

Appendix A – The Homes and Communities Agency Grant Funding Conditions under the Affordable Homes Programme

Introduction

These Funding Conditions apply to previous programmes allocated under the NAHP and the AHP 11-15 programme (including sub-programmes), the Affordable Homes Guarantee Programme and Care and Support.

The affordable housing investment provisions of the Housing and Regeneration Act 2008 came into force from 1 April 2010. Allocations for the provision of affordable housing made prior to 1 April 2010 are treated as being made under s18 of the Housing Act 1996. Allocations for the provision of affordable housing made from 1 April 2010 (including substitute allocations) are made under s19 of the Housing and Regeneration Act 2008. It is likely that a number of providers will have allocations made under both sets of powers. In addition, from 1 April 2012 the Homes and Communities investment powers within Greater London passed to the Greater London Authority who may provide funding for housing and regeneration under sections 30 and 333ZE of the GLA Act (as amended). These Funding Conditions apply to all allocations that exist outside of London, except for those agreed under the 2015-18 Affordable Homes Programme, regardless of the powers under which they were made. For allocations agreed under the 2015-18 Affordable Homes Programme, the grant agreement includes the requirements of these conditions, where relevant, and replaces the requirement for annually agreed conditions.

The Funding Conditions apply to all Registered Providers of social housing, including all classes of Registered Providers including local authorities.

These Funding Conditions set out the requirements that must be met by Registered Providers when using Social Housing Grant, Social Housing Assistance, Purchase Grant (or any successor assistance to it) provided by the Homes & Communities Agency and its predecessor body the Housing Corporation. For the purposes of these Funding Conditions, the generic term “grant” is used throughout to cover all of the above.

Grant Conditions applied to all Programmes

1. All funding is subject to either the provisions of the Housing Act 1996 or the Housing and Regeneration Act 2008 as applicable (or any amendment or re-enactment thereof) and any applicable determinations made under those Acts by the Agency.
2. All grant applications and other scheme submissions relating to the achievement of forecast milestones must be made, and all grants provided must be used, in accordance with the Agency’s published criteria, procedures and audit arrangements; including, but without limitation, the Affordable Housing Capital Funding Guide and Help to Buy guidance. Non-compliance with the Agency’s requirements and procedures could result in the suspension or withdrawal of allocations or payments and recovery of grant (plus interest where applicable).

3. Grant funding is conditional upon Registered Providers meeting the standards set by the social housing regulator under Sections 193 and 194 of the HRA 2008 including the regulator's tenancy standard. This will be monitored by the social housing regulator and assessments of providers published in accordance with the Regulatory Framework. *'The regulatory framework for social housing in England from April 2012'* and associated materials can be found on the Agency's website at www.gov.uk/government/publications/the-regulatory-framework-for-social-housing-in-england-from-2012
4. Where Registered Providers are undertaking the role of Employer/Client on developments for which grant has been requested, funding is conditional upon Registered Providers undertaking grant funded projects in accordance with the principles set out in the '2012 Construction Commitments - Affordable Housing Provider version' or subsequent 'Clients' Commitments Best Practice Guide' http://www.constructingexcellence.org.uk/news/Client%20Commitments_March%202013.pdf. Further detail is available at <http://www.clientscommitments.org.uk/> The Agency will exercise discretion in relation to Registered Providers undertaking small or occasional projects with insignificant construction activity.
5. All grant paid must be applied to the provision of affordable housing and must be used as prescribed in the Agency's guidance. Registered Providers should ensure appropriate financial appraisal of schemes to confirm their viability both during the development period and in the long term. All schemes should be developed to the size and standards submitted at allocation unless specific prior approval to waive certain aspects is granted by the Agency.
6. Funding is conditional on Registered Providers either possessing a legal interest in the property already, or having entered into a binding legal agreement to acquire such an interest as part of a scheme, prior to drawing down grant. Where Registered Providers are acquiring an interest in the property or where works are to be done, the property must offer good title. Property already in Registered Providers ownership must comply with this condition. Where a leasehold interest is to be acquired, the outstanding term should be at least 30 years for rehabilitation schemes, 60 years for new build schemes, and at least 99 years for affordable home ownership schemes at the date of purchase completion. For properties leased under the Empty Homes programme, the lease length must be equal to or longer than the length specified on IMS at the time of grant allocation, unless changes have been agreed subsequently and recorded on IMS.
7. Under the NAHP 08-11 Programme Partnering Agreement (PPA), and later consortium grant agreements, grant can be paid via the Lead Partner to other Registered Providers within the partnership. In this case, the Lead Partner is simply a conduit for payment and not a grant recipient. Lead Partners do not, therefore, need an interest in the site to enable this transaction.
8. No member, employee, agent or consultant of Registered Providers or any partner organisation should have any interest in the proposed vendor, contractor or the land or property to be acquired, including properties purchased by individuals under Affordable Home Ownership or other such schemes. This includes any firm, partnership or organisation in which they or their families are involved.

9. The Agency takes a zero tolerance approach to bribery and corruption and sets the highest standards of impartiality, integrity and objectivity in relation to the stewardship of public funds and the management of its activities. The principles contained within this policy apply to any body or organisation undertaking business with the Agency. The Agency's Anti-Bribery and Corruption policy can be accessed via the link located within the Agency's Ethical Policies website page: www.gov.uk/government/collections/ethical-policies
10. For Affordable Rent units, Registered Provider's rents must be consistent with those agreed at programme offer (unless a programme change notice has been agreed subsequently).
11. For Social Rent units there should be consistency between the rents, including housing benefit eligible service charges specified by Registered Providers at the time of grant allocation, with those agreed at confirmation of grant stage and those charged from first letting or point of sale onwards. Registered Providers will therefore charge rents, including housing benefit service charges, on first letting or point of sale which are no higher than those agreed at confirmation of grant and thereafter it will only change its rents in compliance with standards specified by the social housing regulator. The social housing regulator standard also applies to service charges and includes requirements related to annual changes. Where this is not the case, Registered Providers must be able to demonstrate that the service charge increase is based on cost recovery. Registered Providers should note the rent restriction does not apply to those specific committed programme schemes where an agreement is in place to convert these units to Affordable Rent prior to completion.
12. Where a scheme is to be developed by a different Registered Provider from that which will ultimately own or manage the scheme, there must be a written agreement between the Registered Providers on the terms of transfer and the rents including housing benefit service charges to be charged for the scheme.
13. The conditions above in respect of rents and service charges apply equally where affordable housing is transferred to an RP, from an unregistered body which has received funding to develop that housing, whether under s27A of the Housing Act 1996 or s19 of the Housing and Regeneration Act 2008.
14. All funding is subject to Registered Providers complying with the EU Procurement regime.
15. Registered Providers must ensure that house builder warranties suitable for mortgage purposes together with the accompanying 'cover note' as required under the Council of Mortgage Lenders initiative are available upon completion of homes.
16. Registered Providers are required to commission an appropriately qualified independent consultant or auditor to undertake a programme of self-assessment procedural compliance audit.
17. Registered Providers undertaking delegated development activities in partnership with a 'Lead' Registered Provider shall fully co-operate with the Lead

Organisation in order to enable the Lead Organisation to discharge its functions on behalf of its partner Registered Providers.

18. Where a Registered Provider is acting as the 'Lead' for a group or consortium of other Registered Providers that are participating in the delivery and/or management of homes included within a programme partnering agreement or grant agreement, then that lead organisation will be deemed responsible to the Agency for the following additional responsibilities and obligations on behalf of any of the participating Registered Providers:
- Monitoring programme delivery by all Registered Providers members of the partnership and taking appropriate action to avoid slippage;
 - Ensuring that the principles of the '2012 Construction Commitments AHP version' or subsequent 'Clients' Commitments Best Practice Guide' are understood and followed within the partnership;
 - Determining the individual Registered Providers that will carry out development functions for specific projects;
 - Usage of suitable legal and procedural documentation for all partnership members including an appropriate and binding agreement between the lead Registered Provider and the other participating Registered Providers that sets out the roles and responsibilities of all parties and details arrangements for resolving disputes within the partnership;
 - Ensuring that house builder warranties suitable for mortgage purposes together with the accompanying 'cover note' as required under the CML initiative are available upon completion of homes;
 - Where necessary, providing staff training and/or skills assistance to other partner Registered Providers participating in development activities;
 - Where a development is carried out on behalf of another Registered Providers within the partnership or consortium, ensuring that the build contract is assignable to the other Registered Providers on completion, together with warranties from all design consultants and sub-contractors and where relevant, obtaining consent from the social housing regulator for the transfer;
 - Arranging regular progress review meetings involving all members of the partnership or consortium;
 - Agreeing and facilitating a programme of quarterly review meetings with the Agency's lead investor or lead area contact, including where appropriate, timely submission of the officer certificates;
 - Commissioning appropriately qualified independent auditors to undertake a programme of self-assessment procedural compliance performance tests across the partnership as agreed with the Agency in accordance with the Agency's published standardised terms of engagement.
19. For allocations covered by a Framework Delivery Agreement, Registered Providers should comply with the lead partner responsibilities as set out in the Framework Delivery Agreement.

RENT

20. All properties developed for letting at affordable rents on assured tenancies with social housing grant/social housing assistance funding will be subject to the Right

to Acquire provisions of sections 180 to 185 of the Housing and Regeneration Act 2008 and section 16 and 17 of the Housing Act 1996 (or any amendment or re-enactment thereof), unless they are exempted by Part V of the Housing Act 1985 as amended by the Housing (Right to Acquire) Regulations 1997 or under one of the Housing (Right to Acquire or Enfranchise)(Designated Rural Areas) Orders 1997 or any subsequent amendments or because they are properties funded as part of a Temporary Social Housing or Empty Homes Lease & Repair scheme. In this context, “developed for letting at affordable rents” includes new build, rehabilitation, off the shelf, existing satisfactory purchase, purchase and repair, and re-improvement schemes.

SHARED OWNERSHIP

21. The shared ownership lease used by Registered Providers for future sales must include the fundamental clauses detailed in the Agency’s Affordable Housing Capital Funding Guide. Failure to include, a breach of, or variation (without the explicit written consent of the Agency) of the fundamental clauses, may be considered a Relevant Event under clause 7(e) of the Agency’s The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015, or its replacement, for Grant recovery purposes.

EQUITY LOAN

22. For all equity loans schemes Registered Providers must ensure they operate in line with the Agency’s processes, published guidance and policy. Registered Providers must ensure they are compliant with any required licencing and legislation.

PROGRAMME MANAGEMENT/SYSTEM MANAGEMENT

23. Registered Providers must join and fully participate in the Department for Communities and Local Government’s “Continuous Recording of Lettings System” (CORE) if they have a current development programme and they own or manage either self-contained homes and/or hostel/shared housing bedspaces
24. The Registered Provider must join and fully participate in recording both:
 - any lettings made; and
 - any sales of Registered Providers stock, including outright sales and shared ownership schemes, but excluding sales of additional equity shares purchased by existing shared owners (known as ‘staircasing’).
25. Registered Providers must follow the processes for re-forecasting milestones and for proposing any grant variation as set out in the Agency’s Affordable Housing Capital Funding Guide. Decisions on accepting proposed variations will be made in the light of the Agency’s available resources and the organisation’s progress towards meeting its targets.
26. The Agency may impose sanctions including amendment or withdrawal of allocations if forecast milestones are not met.

27. In the event of a Registered Provider failing to comply with these funding conditions or if there is any cause for serious concern about their performance or financial viability, the Agency reserves the right to suspend funding and, where there is a serious breach of these funding conditions or requirements set out in the Affordable Housing Capital Funding Guide, to recover relevant grant payments made, plus interest where appropriate.
28. If a Registered Provider should fail to comply with the conditions specified under sections 18 (3), 20 (4) and 21(4) of the Housing Act 1996, or those imposed or required under ss19 and 31 to 33 of the Housing And Regeneration Act 2008 the Agency may suspend, withhold or recover all or part of the grant, plus interest where appropriate, in accordance with the determinations made or powers arising under the relevant Act and its published guidance - including the Agency's Affordable Housing Capital Funding Guide.
29. Where Registered Providers receive grant funding this will be subject to the Agency's grant recovery principles as outlined in its Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015 as supplemented by requirements in the Agency's Affordable Housing Capital Funding Guide unless otherwise specified in the Grant Agreement or Framework Delivery Agreement. These principles will also be applied where affordable housing is transferred to a Registered Provider, from an unregistered body which has received funding to develop that housing, whether under s 27A of the Housing Act 1996 or s 19 of the Housing and Regeneration Act 2008.
30. Registered Providers must review their IMS security arrangements and in particular:
- ensure that the Agency is notified immediately if a Security Administrator leaves or changes posts and responsibilities;
 - ensure that the list of IMS users and their authorities is regularly reviewed to ensure they are correct and appropriate;
 - ensure that users are removed from IMS immediately they leave the organisation or are no longer required to work on IMS; and
 - ensure that IMS passwords are not shared and that all users are prevented from entering IMS under a User ID other than their own.
31. Failure to comply with the above may result in the withdrawal of the Registered Provider's IMS access.
32. A copy of the relevant committee minutes of the decision to agree to comply with the Funding Conditions must be retained by Registered Providers for Compliance Audit/Regulatory purposes.
33. The Agency reserves the right to issue additional conditions in year as deemed appropriate and necessary.

The Agency reserves the right to update and amend these conditions