EXECUTED AS A DEED and delivered on but not before the date of this Deed

The COMMON SEAL of NOTTING HILL)
HOME OWNERSHIP LIMITED was)
hereunto affixed in the presence of:)

Authorised Signatory

Director/Secretary

SCHEDULE

(Restrictions and Obligations)

1. INTERPRETATION

In this Deed:-

"Affordable Housing"	means residential accommodation which meets the objectives of a Registered Social Landlord
"Affordable Housing Flats"	means eleven of the units of residential accommodation to be provided as Affordable Housing for rent or for shared ownership on the Land as part of the Development
"Registered Social Landlord"	means an organisation registered by the Housing Corporation in accordance with the Housing Act 1996 (or if such bodies cease to exist or be superseded then the nearest equivalent body whose objectives include the provision of Affordable Housing)
"Relevant Body"	means a mortgagee chargee or receiver of a Registered Social Landlord

2. THE DEVELOPER'S COVENANTS

The Developer hereby covenants not to occupy or permit the occupation of any of the Affordable Housing Flats other than by a tenant or tenants of a Registered Social Landlord

3. EXCLUSIONS

3.1 The covenants in paragraph 2 of this Schedule shall not be binding in the circumstances set out below:-

3.1:1 (Subject to paragraph 3.2 of this Schedule) a Relevant Body who seeks to dispose of the Affordable Housing Flats or any part thereof (as to such part) pursuant to its power of sale exercised pursuant to default of the terms of a mortgage or charge or any person deriving title from any such Relevant Body

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- 3.1:2 An occupant of an Affordable Housing Flat who has exercised a statutory right to acquire under the Housing Act 1996 or otherwise ("Occupant") or any person (other than a Registered Social Landlord) deriving title under that Occupant
- 3.1:3 A person acquiring a shared ownership lease of an Affordable Housing Flat ("Lessee") or any person (other than a Registered Social Landlord) deriving title under that Lessee
- 3.2 In the event that a Relevant Body wishes to exercise its power of sale and/or dispose of the Affordable Housing Flats or any part thereof it shall first use reasonable endeavours to sell the Affordable Housing Flats to another Registered Social Landlord at a price to be agreed by the Relevant Body PROVIDED THAT if after a period of two months from the date of default (having used all reasonable endeavours as aforesaid) such person shall not have sold the Affordable Housing Flats to another Registered Social Landlord the Relevant Body shall thenceforth be under no obligation to sell the Affordable Housing Flats to a Registered Social Landlord and shall be entitled to exercise its powers of sale or make a disposition as the case may be free of any restrictions under this Deed which shall thereupon determine absolutely and be of no further effect