

Date: 7 April 2020



District Council

Town Hall, Penrith, Cumbria CA11 7QF

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Dear Councillor J Derbyshire

Housing and Health Portfolio Holder Meeting Agenda - 17 April 2020

A meeting is to be held with Officers at 9.30 am, on Friday, 17 April 2020, in the Laburnum Room, Mansion House to consider the following matters:

1 Declarations of Interest

To receive declarations of the existence and nature of any private interests, both disclosable pecuniary interests and any other registrable interests, in any matter to be considered or being considered.

2 Grant Funding Agreement relating to the provision of Affordable Housing at Newton House, Penrith (Pages 3 - 32)

To consider report PP16/20 from the Assistant Director Community Services which is attached and which seeks to present for approval the Grant Funding Agreement in relation to the provision of affordable extra care housing at Newton House, Penrith.

RECOMMENDATION that the Grant Funding Agreement between Eden District Council and Housing 21 be approved.

Yours sincerely

A handwritten signature in black ink that reads "Rose Rouse".

Rose Rouse
Chief Executive

Democratic Services Contact:

Encs

For Attention

Portfolio Holder – Councillor J Derbyshire

For Information by Email to: - All remaining Members of the Council

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Report No: PP16/20

Eden District Council
Housing and Health Portfolio

17 April 2020

Grant Funding Agreement relating to the provision of Affordable Housing at Newton House, Penrith

Portfolio:	Housing and Health
Report from:	Assistant Director Community Services
Wards:	Penrith West
OPEN PUBLIC ITEM	

1 Purpose

- 1.1 To present for approval the Grant Funding Agreement in relation to the provision of affordable extra care housing at Newton House, Penrith.

2 Recommendation

- 2.1 It is recommended that the Grant Funding Agreement between Eden District Council and Housing 21 be approved.

3 Report Details

- 3.1 At Budget Meeting Executive Committee on 22 January 2019 the approved Capital Programme for 2018-2023 contained a commitment to fund a £288,000 contribution to Newton Road, Penrith extra care housing scheme. This was to be funded from existing S106 contributions held within the Affordable Housing Fund Reserve.
- 3.2 Following approval of full planning permission on 12 November 2018 (Planning Ref 18/0913) for a 54 Extra Care housing scheme (comprising 26 apartments for affordable rent and 28 apartments for shared ownership) and the subsequent signing of the associated S106 Agreement on the 14 June 2019, a Grant Funding Agreement (attached to this report as **Appendix 1**) has been prepared.
- 3.3 The Grant Funding Agreement is between the Council (the Funder) and Housing 21 (the housing provider and Recipient). The agreement sets out the terms of the £288,000 grant in relation to the provision of affordable extra care housing at Newton House; principally, the Recipient acknowledges and agrees that:
- The Grant is provided by the Funder on the express understanding that it is applied solely for the purposes of providing and retaining in perpetuity 54 Affordable Housing Units, comprising 26 units for rent and 28 units for Shared Ownership being Extra Care Housing, as indicated on the attached plan, at Newton Road, Penrith and;

- the Affordable Housing Units shall be used and continue to be used in perpetuity for the provision of Affordable Housing for persons with a Local Connection only.
- 3.4 The terms of the payment of the grant are set out in Clause 3 of the Grant Funding Agreement and are summarised below:
 - The Funder shall pay one half of the grant being the sum off £144,000 to the Recipient following the completion of this agreement on receiving a written request from the Recipient.
 - The Funder shall pay one half of the grant in the sum of £144,000 to the Recipient following the practical completion of the 54 Affordable Housing Units.
- 3.5 Of note, the Grant Funding Agreement requires the Recipient to take account of any nominations made by the Council in determining to whom the affordable extra care apartments should be let or sold. In this regard, the Recipient is required to adhere to a Joint Working Protocol (attached to the Grant Funding Agreement and shown in **Appendix 2**) entered into by the Care Provider, Housing Provider, Cumbria County Council and Eden District Council.
- 3.6 The principles underpinning the Joint Working Protocol were established in collaboration with Cumbria County Council and all District Councils across Cumbria, with the aim of facilitating extra care housing within the County. The Joint Working Protocol for Newton House has been tailored to ensure compliance with the obligations of the Section 106 Agreement and the District Council's Grant Funding Agreement, as well as guaranteeing District Council representatives are able to sit on the schemes Selection Panel allowing nominations to be considered from our Housing Register.

4 Policy Framework

- 4.1 The Council has four corporate priorities which are:
 - Sustainable;
 - Healthy, safe and secure;
 - Connected; and
 - Creative
- 4.2 This report meets 'Healthy, safe and secure' corporate priority by improving the housing stock to meet an identified affordable need.

5 Consultation

- 5.1 The Housing and Health Portfolio Holder has been consulted in the drafting of the Grant Funding Agreement.

6 Implications

6.1 Financial and Resources

- 6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2019-2023 as agreed at Council on 7 November 2019.

The proposals within this report fit within the criteria of the approved Capital Programme and are funded from existing S106 contributions held within the Affordable Housing Fund Reserve.

6.2 Legal

- 6.2.1 The Grant Funding Agreement has been prepared by the Council's Legal Department and ensures the Council's criteria for spend is met.

6.3 Human Resources

- 6.3.1 There are no Human Resources implications arising from this report.

6.4 Statutory Considerations

Consideration:	Details of any implications and proposed measures to address:
Equality and Diversity	No implications
Health, Social Environmental and Economic Impact	A 100% affordable Extra Care Scheme within Penrith West has the potential to have positive health, social, environmental and economic impacts for persons within the Ward
Crime and Disorder	No implications
Children and Safeguarding	No implications

6.5 Risk Management

Risk	Consequence	Controls Required
That the Grant Funding Agreement is not awarded to the Housing Provider	Development of the affordable Extra Care Housing Scheme would not reach completion	Continued cooperation and joint working with the Housing Provider to ensure a Grant Funding Agreement can be approved in a timely manner

7 Other Options Considered

- 7.1 No other options are considered.

8 Reasons for the Decision/Recommendation

- 8.1 The Grant Funding Agreement meets the aims of the Affordable Housing Fund and if approved would assist the Council in meeting an identified affordable housing need improving housing and contributing to a 'Healthy, safe and secure' district, a Corporate Priority.

Tracking Information

Governance Check	6 April 2020
Chief Finance Officer (or Deputy)	Prepared in consultation with Finance
Monitoring Officer (or Deputy)	Prepared in consultation with Legal
Relevant Director	Les Clark

Background Papers: None

Appendices: Appendix 1 – Grant Funding Agreement relating to the provision of Affordable Housing at Newton House, Penrith
Appendix 2 – Joint Working Protocol

Contact Officer: Robert Docherty Assistant Director Community Services
Tel: 01768 212328

This deed is dated

2020

EDEN DISTRICT COUNCIL (1)

and

HOUSING AND CARE 21 LTD (2)

GRANT AGREEMENT

Relating to the provision of Affordable Housing at Newton House, Newton Road, Penrith Cumbria.

This DEED is made the day of Two Thousand and Twenty

BETWEEN:

PARTIES

(1) Eden District Council (**the Funder**), whose principal address is at Town Hall, Corney Place, Penrith, CA11 7QF

(2) Housing 21 (**the Recipient**), whose principal address is at [ADDRESS]

BACKGROUND

- (A)** The Funder is the local planning authority for the purpose of the Act and granted the Planning Permission for the Development of Affordable Housing at the Property.
- (B)** The Recipient is a Registered Provider and the Owner of the Property and will provide and retain 54 Affordable Housing Units at the Property in perpetuity.
- (C)** The Funder has the power to make grants available to facilitate the development and provision of Affordable Housing.
- (D)** The Funder has agreed to provide the Grant to the Recipient on the terms and conditions set out in this Agreement for the provision of Affordable Housing in response to Housing Need within the District of Eden

AGREED TERMS

1. DEFINITIONS

In this Agreement the following terms shall have the following meanings:

“Act”	the Town and Country Planning Act 1990 (as amended)
“Affordable Housing”	means subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market and which complies with one or more of the definitions set out in Annex 2 of the National Planning Policy Framework (NPPF) (and any replacement and amendment of it) issued in February 2019 by the Ministry of Housing, Communities and Local Government;.

“Affordable Housing Units”	means the 54 Dwelling’s for the provision of Affordable Housing being Extra Care Housing constructed under the Planning Permission and Affordable Housing Unit shall be construed accordingly.
“Agreement”	means this agreement made between the parties and dated
“Application”	the application for full planning permission received on 12 th November 2018 and validated by the Council and given reference number 18/0913
“Commencement Date”	the date on which the first payment of the Grant is made to the recipient in accordance with Clause 3 of this Agreement.
“Data Protection Legislation”	all applicable data protection legislation and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable European Union regulation relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications.
“Development”	the provision at the Property of 54 Affordable Housing Units for Extra Care Housing comprising 26 units for rent and 28 units for Shared Ownership Lease as set out in the Application.
“District of Eden”	means the administrative area of Eden District Council
“Dwelling”	a dwelling or dwellings to be constructed pursuant to the Planning Permission
“Extra Care Housing”	means self-contained homes, with a lounge, kitchen, bedroom and bathroom, design features and support

services to enable people to care for themselves and continue to live independently with 24 hour care and support services available onsite in order to provide both responsive and scheduled access to support as is required. Persons living in Extra Care Housing will have a legal right to occupy a home.

“Governing Body”	the governing body of the Recipient including its directors or trustees.
“Grant”	the sum of £288,000 to be paid to the Recipient in accordance with this Agreement.
Grant Period:	the period for which the Grant is awarded starting on the Commencement Date and ending on the date being three years from the date thereof.
“Housing Need”	means a situation where a person’s accommodation (if he is currently occupying accommodation) is for whatever reason unsuitable for his housing requirements and he cannot afford to buy or rent a dwelling more appropriate to meet his needs on the open market
“Local Connection”	<p>means a situation in which an Affordable Housing Unit Occupied or is to be Occupied by any person or household who immediately before taking up such occupation:</p> <ul style="list-style-type: none">a) lives in the Locality Defined and has done so for a continuous period of at least three years; orb) works in the Locality Defined and has done so for a continuous period of at least three years; orc) has moved away from the Locality Defined but has strong established and continuous links to the Locality Defined from which the person moved away by reason of birth or long term immediate family connections; or

-
- d) has an essential need through old age or disability to live close to a relative who has lived in the Locality Defined, for a continuous and continuing period of at least three years

“Locality Defined”

Means the District of Eden and if on marketing of the Affordable Housing Unit for a period of six weeks in the District of Eden no prospective tenant of the Recipient has satisfied the Recipient (acting reasonably) that he is a Person with a Local Housing Need in the District of Eden then provided the Recipient has supplied the Funder with Evidence of Unsuccessful Marketing and reasonably satisfactory evidence of marketing the said Unit through a national web based property marketing tool for rental and the Funder is reasonably satisfied, the Locality Defined shall be extended to the County of Cumbria.

“Owner”

the owner and any successors in title to the Property.

“Person”

means an individual and not a body corporate or unincorporated body

“Personal Data”

shall have the same meaning as set out in the Data Protection Legislation.

“Person with a Local Housing Need”

means a person who before taking up Occupation of any Affordable Housing Unit was certified as being a Person in Housing Need with a Local Connection and such definition shall include that Person’s partner and dependants and the widow or widower of such a person

“Plan”

the plan marked Site Plan attached to this Deed at Schedule 1 showing the location of the Property

“Planning Permission”

the full planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application and any subsequent or later related reserved matters permission or full planning permission granted thereafter for the Property pursuant to any application made under section 73 of the Act unless the Local Planning

	Authority requires otherwise
“Practical Completion”	The issue of a full plans compliance certificate from Buildings Regulations (or equivalent) of the Council in respect of the Development and “Practically Completed” shall be construed accordingly.
“Prohibited Act:	<p>a. offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:</p> <p>(i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder;</p> <p>(ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder;</p> <p>(iii) under the Bribery Act;</p> <p>(iv) under legislation creating offences in respect of fraudulent acts; or</p> <p>(v) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder;</p>
“Property”	The property known as Land at Newton House, Newton Road, Penrith, Cumbria CA11 9EE edged red on the Plan attached hereto and being the lands registered at HM Land Registry under title numbers CU199285 and CU195427
“Shared Ownership Lease”	a lease substantially in such form as may from time to time be prescribed or approved by Homes England or any successor to Homes England for use by a Registered Provider of Social Housing for comparable properties, or such lease as shall be approved in writing by the Council for the purpose of this Agreement; which lease shall in either case allow for the lessee to pay a premium of between 25% and 75% of the Open Market Value of the Affordable

Housing Unit and to pay a rent calculated by reference to the remaining portion of the Open Market Value of said Unit as prescribed by their Regulator of Social Housing.

2. PURPOSE OF GRANT

2.1 The Funder has agreed to make the Grant in the sum of £288,000 available to the Recipient subject to and in accordance with the terms of this Agreement.

2.2 The Recipient acknowledges and agrees that :

2.2.1 the Grant is provided by the Funder on the express understanding that it is applied solely for the purposes of providing and retaining in perpetuity 54 Affordable Housing Units, comprising 26 units for rent and 28 units for Shared Ownership being Extra Care Housing, as indicated on the attached plan, at Newton Road, Penrith and;

2.2.2 the Affordable Housing Units shall be used and continue to be used in perpetuity for the provision of Affordable Housing for persons with a Local Connection only.

2.3 The Recipient shall not make any significant change to the Development without the Funder's prior written agreement.

2.4 Where the Recipient intends to apply to a third party for other funding for the Development, it will notify the Funder in advance of its intention to do so and, where such funding is obtained, it will provide the Funder with details of the amount and purpose of that funding.

2.5 The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Development or any related administration costs that the Funder is funding in full under this Agreement.

2.6 The Funder shall, subject as herein after provided, pay the Grant to the Recipient in accordance with Clauses 3.1 to 3.6 hereof.

3. PAYMENT OF GRANT

3.1 The Recipient agrees and accepts that payments of the Grant can only be made to the extent that the Funder has available funds at the time that payments fall due under this Clause.

3.2 No Grant shall be paid unless and until the Funder is satisfied that such payment will be used for proper expenditure in the delivery of the Development on the terms and conditions set out in 2.2

above.

3.3 Subject to Clause 12, the Funder shall pay one half of the Grant being the sum off £144,000 to the Recipient following the completion of this agreement on receiving a written request from the Recipient.

3.4 Subject to Clause 12, the Funder shall pay one half of the Grant in the sum of £144,000 to the Recipient following the practical completion of the 54 Affordable Housing Units referred to in Clause 3.3 above and upon receipt of:

- a) the confirmation that they are available for Occupation; and
- b) the certificate confirming that the units have been Practically Completed and are available for occupation.

3.3 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Development.

3.4 The Grant shall be paid into a separate bank account in the name of the Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Recipient.

3.5 The Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Funder.

3.6 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

4 RECIPIENTS OBLIGATIONS

4.1 To request in writing from the Council nominations from the Council's housing waiting list for the occupation of any Affordable Housing Unit, prior to the occupation of the Affordable Housing Unit.

4.2 To take account of any nominations made by the Council in determining to whom the Affordable Housing Unit should be let or sold, provided such nominations are made within three (3) weeks of a written request to provide nominations, in accordance with clause 4.1 above.

4.3 To secure that 28 Affordable Housing Units are Occupied by Persons with a Local Housing Need pursuant to a Shared Ownership Lease.

4.4 To let 26 Affordable Housing Units to Persons with a Local Housing Need at no more than the Affordable Rent on the basis of a standard form tenancy agreement used by the Recipient or such form

as may be agreed from time to time with the Funder (Such agreement not to be unreasonably withheld or delayed).

4.5 To keep the Affordable Housing Units insured with a reputable insurance company for the full reinstatement cost against loss or damage.

4.6 To provide the Funder within 10 working days of a written request for the same a copy of any insurance policy or any evidence acceptable to the Funder acting reasonable from an insurer of the terms if the insurance required by this agreement.

4.7 Following damage to or destruction of the property by any insured risk, to diligently apply or procure the application of the proceeds of the insurance covering reinstatement, rebuilding or replacement costs for those purposes so as to achieve reinstatement, rebuilding or replacement as soon as reasonably practicable and will make up any shortfall out of its own moneys.

4.8 Not to do or permit or suffer to be done anything which may render any policy or policies of insurance required by this Agreement void or voidable.

5. ACCOUNTS AND RECORDS

5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.

5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.

5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.

5.4 The Recipient shall provide the Funder with a copy of its annual accounts within six months (or such lesser period as the Funder may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.

5.5 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

6. MONITORING AND REPORTING

6.1 The Recipient shall closely monitor the delivery and success of the Development throughout the

Grant Period to ensure that the aims and objectives of the Development are being met and that this Agreement is being adhered to.

6.2 The Recipient shall submit a report to the Funder on its use of the Grant and delivery of the Development every quarter during the period of three years from the Commencement Date and in such formats as the Funder may reasonably require. The Recipient shall provide the Funder with each report within three months of the last day of the quarter to which it relates.

6.3 The quarterly report shall address the following issues in relation to the development as appropriate to that quarter:

- Progress in relation to the letting or sale of any affordable dwelling for rent or shared ownership;
- The reasons for and the actions to mitigate any delays in the letting or sale of any unit;
- Any significant event;
- Any breach of any term or provision of this agreement;
- Any material change in the financial standing of Housing 21;
- Any matter or event which would entitle the Funder to terminate this Agreement in whole or in part;
- Any other issue where relevant, appropriate and reasonable required for the purposes of this Agreement and where requested on reasonable notice by the Funder.

6.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Development, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.

6.5 The Recipient shall on request provide the Funder with such further information, explanations and documents as the Funder may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.

6.6 The Recipient shall permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.

6.7 The Recipient shall permit any person authorised by the Funder for the purpose to visit the Recipient once every quarter to monitor the delivery of the Development. Where, in its reasonable opinion, the Funder considers that additional visits are necessary to monitor the Development, it shall be entitled to authorise any person to make such visits on its behalf.

6.8 The Recipient shall provide the Funder with a final report on completion of the Grant Period which shall confirm whether the Development has been successfully and properly completed.

6.9 The Recipient agrees that the Funder shall be entitled to insist upon repayment of the Grant in

whole or in part in the event that any part of this Clause 6 is not complied with to the reasonable satisfaction of the Funder and undertakes to cooperate with the Funder and to make such repayments as are requested in writing by the Funder in accordance with this Clause.

7. CONFIDENTIALITY

7.1 Subject to Clause 10, each party shall during the term of this Agreement and thereafter keep secret and confidential all technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

7.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to technical or commercial information or any other business which:

- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
- (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

8. FREEDOM OF INFORMATION

8.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

8.2 The Recipient shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Funder to enable the Funder to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Funder all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
- (c) provide the Funder with a copy of all information belonging to the Funder requested in the request for information which is in its possession or control in the form that the Funder requires within 5 working days (or such other period as the Funder may reasonably specify) of the Funder's request for such information; and
- (d) not respond directly to a request for information unless authorised in writing to do so by the Funder.

8.3 The Recipient acknowledges that the Funder may be required under the FOIA and EIRs to disclose

information without consulting or obtaining consent from the Recipient. The Funder shall take reasonable steps to notify the Recipient of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this agreement) the Funder shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

9. DATA PROTECTION

Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

10. WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT

10.1 The Funder's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the Funder may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

- (a)** the Recipient uses the Grant for purposes other than those for which it has been awarded;
- (b)** the delivery of the Development does not start within 6 months of the Commencement Date and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;
- (c)** the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Development;
- (d)** the Recipient is, in the reasonable opinion of the Funder, delivering the Development in a negligent manner;
- (e)** the Recipient obtains duplicate funding from a third party for the Development;
- (f)** the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Development or the Funder into disrepute;
- (g)** the Recipient provides the Funder with any materially misleading or inaccurate information;
- (h)** the Recipient commits or committed a Prohibited Act;
- (i)** any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Development or (b) taken any actions which, in the reasonable opinion of the Funder, bring or are likely to bring the

Funder's name or reputation into disrepute;

(j) the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);

(k) the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or

(l) the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.

10.2 The Funder may retain or set off any sums owed to it by the Recipient which have fallen due and payable against any sums due to the Recipient under this agreement or any other agreement pursuant to which the Recipient provides goods or services to the Funder.

10.3 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

10.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Development or compliance with this Agreement it will notify the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

11. ANTI-DISCRIMINATION

11.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment or otherwise.

11.2 The Recipient shall take all reasonable steps to secure the observance of Clause 13.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Development.

12. HUMAN RIGHTS

12.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

12.2 The Recipient shall undertake, or refrain from undertaking, such acts as the Funder requests so as to enable the Funder to comply with its obligations under the Human Rights Act 1998.

13. LIMITATION OF LIABILITY

13.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Development, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Development, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

13.2 Subject to Clause 15.1, the Funder's liability under this Agreement is limited to the payment of the Grant.

14. WARRANTIES

The Recipient warrants, undertakes and agrees that:

- (a)** it has all necessary resources, approvals, powers and expertise to deliver the Development (assuming due receipt of the Grant);
- (b)** it has not committed, nor shall it commit, any Prohibited Act;
- (c)** it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
- (d)** it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Development;
- (e)** it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f)** it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g)** all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- (h)** it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;

(i) it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement; and

(j) since the date of its last accounts there has been no material change in its financial position or prospects.

15. DURATION

15.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Grant Period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.

15.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

16. TERMINATION

The Funder may terminate this Agreement and any Grant payments on giving the Recipient three months written notice should it be required to do so by financial restraints or for any other reason.

17. ASSIGNMENT

The Recipient may not, without the prior written consent of the Funder, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Development, transfer or pay to any other person any part of the Grant.

18. WAIVER

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

19. NOTICES

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on

the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

20. COOPERATION

20.1 Each party undertakes to cooperate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Development and in particular will;

20.1.1 adhere to the Joint Working Protocol in the form attached at Schedule 2 to this Agreement setting out agreed working arrangements to support effective joint working between the parties in respect of the Development;

20.1.2 use all reasonable endeavours to avoid unnecessary disputes and claims against the other party;

20.1.3 not interfere with the rights of the other party (nor its employees, agents, representatives, contractors, subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent the other party (nor its employees, agents, representatives, contractors, subcontractors) from performing those obligations provided that this provision shall not prevent either party from exercising its express rights under this Agreement or any other agreement in relation to the Development.

21. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

22. JOINT AND SEVERAL LIABILITY

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

24. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

HOUSING 21

in the presence of:

Authorised Signatory

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

EDEN DISTRICT COUNCIL

in the presence of:

Authorised Signatory

Joint Working Protocol

This Joint Working Protocol is hereby agreed on the day of 2020
BETWEEN

(1) CUMBRIA COUNTY COUNCIL of 117 Botchergate, Carlisle, Cumbria CA1 1RD (“the County Council”)

AND

(2) EDEN DISTRICT COUNCIL of Town Hall, Penrith, Cumbria, CA11 7QF (“the District Council”)

AND

(3) HOUSING 21 (Registration Number.....) whose registered office is at..... (“the Housing Provider”)

AND

(4) [x] of [y] (Registration Number.....) whose registered office is at..... (“the Care Provider”)

1. Introduction

1.1 The purpose of this Protocol is to agree working arrangements that support effective joint working between the County Council, the District Council, the Housing Provider and the Care Provider relating to the provision of Affordable Extra Care Housing at land at Newton House, Newton Road, Penrith, Cumbria, CA11 9EE under planning permission 18/0913 (the Scheme)

Aims of the Protocol:

- 1.2 To describe the agreed working arrangements between the parties with regard to nominations and allocation of the tenancies at the Scheme and to ensure that the aims of the Scheme are delivered.
- 1.3 To strengthen partnership working to the benefit of the tenant receiving services;
- 1.4 To ensure there are effective lines of communication so that all parties can fulfil their roles and responsibilities; and
- 1.5 To provide clarity of roles and responsibilities of each party to this Protocol.

Definitions

1.6 For the purposes of this Protocol the following definitions will apply:

“Affordable Housing Units” means:

The 54 Dwelling’s for the provision of affordable housing being Extra Care Housing.

“ Grant Funding Agreements” means:

The agreements made between Housing 21 and Cumbria County Council and between Housing 21 and Eden District Council for the provision of funding for the delivery of the Scheme .

“Extra Care Housing” means:

Extra Care Housing is a term used to describe housing developments with design features and support services to enable people to care for themselves and continue to live independently.

People who live in extra care housing have their own self-contained homes, with a lounge, kitchen, bedroom and bathroom and have a legal right to occupy the property. 24 hour care and support services are available onsite in order to provide both responsive and scheduled access to support as it is required.

“Local Connection” means:

A situation in which an Affordable Housing Unit occupied or is to be occupied by any person or household who immediately before taking up such occupation:

- a) lives in the Locality Defined and has done so for a continuous period of at least three years; or
- b) works in the Locality Defined and has done so for a continuous period of at least three years; or
- c) has moved away from the Locality Defined but has strong established and continuous links to the Locality Defined from which the person moved away by reason of birth or long term immediate family connections; or
- d) has an essential need through old age or disability to live close to a relative who has lived in the Locality Defined, for a continuous and continuing period of at least three years

“Locality Defined” means:

The District of Eden and if on marketing of the Affordable Housing Unit for a period of six weeks in the District of Eden no prospective tenant has satisfied the Housing Provider (acting reasonably) that he/she is a person with a local housing need in the District of Eden then provided the Housing Provider has supplied Eden District Council with evidence of unsuccessful marketing and reasonably satisfactory evidence of marketing the said Unit through a national web based property marketing tool for rental and Eden District Council are reasonably satisfied, the Locality Defined shall be extended to the County of Cumbria.

“Section 106 Agreement” means:

The Section 106 Agreement dated 14th June 2019 made between EDC and Atkinson Homes Limited relating to Land at Newton House, Newton Road, Penrith.

Extra Care Housing Principles

- 1.7 **To promote independence:** the provision of self-contained accommodation with access to on-site care and support enabling individuals to live independently in the community.
- 1.8 **To be empowering:** care and support, health and housing services should be available to the individual as and when needed without being required to change accommodation.

2. Partners

The key partners involved in the provision of services at the Scheme are:

Housing Provider

- 2.1 The Housing Provider is the owner (landlord) of the property and will manage the Scheme.
- 2.2 Insofar as they are assessed as relevant to the needs of each site occupant, the Housing Provider will be responsible for appropriate equipment at the Scheme, including but not limited to, for example, community alarms, telecare equipment and door entry/security systems.
- 2.3 The Housing Provider holds the responsibility for coordinating allocation of the tenancies, provides the accommodation and manages the buildings at the Scheme. The Scheme Manager (who is an employee of the Housing Provider) or their deputy undertakes the day to day management of the Scheme, including but not limited to, rents, repairs, maintenance and the allocation of properties on site.
- 2.4 The Housing Provider holds ultimate responsibility for the building and the welfare of people living within the Scheme. Therefore the Housing Provider will take a lead on any further local protocols which may be put in place to promote the smooth –running and management of the site. More detailed arrangements may need to be put in place to cover areas such as communication, conflict resolution and response to emergencies.
- 2.5 The Housing Related Support Service provision shall be undertaken by the Housing Provider to deliver support services (as set out in section 4.3) to assist tenants to manage their tenancies. The Scheme Manager would normally oversee this service.

CCC - Adult Social Care

- 2.6 Cumbria County Council will support nominations made by the District Council subject to those nominations having an assessed care need which can be most appropriately met through the Scheme.

Adult Social Care (ASC) is part of the County Council and may organise an assessment of need for individuals under appropriate legislation. People who meet the eligibility criteria will receive an indication of the resources which could be made available to meet their support needs. They will have an opportunity to agree a Support Plan with their ASC Practitioner (often a Social Worker or Social Care Worker) and when agreed they will receive a Personal Budget. This could be added to from other funding sources to make an Individual Budget. A financial contribution by the individual to the Personal Budget may be required following financial assessment by Adult Social Care.

- 2.7 Individuals accessing a Personal Budget may choose to meet their needs through a variety of means, usually through purchase of resources from the on-site care team, and other resources agreed with the ASC Practitioner via the individual's Support Plan.
- 2.8 If an individual develops additional care and support needs within the Scheme, or support needs significantly decrease, they should be encouraged to contact ASC for a new assessment or a review of need so that support needs can adjusted following a further assessment and through their individual Support Plan.
- 2.9 In addition, specialist Community Occupational Therapy assessments and provision of specialist OT equipment may be co-ordinated by ASC for disabled people living in the community. ASC Occupational Therapists can assess for and arrange disability equipment and housing adaptations to promote the independence of individuals.

- 2.10 Informal Carers are people who help look after others, providing care or essential support to people who are unable to do everything for themselves. They may be relatives of the person or their neighbour.
- 2.11 Informal Carers can access assessments and support from ASC, or contact their local Carers organisation who will progress on behalf of the County Council. They should be encouraged to seek assessment if they appear to need support.

The District Council

- 2.12 The District Council may nominate individuals to Adult Social Care so that an assessment of need can be made under appropriate legislation. The District Council will support nominations made to the Scheme by County Council. Such nominations will have a Local Connection and will be made in line with the District Council's Equality Duty/Policy. The District Council will consider requests for Disabled Facilities Grants in line with policy and statutory requirements. The District Council will consider requests for Handyperson services in line with policy.

Care Provider

- 2.13 It is anticipated that the Care Provider will deliver personal care to most service users living in the Scheme. Personal care services may be delivered on a flexible basis, 24 hours per day, within all Extra Care Housing Schemes. The service is tailored to meet individual needs that are agreed and signed off via the individual's Support Plan and expressed on an Individual Service Order for the Individual.
- 2.14 The Care Provider will be accredited with Cumbria County Council and subject to appropriate inspection by Care Quality Commission (CQC). Regular reviews will be necessary of the hours appropriate to the Scheme, taking into account that some individuals may opt out from the onsite provision and choose to make alternative arrangements via a Direct Payment or Personal Budget.

Other Potential Partners

- 2.15 Specialist Health Support Services e.g. Community Mental Health and Recovery Teams, Specialist Multi-disciplinary input.
- 2.16 Voluntary Sector e.g. AGE UK, Stroke Association may organise activities on site which people may identify as desirable and wish to take part for social support. Activities may be set up as part of a collective decision by individuals willing to commit their personal budgets to a group activity.

3. Roles and responsibilities

The following lists of roles and responsibilities provide a general overview. As a general principle all parties should collaborate and work together for the overall benefit of tenants.

3.1 Adult Social Care

ASC Practitioners are responsible for:

- (i) identifying and referring appropriate individuals in accordance with this Protocol;

- (ii) organising an assessment of need for individuals under appropriate legislation and ASC eligibility criteria and providing them with an indication of the resources which could be made available to meet their support needs;
- (iii) ensuring that the ASC Support Package is tailored to the tenant's needs and provided in a co-ordinated manner
- (iv) sharing Service User's/tenant's Support Plan with the tenant and Care Provider in line with giving them choice and control over decisions regarding their lives;
- (v) providing advice and advocacy as appropriate in line with the Care Act 2014; The Care and Support (Independent Advocacy) Regulations may assist with this and the ASC Practitioner will need to sign off the individual's Support Plan;
- (vi) for Care Managed packages, liaising with the Care Provider to arrange for or assist the tenant to access the care, social contact and support they require to meet their assessed needs;
- (vii) providing Emotional support to tenants;
- (viii) helping with social contact and activities;
- (ix) helping find other accommodation when necessary;
- (x) carrying out a safeguarding investigation in appropriate cases (for example, in case of suspected physical, emotional, financial or other abuse) and where necessary and/or appropriate implementing/monitoring appropriate Safeguarding Plans in accordance with the Cumbria Safeguarding Adults Policy, details of which can be found here: <http://www.cumbriasab.org.uk/>;
- (xi) ensuring specialist support from Occupational Therapy when necessary and/or appropriate; and
- (xii) when necessary, arranging for a bespoke telecare packages to be fitted as part of the ASC support package (accessed in consultation with the tenant via a referral to ASC).

4.3 Housing Related Support Service

Shall assist tenants with the following:

- (i) help in setting up and maintaining the tenancy;
- (ii) managing utilities;
- (iii) assist with Housing Benefit and any Housing related finances;
- (iv) liaison with family member/appointed person with regard to tenancy issues;
- (v) ensure that tenants understand their responsibilities of being a tenant;
- (vi) assist with arranging for repairs and practical maintenance issues within the home;
- (vii) respond to call systems, as per local Scheme arrangements;
- (viii) general advice, advocacy liaison and signposting;
- (ix) health & Safety and Security – Ensuring 'Safe environment';
- (x) emotional Support when necessary and/or appropriate;
- (xi) support in establishing social contact/activities;
- (xii) peer support and befriending;
- (xiii) help finding alternative accommodation. (E.g. if cared for dies and carer requests to move).

4.4 Housing Provider

is responsible for the following:

- (i) providing the Housing Related Support Service
- (ii) ensuring the Affordable Housing Units are used and continue to be used in perpetuity for the provision of affordable housing for persons with a Local Connection only;
- (iii) within 14 days of the District Council's written request providing such information as the District Council may reasonably require;
- (iv) notifying ASC once a flat/ becomes or will become available;
- (v) delivering support services to assist tenants to manage their tenancies;
- (vi) all repairs and maintenance of the buildings at the Scheme, including but not limited to servicing, repairing and maintaining the fabric of the buildings, the fire alarms, emergency lighting, intruder alarms and the generic call system (community alarm);
- (vii) health and safety at the Scheme, including fire emergency procedures;
- (viii) taking the lead in developing any necessary additional joint procedures;
- (ix) ensuring a response to all calls on the 24hr warden call system; and
- (x) ensuring appropriate staff training.

4.5 Role of Assistive Technology (Telecare) – Responsibilities of Partners

- (i) The Scheme Manager (or their deputy) will take responsibility to ensure a response to all calls on the 24hr warden call system and to liaise appropriately depending on the reason for activation of the system.
- (ii) The Scheme Manager will be responsible for accessing appropriate training to ensure an understanding of the Scheme systems, their benefits and limitations, and will have an understanding of other sensors/portable systems which individuals may be able to access to enhance their welfare.
- (iii) Bespoke Telecare packages for users will usually be fitted as part of the ASC support package and should be accessed in consultation with the tenant via a referral to ASC for an assessment/reassessment of need.

5. Training

- 5.1 Training should be co-ordinated between all partners whenever appropriate.
- 5.2 Core competencies, such as moving and handling, Safeguarding Adults and medication management should be agreed on a partnership basis.

6. Equality and Diversity

- 6.1 The Parties are jointly committed to work together and to provide responsible leadership in promoting the values of equality and diversity. All forms of discrimination, on the grounds of disability, gender, race, colour, ethnic origin, religion, belief, culture, nationality, national origin, age, and sexual orientation are unacceptable within existing legislation. The Parties are committed to eliminating all forms of discrimination; promoting equality of opportunity, and good community relations and community cohesion.

7. Allocation Process

- (i) The Housing Provider will inform the District Council and ASC when a vacancy, or impending vacancy occurs or is likely to occur, within one of the Scheme units. Such a notification shall be made via email to the District Council's and ASC's respective nominated individual(s) within 2 working days of the vacancy or notice of the vacancy becoming available;
- (ii) The District Council and ASC will notify the Housing Provider of any suitable nominations into the prospective vacancy;
- (iii) Any such nominations will be considered by a Selection Panel, consisting of the Scheme Manager and representatives designated by ASC, the District Council and the Care Provider. Where a prospective tenant has been identified by ASC, the selection panel must be convened within five working days or as soon as operationally practicable thereafter. When appropriate, other professionals, such as NHS staff, will be consulted. As vacancies occur, the Scheme Manager will promptly notify the other members of the selection Panel, and will promptly arrange a face-to-face or telephone meeting to discuss the nominations. While the final decision rests with the Housing Provider, it is hoped that usually selections will be made by consensus.
- (iv) The discussions of the Selection Panel, the basis for selection of a tenant and the outcome of the process will be recorded in a minute prepared by the Scheme Manager and distributed to all Panel members.
- (v) In the event that the Housing Provider rejects a nomination, the reason for the rejection must be documented and must be reasonable. For the avoidance of doubt, the reason for rejection provided must be in line with equality and diversity legislation and policies of CCC and the District Council;
- (vi) In the event that a nomination is refused, the Selection Panel will consider at that same meeting any further nominations made by ASC and/or the District Council into that prospective vacancy;
- (vii) The District Council and ASC's option to nominate into a vacancy within one of the flats will be time limited to 3 weeks. Therefore, provided that the District Council and ASC receive the requisite notice of vacancy from the Housing Provider as set out in this paragraph 7, if ASC or the District Council do not offer a nomination into one of the Scheme units during the initial three week period of the vacancy becoming available, the Housing Provider is free to allocate that unit as they see fit;
- (viii) When a potential tenant has been identified, he/she will be visited by the Scheme Manager who will update the assessment of needs and will, if appropriate, offer the tenancy;
- (ix) The agreed aim of the parties is that, over time, at least 54 of the Scheme units at any time would be held by tenants nominated by ASC.
- (x) In taking decisions to offer tenancies, the Housing Provider will ensure that the eligibility criteria and Local Connection criteria are complied with, unless otherwise agreed between the Parties .
- (xi) Nominations and selections of tenants will be made in accordance with all equality and diversity legislation and with the equality and diversity policies of both CCC and the District Council.
- (xii) Selection of tenants will take into account the need for a balanced and diverse community in terms of the service needs of tenants.
- (xiii) Occasionally, the Section Panel may wish to review/monitor existing tenants within the Scheme regarding their level of need or any tenancy issues

Allocation and Care Co-ordination Process

