

Supplementary Planning Guidance to the Bristol Local Plan

POLICY ADVICE NOTE NO.12

AFFORDABLE HOUSING

Adopted January 2001

Published May 2002



	page no.		page no.
1.0 INTRODUCTION	1	16.0 BIBLIOGRAPHY	10
2.0 PURPOSE	1	17.0 GLOSSARY	11
3.0 CONSULTATION	1	• Affordable Housing	11
4.0 STATUS OF PAN 12	3	• Affordable Housing for Rent	11
5.0 DEFINITION	4	• Exceptional Circumstances	11
6.0 HOUSING NEED IN BRISTOL	4	• Key Workers	11
7.0 ESTABLISHING THE LEVEL OF AFFORDABLE HOUSING REQUIRED	5	• Low Cost Market/Discount for Sale	11
8.0 THE FORM OF AFFORDABLE HOUSING	6	• Mortgagee in Possession Clause	11
9.0 SERVICE CHARGES	6	• Nominations	11
10.0 FUTURE MANAGEMENT OF AFFORDABLE HOUSING	7	• Perpetuity	12
11.0 SECTION S106 AGREEMENTS	7	• Registered Social Landlord (RSL)	12
12.0 KEY ELEMENTS OF PAN12	8	• Section 106 Agreements	12
13.0 FLOW CHART	9	• Service Charge	12
14.0 OTHER POLICIES	10	• Shared Equity/Ownership Housing	12
15.0 ADVICE AND FURTHER INFORMATION	10	• Subsidised or Social Housing	12
		• Social Housing Grant	13
		• Special Needs/Supported Housing	13
		• Total Cost Indicators (TCIs)	13
		• TIPISH index	13
		18.0 MODEL S106 AGREEMENTS	14



Recent social family housing at Culverwell Road, Withywood



1.0 INTRODUCTION

1.1 Government expects the planning system to tackle the recognised shortage of affordable housing by securing the provision of such accommodation as a proportion of new, large-scale, open market housing. The private housing development sector is expected to deliver such provision on site, unless exceptional circumstances exist. This will help to promote a greater mix of housing opportunity for those of different economic status and lifestyle, avoiding large concentrations of the same type of housing.

1.2 The main source of funding for affordable housing comes from the Housing Corporation through their Approved Development Programme (ADP) and grants (known as the Social Housing Grant (SHG)). The vast majority of all new affordable housing in Bristol has resulted from direct subsidy from the Housing Corporation. Policy H9 of the Bristol Local Plan, 1997 states:

In major residential schemes an element of affordable housing the benefits of which would be enjoyed by initial and successive occupiers, will be sought through negotiation. The precise number of units will reflect demonstrable need, site suitability and the economics of provision.



Conversion of the former WCA warehouse building, Redcliffe.

The purpose of policy H9 is to secure additional affordable housing. This will be subsidy free with the developer providing the grant element.

1.3 In March 2000 Bristol City Council issued an amended Policy Advice Note 12 (PAN 12) 'affordable housing' which sought to improve the efficiency of Local Plan policy H9 and so increase the level of affordable housing achieved through private housing development. Following consultation PAN 12 was adopted on 10 January 2001. The PAN was adopted on the understanding that additional items of detail should be provided, including, for example, a glossary, car parking information and model S106 agreements. This has been provided within this document. The opportunity has also been taken to clarify additional matters of detail such as with regard to service level charges. Please note the thrust of PAN 12 and its key aspects remain as adopted in January 2001.

1.4 This document, produced by the Strategic and Citywide Policy Team of the Department of Environment, Transport and Leisure, published in April 2002, has been developed in close co-operation with the City Council's Neighbourhood and Housing Services Department who have a crucial role in delivering affordable housing within Bristol.

2.0 PURPOSE

2.1 This supplementary planning guidance provides detailed advice for all those involved in the provision of new housing. It shows how to implement affordable housing policy H9 of the Bristol Local Plan, 1997, and in doing so secure objectives of the Local Plan and the objectives of the Central Government Guidance and Advice set out in Planning Policy Guidance Note 3 - Housing, (March 2000), and Circular 6/98. Planning and Affordable Housing.

3.0 CONSULTATION

3.1 An initial version of this supplementary planning guidance (SPG) dated March 2000 was subjected to extensive consultation. Over 300 copies were



sent to relevant parties. Posters advertising the proposed SPG were displayed in appropriate locations and copies issued to public libraries and area housing offices across the city.

3.2 32 responses to the consultation exercise were received. Whilst several were in support of PAN12, many concerns were expressed. A discussion forum was convened in September 2000 to consider and debate, the major issues of concern. 25 invited individuals were present. A range of interests were represented including relevant members of the Council, key officers and, in the majority, a representative sample from the 'industry' including the House Builders Federation. An independent facilitator from the University of the West of England (Bristol) was employed as chair of the event to guide matters in a measured fashion. Whilst agreement on every point of discussion may not have been possible due to the variety of interests present, the event did provide the opportunity to debate those issues and for the views of all in attendance to be heard.

- 3.3 Following consideration of the issues raised, alterations were proposed to:
- A address the valid concerns expressed and ensure it was more fully in line with government advice;
 - B ensure it was sufficiently robust to withstand scrutiny at appeal;
 - C provide a sufficiently clear and comprehensive advice for all those involved in the process of delivering affordable housing through new residential development in the city.

These changes were formally presented to all three Area Planning Committees of the City Council. Previous external correspondents were notified and their comments invited on the changes proposed. Members of the Area Planning Committees expressed general support for the recommended changes to PAN12. However, it was also considered that formal alterations to the Bristol Local Plan should consider a lower threshold of 15 and that, irrespective of any threshold, affordable housing should be sought, even if only on a voluntary basis, from housing

developments of all sizes however small.

3.4 PAN 12 was considered and adopted as SPG by the Executive member for the Department for Environment, Transport and Leisure on 10th January 2001.

3.5 A copy of this Environment, Transport and Leisure Executive report containing full details of the consultation debate including concerns expressed and the City Council's response can be downloaded via Bristol City Council's web site www.bristol-city.gov.uk If required, a hard copy can be obtained from the Cabinet Office, 0117 922 552.



Well designed recent social housing at Bengough House, Crow Lane, Henbury

4.0 STATUS OF PAN 12

4.1 PAN 12 may be taken into account as a material planning consideration when planning applications are being considered. As PAN 12 derives out of, and is consistent with the development plan, and has been prepared in accordance with PPG 12 Development Plans, the Secretary of State for Transport, Local Government and the Regions (SOS) will give substantial weight to it when making decisions on matters relating to the provision of affordable housing.

4.2 The relative weight given by the SOS to this SPG will be dependent on whether the following matters have been satisfactorily addressed:

1	The SPG must be consistent with national and regional planning guidance and the adopted development plan	It is considered PAN12 is consistent with relevant guidance including PPG12 Development Plans, PPG3 Housing, C6/98 and the Bristol Local Plan, 1997.
2	The SPG must be cross referenced to the relevant plan policy which it supplements	PAN12 relates specifically to policy H9 of the Bristol Local Plan, 1997.
3	The SPG must be issued separately from the plan	The Bristol Local Plan was issued in 1997, this SPG 10 January 2001.
4	The SPG must be made publicly available	Hard copies of PAN12 are available from the City Council's Planning Reception and can also be viewed and downloaded from: www.bristol-city.gov.uk/pan12
5	Consultation should be undertaken with the general public, businesses and other interested parties with their views being taken into account before the SPG is finalised.	General details of the consultation undertaken are included within this SPG. Full details of the consultation debate including concerns expressed and the City Council's response can be downloaded via Bristol City Council's web site www.bristol-city.gov.uk (DETL EXEC meeting 10.01.01 item 5). or if necessary, a hard copy can be obtained from the Cabinet Office, (0117) 922 552.
6	A statement of the consultation undertaken, the representations received and the local authorities response to those representations must be made available as a separate document.	As above please refer to the report to the DETL Executive meeting on 10.01.01.
7	The SPG must be subject to a council resolution to adopt it as supplementary guidance.	PAN12 was considered and adopted by the Local Planning Authority on 10 January 2001.
8	The status of the SPG should be made clear	This has been clearly established, please refer to part 4 of this Policy Advice Note.

Source for the above requirements. PPG 12. Development Plans



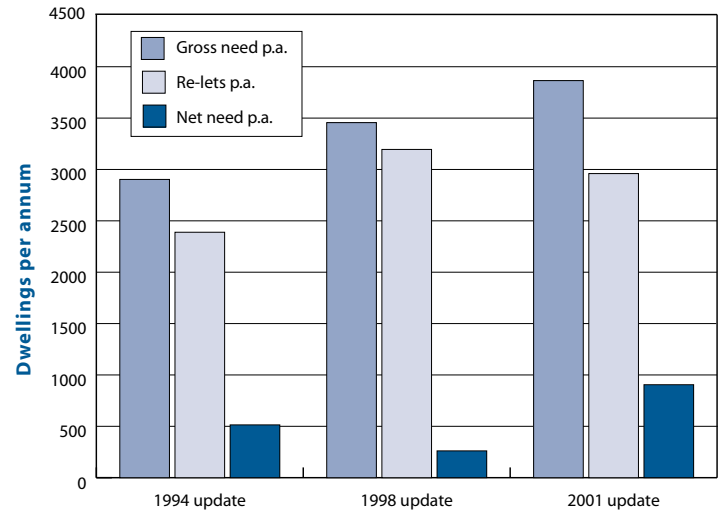
5.0 DEFINITION

- 5.1 Policy H9 of the Bristol Local Plan defines affordable housing as "housing that is available to people whose income does not allow them to rent or buy at normal market prices".
- 5.2 The Housing Needs Model establishes the degree of affordable housing demand within the city. It does not separately identify the level of demand for supported/special needs housing, short term key worker accommodation, hostels, student halls of residence, sheltered housing or the like, to which other local housing strategies relate and seek to tackle. Future occupants of affordable housing, arising as a result of policy H9 and PAN 12, will be nominated from the Bristol Housing Register that is operated by the City Council and all social housing providers. Eligibility criteria initially restricts the affordable housing to local residents, people employed locally, or people with local connections.



Current scheme in progress. The conversion of the former Dingles store on Queen's Road, Clifton by Crown Dilmum has secured on-site affordable housing provision

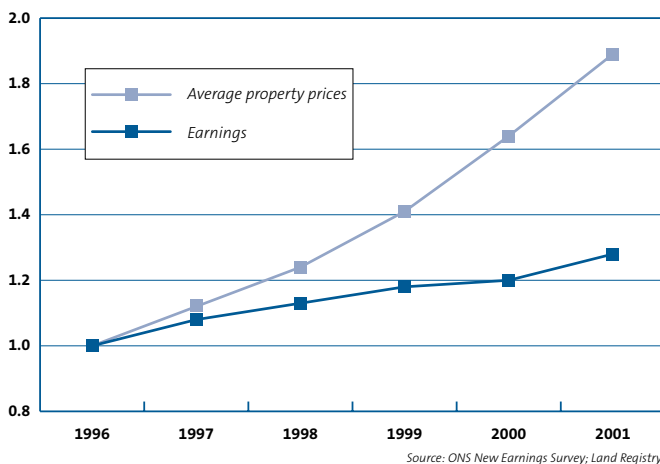
6.0 HOUSING NEED IN BRISTOL



- 6.1 Bristol City Council makes use of a Housing Needs and Affordability Model developed by Professor Bramley of Heriot Watt University. The model provides robust and up-to-date assessments of housing need over the next 3 to 5 years, and as such reflects good practice issued by the Government in July 2000.
- 6.2 The 2001 update has identified a substantial shortfall between the gross need for affordable housing in the City of Bristol, and the supply from re-lets of existing stock and additions to stock. This shortfall or "net need" is estimated as 905 dwellings per annum.
- 6.3 There has been an increase in net need since 1998 (261 dwellings) due to a number of factors, in particular:
- A a higher level of existing need (the "backlog" on the waiting list)
 - B changes in the size, age structure and distribution of population in the city
 - C a wider "affordability gap" (the divergence between incomes and house prices)
 - D a reduction in the number of re-lets

6.4 It is important to note that the model is predicted upon a single social rented "market" in Bristol. In other words, it is assumed that residents on the Housing Register are able to and/or willing to accept accommodation in any part of the city, rather than necessarily within their area of residence or area of first choice. If no such movement took place, net need would total 1283 rather than 905 dwellings per annum. What this means (in relation to PAN 12) is that affordable housing should be considered for all new private housing schemes in the city, not just those in the areas of highest net need.

6.5 The Needs Model is available on the City Council's web site www.bristol-city.gov.uk For a hard copy or response to any specific enquiry relating to the Needs Model please contact Michael Price of the Strategic and Citywide Policy Team (0117 903 6718) or email michael_price@bristol-city.gov.uk



7.0 ESTABLISHING THE LEVEL AND TYPE OF AFFORDABLE HOUSING REQUIRED

7.1 All significant housing developments of 25 units or over, or of 1 hectare and over, irrespective of the number of units, must normally (see paragraph 7.3 below) contribute to satisfying the shortage of affordable housing units in Bristol. However, the type and form of affordable housing may be adjusted to suit the particular needs of a locality. For example, in an area of predominantly family sized rented accommodation it may be more

appropriate to seek an element of shared ownership or low cost market housing/or discounted market housing available in perpetuity. If, in the interests of balanced communities no further affordable housing is appropriate in a particular location, then off site provision or a commuted sum may be considered. However, the lack of apparent local need for affordable housing should not preclude any contribution towards addressing a citywide shortfall.

7.2 Three criteria are used to assess the percentage of affordable housing required within private sector schemes of 25 or more dwellings, or 1 hectare or over in area. These are:

- A **local needs assessment** – Information provided of the housing management areas in the city by the Bristol Housing Needs and Affordability Model, and in addition informed by the views of the local Housing Office(s) in relation to local need;
- B **local property prices**; and
- C **local supply of affordable housing**. This takes into account re-lets, recent completions and likely additions to the affordable housing stock.

The Strategic and Citywide Policy Team (Michael Price) is able to provide data for A, B, and C with the Neighbourhood and Housing Services providing information in relation to point A. (See point 15.00 for contact information).

7.3 Consideration will also be given to whether the provision of affordable housing would prejudice the realisation of other planning objectives that need to be given priority in the development of the site.



Current scheme, 30 affordable housing on-site as part of market housing scheme by Countryside, at Brentry

8.0 THE FORM OF AFFORDABLE HOUSING

8.1 There is an expectation by Government in PPG3-Housing, and consequently in PAN12, that affordable housing resulting from provision of a new housing scheme should be provided on site.

"There is a presumption that such housing should be provided as part of the proposed development of the site. Failure to apply this policy could justify the refusal of planning permission." Para 17 PPG3

8.2 The order of preference of form of affordable housing is as follows.

- A On site
- B Part on site provision and part off site/commuted payment
- C Off site:
 - provision by applicant, developer, or RSL
 - commuted payment
 - transfer of land

8.3 In exceptional circumstances off site provision or the payment of a commuted sum may be warranted. However, off site provision should be located within the immediate locality of the development to ensure the affordable housing contributes towards the housing needs of that area to which the application relates and to improve the mix of residential accommodation. Due to high land values in areas of greatest affordable housing need such as Clifton, this may be the only opportunity for providing any new affordable housing.

9.0 SERVICE CHARGES

9.1 Although traditionally the emphasis in determining affordability has been on rents or purchase prices, it is the total costs of occupation which ultimately determine affordability. The individual significance of other costs may increase and merit specific attention as market conditions change. In Bristol, some recent residential developments in the city have been accompanied by unprecedented high levels of service charge. The level of service charge is considered to be a material planning consideration as service charges affect the relative affordability of residential accommodation. Excessive service charges for future residents of affordable housing must be avoided. Such potentially significant additional costs may result in the cost of seemingly affordable housing extending beyond the financial reach of those in need, to which this policy is considering, and hence would thereby clearly conflict with the objectives of the policy.

9.2 The level of service charge to ensure affordable housing remains within the definition of affordable housing in Policy H9.

9.3 Planning permission will be refused where affordable housing is offered but is subject to excessive service charges i.e such that the units are unable to meet the definition of affordable housing in policy H9. If at the time of any determination of a planning application the level of service charge is not yet known, an appropriate condition or section 106 agreement will be applied.



Current scheme at Deanery Road, City Centre. 22 affordable units on-site as part of Crosby Homes market housing development

10.0 FUTURE MANAGEMENT OF THE AFFORDABLE HOUSING

- 10.1 A Residential Social Landlord (RSL) continuing interest in a property should ensure control over subsequent changes of ownership and occupation. This provides two safeguards. Firstly, RSLs are obliged to have publicly available policies and procedures for allocating tenancies. This obligation is part of the Housing Corporation's 'Performance Standards' for RSLs. These should be open, fair and based on housing need. Secondly, should disposal of RSL assets become necessary, it will take place under Housing Corporation arrangements.
- 10.2 The appointment of an RSL to manage affordable housing on any given site should be an effective way of controlling occupancy without the need for additional occupancy controls. It is recommended that the skills and experience of RSLs be employed at an early stage of the design process to ensure a future effective management operation can be properly considered.
- 10.3 In the interests of securing truly mixed residential schemes the principle of grouping together affordable housing units will not be supported where large numbers of units are involved. It is accepted however, that it may not be practical in all schemes to 'pepper-pot' individual affordable housing units throughout a scheme and that in certain circumstances it would be preferable to have small clusters located together.



Agreement for 6 units on-site as part of the recent planning permission for development of this gap site at West Street, Old Market by Agrarian.

11.0 SECTION 106 AGREEMENTS

- 11.1 Planning agreement and obligations (S106 agreements) will be applied to any planning permission to ensure that the affordable housing is provided as approved and occupied as intended.
- 11.2 When no RSL is involved a S106 agreement will always be required to secure the affordable housing whether the application is outline, full or for reserved matters.
- 11.3 Bristol City Council has produced standard/model S106 agreements to streamline the decision making process and to avoid excessive time being spent drafting such items. Details are included within the appendix to this advice note. (See also section 18.00).



Current scheme. The conversion of the former AA office building at Park Row in the city centre by Edward Ware Homes has enabled on-site affordable housing provision



12.0 KEY ELEMENTS OF PAN 12

In order for residential schemes to provide a proportion of affordable housing, help address the shortfall in affordable housing, promote balanced residential development and neighbourhoods, and consequently meet the objectives of Policy H9 of the Bristol Local Plan, Circular 6/98 and PPG3-Housing, the Council will:

- A seek an element of affordable housing from all open market housing developments of 25 or more dwellings, or 1 hectare or over in area.

The artificial sub-division of sites and buildings with the effect of circumventing this threshold will not be supported. The threshold figure relates to 'open market' housing development, and not, for example, student accommodation, or social housing subsidised by public funders.

- B as a guide, apply a target for the provision of affordable housing units of between 10% and 30% of the total number of dwellings proposed. This figure will vary depending on the degree of local need, the suitability of the site, and the economics of provision. The extent of the relative need for affordable housing in Bristol is established by a three criteria:

- i local needs assessment
- ii local property prices, and
- iii local supply of affordable housing (see 7.2 for details)

An appropriate figure can be agreed with an applicant once the housing need has been determined and the economics of the scheme are established by the City Council's Neighbourhood and Housing Services Department (N&HS) with the submission of a checklist of information and a financial appraisal that will remain confidential.

- C accept that a variety of alternative types of affordable housing may be considered, such as rented accommodation or shared ownership.

The council will promote the option which best reflects local need as established by the City Council's Housing and Neighbourhood Services Department and will further the establishment of 'well balanced communities' and address the

barriers to social exclusion.

- D expect that, in all cases, affordable housing will be provided on-site unless there are exceptional circumstances that prevent this or it would be contrary to the interests of promoting 'well balanced communities'.

On-site affordable housing provision should be made available for occupation at the same time, or sooner, than other elements, e.g. open market units.

- E expect, except in exceptional circumstances, the integration of affordable housing with general open market housing to promote mixed and well-balanced communities.

Integrating different tenures throughout a scheme helps to ensure that a variety of housing types and ownership patterns result, rather than the creation of exclusive areas. In flatted schemes clusters of units will be supported throughout the scheme.

- F expect any commuted sum to be paid before the occupation of any open market housing.

This commuted sum is to be calculated, preferably in pre-application or during negotiations prior to Planning Committee, with reference to the Housing Corporation Total Cost Indicators prevailing at the time when negotiations are completed. The commuted sum will be indexed according to construction costs using the TIPISH index to facilitate the construction elsewhere of the number of units that should otherwise have been built on the site. The sum shall be repaid if unused by the Council within 5 years.

- G recommend that the prospective developer work in partnership with a Registered Social Landlord.

Neighbourhood and Housing Services can advise on an appropriate RSL partner. Involvement at an early stage in the process is recommended to ensure RSL design and other standards are met.

- H expect the service charge levels to be such that the affordable housing provided is in accordance with the Bristol Local Plan Policy H9 definition of affordable housing.



14.0 OTHER POLICIES

- 14.1 Other relevant policies within the Bristol Local Plan must be observed. Other supplementary planning guidance in the form of a series of policy advice notes have also been adopted by the City Council to promote best practice.
- 14.2 High standards of design and amenity consideration will be expected of affordable housing as is, of course, expected of all other forms of residential accommodation. Poor quality development contrary to local and national policy and guidance will not be supported. The recently published 'Better Places to Live by Design: a companion guide to PPG3', DTLR September 2001', is worthy of particular note.
- 14.3 It should not be assumed that occupants of affordable housing do not have the same demand for car, motorcycle or cycle parking as other housing sectors. However, demand for car parking may be affected by other factors such as the close proximity to a good public transport service, essential services and amenities (shops, schools, leisure) employment and cycle paths for example. The level of car parking may be adjusted according to these factors in accordance with Local Plan policy.

15.0 ADVICE AND FURTHER INFORMATION

- 15.1 Should you require any further assistance or clarification please contact the Strategic and Citywide Policy Team or the Neighbourhood and Housing Services Enabling Team as detailed below. If your query relates to a specific proposal or planning application you should contact the relevant development control case officer in the first instance.

**The Enabling Team,
Neighbourhood & Housing Services,
St Anne's House, St. Anne's Road,
Bristol BS4 4BD
Tel: (0117) 916 5144/5138**

**Strategic & Citywide Policy Team
Department of Transport, Environment & Leisure,
Brunel House,
St. George's Road,
BRISTOL BS1 5UY
Tel: (0117) 903 6718**

- 15.2 For further hard copies of this document and/or general planning advice please contact:

**The Customer Care Team,
Department of Transport, Environment & Leisure,
Brunel House,
St. George's Road,
BRISTOL BS1 5UY**

**Tel: (0117)-922-3097
or email:**

customer_services_det&l@bristol-city.gov.uk

This Policy Advice Note is available on the City Council Website: www.bristol-city.gov.uk/localplan

- 15.3 Any comments you may have on how you feel we might update this advice in future would be welcome.

16.0 BIBLIOGRAPHY

Planning and Affordable Housing Circular 6/98

Planning Policy Guidance Note 1: General policy and principles (DTLR, 1997)

Planning Policy Guidance Note 3: Housing (DTLR, 2000)

Planning Policy Guidance Note 12: Development Plans (DTLR, 1997)

Planning and Development Briefs: A Guide to Better Practice (DTLR, 1998)

Local Housing Needs Assessment: A Guide to Good Practice (DTLR, 2000)

Housing Corporation F2/42/98

17.0 GLOSSARY (DEFINITIONS/CLARIFICATIONS)

17.1 Affordable Housing

Affordable housing is defined by its meaning in Planning Policy Guidance Note 3 of March 2000 and Department of the Environment, Transport and the Regions Circular 06/98, or any Guidance or Circular which may supersede them. (Refer to section 5 of this PAN). The Council defines affordable housing in Policy H9 of the Bristol Local Plan.

17.2 Affordable Housing for Rent (Social Housing)

Affordable housing for rent is the type of affordable housing that is in greatest need in Bristol. It is defined as housing for which both a) rent of the property is significantly lower than the prevailing rents in the city and b) subject to arrangements that will ensure its availability in perpetuity. RSLs in Bristol manage a variety of accommodation for rented purposes for general needs, sheltered accommodation and special needs.

17.3 **Exceptional circumstances** such as high land assembly costs, contamination, site clearance matters amongst others are normally reflected in land value and should not normally therefore be used to justify the lack of affordable housing provision. However, this will be considered with the full disclosure of financial information to assist in the understanding of the relative economics of provision and the viability of the scheme in relation to the proportion of affordable housing units expected. It is the responsibility of the purchaser of the land to recognise future affordable housing obligations as affordable housing policy is well established nationally and within Bristol, and the requirement to provide an element of affordable housing should not be unexpected. Affordable Housing Policy H9 of the Bristol Local Plan was adopted in 1997. Exceptional circumstances may be considered where such costs are unforeseen at the time, e.g. hidden mine shafts, drainage etc which cannot reasonably have been foreseen or discovered prior to an application to purchase land and were not revealed by appropriate land search investigations.

17.4 Key Workers

The Housing Green Paper (2000) sought to encourage provision for key workers. Key workers may include key public sector workers e.g. nurses and teachers. It is accepted that individual nurses or teachers, for example, may appear on the Common Housing Register and as such qualify for particular affordable housing accommodation. Affordable housing arising from policy H9 should be made available to all its citizens in need rather than exclusively to one particular group. Please note that the City Council expects to clarify the above initial definition of key worker housing with the publication of a First Deposit Alteration to the Bristol Local Plan.

17.5 Low Cost Market/Discount for Sale

With reference to para 4 of Circular 06/98, affordable housing may also include low cost market housing. This is homes for either rent or sale at discount compared to open market value where a planning agreement ensures that the discount remains available in perpetuity to people identified as being in housing need.

17.6 Mortgagee in Possession Clause

Where the Council seeks to impose occupancy controls, lenders of private finance often require the RSL to negotiate for the inclusion of clauses in planning obligations which would enable the lender to dispose of the property on the open market, as a last resort, if the RSL is in financial difficulties. Such clauses are known as mortgagee in possession clauses.

17.7 Nominations

Nomination agreements are used to ensure that the affordable housing units of the development are held for local people in affordable housing need. The Bristol Local Plan emphasises that those nominated for affordable housing should be listed on Bristol's Common Register which is operated by all social housing providers across the city. The council normally requires a proportion of nomination rights.



17.8 Perpetuity

It is important that affordable housing is of benefit not just to initial occupiers but subsequent occupiers and as such should be provided therefore in perpetuity.

17.9 Registered Social Landlord (RSL)

RSL applies to housing landlords registered with the Housing Corporation. These may be charities that are housing associations, industrial and provident societies and not-for-profit companies. As paragraph 27 of DTLR Circular 6/98 emphasises the involvement of an RSL ensures the future occupancy of affordable housing is controlled. Their continuing interest in the property ensures control over subsequent changes of ownership and occupation. This provides two safeguards. First, RSLs are obliged to have publicly available policies and procedures for allocating tenancies which is part of the Housing Corporation 'Performance Standards' for RSLs, reinforced by the Tenants Guarantee. These should be 'open, fair and based on housing need'. Second, should disposal of RSL assets become necessary, it will generally take place under Housing Corporation controls.

17.10 Section 106 Agreements

An agreement made under Section 106 of the Town and Country Planning Act 1990, between a local planning authority and developers specifying, for instance, that a proportion of a development site be reserved for affordable housing. S106 agreements run with the land and apply to successive owners. The delivery of affordable housing will normally be through a S106 agreement as the provisions governing the provision of affordable housing and its future retention are often too complex to be suitable for inclusion within a condition.

However, it is also possible to deliver the affordable housing by way of condition. Paragraph 12 of DTLR Circular 6/98 stated that where an RSL is to manage affordable housing on any given site, use of a condition should be an effective way of controlling occupancy without the need for additional occupancy controls to be imposed by

the Local Planning Authority. A developer can challenge a condition by appealing against its imposition. When a RSL is the applicant it may be appropriate to impose a condition rather than enter a S106 provided the RSL has an interest in the site.

17.11 Service Charge

A service charge is a charge to the tenant by an RSL for provision of services such as warden facilities, caretaking and cleaning and the running costs e.g. communal lighting. In the Bristol context a significant proportion of recent flatted development, particularly in the Central area, has been of the market luxury type where service charges have been in excess of £2,000 per annum, making it impossible for it to be affordable for an RSL to manage. However, this can be rectified by restricting the service charge to an affordable level with the affordable units perhaps being subsidised by the remainder of the development and receiving only essential services.

17.12 Shared Equity/Ownership Housing (Social Housing)

This type of accommodation is becoming increasingly popular in Bristol and there is significant demand especially from young couples and low income workers who are unable to compete on the open housing market. This provides them with an opportunity to acquire a part equity not normally more than 25%, of the overall value of the property up to a 50% share. This means the housing is partly sold and partly rented by the occupier and an RSL is the landlord so that the property is secured for shared equity/ownership in the longer term. It may sometimes be possible to gradually move to full ownership (sometimes referred to as 'staircasing') but this will not work in many areas due to cost and value relationship of the property.

17.13 Subsidised or Social Housing

These are homes for either rent or shared ownership at below market levels, provided by local authorities and registered social landlords.

17.14 Social Housing Grant

The grant paid by the Housing Corporation to RSLs for capital development programmes is called Social Housing Grant (SHG). The grant paid by Bristol City Council to RSLs for capital development programmes is called Local Authority Social Housing Grant (LASHG).

17.15 Special Needs/Supported Housing

This encompasses a wide variety of different types of accommodation usually in the ownership of local authorities and RSLs, not all of which are affordable. Such accommodation is provided for people with some special disability or requirement in addition to their need for a home e.g. people who are physically disabled, people with mental health problems or older people. It includes group homes, hostels, cluster flats, shared housing and ordinary flats. The majority of such accommodation will be to rent to those who are unable to compete on the open market e.g. sheltered housing.

17.16 TCIs (Total Cost Indicators)

This is a system used by the Housing Corporation to determine the normal cost of producing certain types and sizes of dwellings at any location in England. The TCIs are re-appraised on an annual basis using data on property and construction costs.

17.17 TIPISH index

This is a social cost indicator produced by the Housing Corporation.



18.0 RECOMMENDED STANDARD AFFORDABLE HOUSING CLAUSES FOR SECTION 106 AGREEMENTS

CONTENTS

- **INTRODUCTORY NOTE**
- **GENERAL MATTERS TO BE COVERED IN**
- **AGREEMENTS:**
 - **Securing Affordable Housing in the Longer Term**
 - **Design Related Considerations**
 - **Occupancy Criteria**
 - **Mortgagee in Possession Clause**
 - **Exclusion From Right to Buy**

MODEL LEGAL AGREEMENTS:

On-Site Provision:

- Model Legal Agreement 1: Developer Builds and Transfers Affordable Housing Units to Registered Social Landlord
- Model Legal Agreement 2: Developer Transfers Serviced Affordable Housing Land to Registered Social Landlord and Pays a Commuted Sum to the Council
- Model Legal Agreement 3: Affordable Housing Provided and Managed by Developer with no Registered Social Landlord Involvement

Off-Site Provision:

- Model Legal Agreement 4: Developer Builds and Transfers Off-Site Affordable Housing Units to Registered Social Landlord
- Model Legal Agreement 5: Financial Contributions by Developer

Low Cost Market Housing:

- Model Legal Agreement 6: Developer Provides Low Cost Market Housing

INTRODUCTORY NOTE

Where it is agreed that affordable housing is to be provided in accordance with Bristol Local Plan Policy H9, planning obligations will be used to secure provision. Negotiations with developers will be based upon one of the Council's model legal agreements, as set out below:

Key items, or heads of terms, for planning S106 agreements to address include: location (e.g. on site), the issue of subsidy, the number, size, cost, standard, mix and type of affordable housing in perpetuity, the programme and timetable for provision (phasing) and service level charges.

A combination of terms under each of the model agreements may occasionally be appropriate e.g. when a combination of on-site and off-site provision is secured depending on the agreed form of affordable housing provision. The Council may also agree phased provision and transfer of affordable housing on large scale development sites.

GENERAL MATTERS TO BE COVERED IN AGREEMENTS

SECURING AFFORDABLE HOUSING IN THE LONGER TERM

The affordable housing should only be used for the purposes of providing accommodation to be occupied by households in need of affordable housing in the Local Plan area and to meet the objectives of a RSL.

DESIGN RELATED CONSIDERATIONS

The location of the affordable housing is approved in Plan number U comprising of V units with a housing mix of W 1 bed unit, X 2 bed unit etc with floorspace/bedspaces area comprising of YM2 per unit for 1 bed units, ZM2 for 2 bed units etc in accordance with the planning permission.

The units shall be constructed to the minimum standards specified in the Housing Corporation publication 'Scheme Development Standards' or in accordance with such other guidance as shall be issued by the Housing Corporation or any successor body in substitution.

The units shall not be used for any other purpose except the agreed affordable housing provision.

OCCUPANCY CRITERIA

Not to permit or allow the affordable housing units to be occupied by any person(s) except person(s) satisfying the following occupancy criteria:

immediately prior to occupation of the Affordable Housing Unit were a resident within the City of Bristol and need separate accommodation

were not resident in the City of Bristol immediately prior to occupation of the Affordable Housing Unit but who have a strong local connection with the City of Bristol and in determining whether a person has a strong local connection with the City of Bristol, the Registered Social Landlord (RSL) shall consider:-

- family associations in the City of Bristol and/or
- any periods of ordinary residence in the City of Bristol not immediately before the date upon which any Affordable Housing Unit becomes vacant or

through their work provide important services to the City of Bristol and who need to live closer to the local community or who have employment (or an offer of employment) within the City of Bristol or

immediately prior to occupation of the Affordable Housing Unit were resident in the City of Bristol in non self-contained accommodation or

is a single person who immediately prior to occupation of the Affordable Housing Unit was resident in the City of Bristol in his/her parental home in overcrowded conditions or

immediately prior to occupation of the Affordable Housing Unit were living in the City of Bristol in self-contained accommodation inadequate for their needs

is in the opinion of the RSL, in need of affordable housing and no other person falling within the categories set out in the paragraphs 1-6 above is found who is willing to become a tenant of the Affordable Housing Unit within a period of 4 (Four) weeks from the date upon which the Affordable Housing Unit becomes available.

MORTGAGEE IN POSSESSION CLAUSE

The obligations in relation to affordable housing shall not bind a mortgagee of any Registered Social Landlord that may acquire by way of long lease or better title the affordable housing units or any receiver appointed by such mortgagee or chargee and the said obligations shall thereafter cease to have effect in relation to the affordable housing units (or such part thereof as may be affected) in the event of such mortgagee or chargee becoming a mortgagee in possession of the affordable housing units or any part thereof.

EXCLUSION FROM RIGHT TO BUY

The affordable housing units which were secured without public subsidy shall be excluded from any Voluntary Purchase Grant scheme and from any right to buy introduced in favour of the occupiers of the affordable housing units and/or from any other mechanisms that could result in any of the affordable housing units becoming available for sale in the private housing market.

**Please note the following Model Agreements will contain the provisions set out below but variations may be necessary depending upon the circumstances.*



ON-SITE PROVISION

MODEL LEGAL AGREEMENT 1

DEVELOPER BUILDS AND TRANSFERS AFFORDABLE HOUSING UNITS TO REGISTERED SOCIAL LANDLORD

Developer's obligations

- 1 Not to commence the development until the Developer has obtained the approval of the Council to a programme and timetable for the provision of the Affordable Housing Units and to the location, type, cost, standard, size and level of servicing of and element of subsidy in respect of such units.
- 2 To construct the Affordable Housing Units to the standard required by the Housing Corporation and the Registered Social Landlord (RSL) and in accordance with the approval referred to above.
- 3 Not to occupy or permit occupation of any of the dwellings comprised in the development which are to be sold or let on the open market until the Developer has transferred (either by freehold transfer or lease for a term of at least 125 years) the Affordable Housing Units (fully serviced and accessible by vehicles and pedestrians) to the RSL at a sum calculated using the Housing Corporation Total Cost Indicator and Grant Rates.

As an alternative to the immediately preceding obligation, (to be used only where that obligation is not practical).
- 1 Not to occupy more than an agreed percentage of the dwellings comprised in the development which are to be sold or let on the open market until the Developer has entered into an unconditional contract with the RSL for the sale (either by freehold transfer or lease for a term of at least 125 years) of the Affordable Housing Units to the RSL at a sum calculated using the Housing Corporation Total Cost Indicator and Grant Rates when such units have been substantially completed and has produced to the Council evidence of such contract.
- 2 Not to occupy the remainder of the dwellings to be sold on the open market until the Council has been provided with evidence that all of the Affordable Housing Units have been transferred to the RSL (either by freehold transfer or lease for a term of at least 125 years) in accordance with the contract referred to above.
- 3 To procure that the Affordable Housing Units are either let by an RSL in accordance with its objectives and with such published housing waiting list and allocation system as it may adopt or are made available by an RSL for shared equity leasing depending upon the agreed split (if any) between Affordable Housing Units available for rent and those available for shared ownership leasing. Where any units are to be made available for shared ownership leasing, the occupiers shall not be permitted to staircase above 50% of the value of such units at the date upon which the right to staircase is exercised.
- 4 To procure that those Affordable Housing Units which are to be let (as opposed to those which are to be made available for shared ownership leasing) are occupied by persons considered by an RSL to be in need of such accommodation and the RSL shall have regard to the categories of medical and social priority as referred to in the Council's Housing Needs Register and to those persons accepted by the Council as homeless and who fall within the Council's Occupancy Criteria.
- 5 If after using all reasonable endeavours the Developer has been unable to dispose of the Affordable Housing Units to an RSL upon the terms specified above and within an agreed timescale from the date of occupation of the first of the dwellings which are to be let or sold on the open market it will notify the Council of this fact and comply with such alternative method of securing such on site affordable housing benefits (to a value no less than that which would have been achieved had the Developer disposed of the Affordable Housing Units to an RSL as provided for above) as shall be specified by the Council and within such reasonable timescale as the Council shall require. If after using all reasonable

endeavours the Developer has been unable to comply with such alternative method within a further period of 12 months the Developer shall immediately pay to the Council a sum equal to the value which would have been achieved had the Developer disposed of the Affordable Housing Units to an RSL as provided for above such sum to be used by the Council to facilitate the provision of affordable housing within a specified area. Council's Obligations (where Developer pays a commuted sum in lieu of providing Affordable Housing Units)

- 6 To use the payment received from the Developer to facilitate the provision of affordable housing within a specified area.
- 7 In the event that the contribution towards affordable housing (or any part of it) has not been spent or committed within a period of five years from the date of payment to repay the part not spent or committed to the Developer together with interest on such sum from the date of receipt until the date of repayment.

MODEL LEGAL AGREEMENT 2

DEVELOPER TRANSFERS SERVICED AFFORDABLE HOUSING LAND TO REGISTERED SOCIAL LANDLORD AND PAYS A COMMUTED SUM TO THE COUNCIL

Developer's obligations

1. Not to commence the development until the Developer has
 - A obtained the approval of the Council to a programme and timetable for the provision of the Affordable Housing Units and to the location, type, cost, standard size and level of servicing and element of subsidy in respect of such units.
 - B entered into an unconditional contract with an RSL for the transfer to such RSL (either by freehold transfer or lease for a term of at least 125 years) of all of the land required for the Affordable Housing Units such transfer to be effected when all services and access have been provided.
 - C paid to the Council a sum for the provision of the Affordable Housing Units calculated using the Housing Corporation Total Cost Indicator and Grant Rates at the date of payment. Alternatively this sum can be paid simultaneously with the transfer to the RSL of the land required for the Affordable Housing Units. In that event the Developer will be required to provide a Bond.
2. Not to occupy or permit occupation of any of the dwellings comprised in the development which are to be sold or let on the open market until the Developer has transferred to the RSL for no consideration (either by freehold transfer or lease for a term of at least 125 years) all of the land required for the Affordable Housing Units (fully serviced and accessible by vehicles and pedestrians).
3. To procure that the Affordable Housing Units are constructed to the standard required by the Housing Corporation.
4. To procure that the Affordable Housing Units are either let by an RSL in accordance with its objectives and with such published housing waiting list and allocation system as it may adopt or are made available by an RSL for shared equity leasing depending upon the agreed split (if any) between Affordable Housing Units available for rent and those available for shared ownership leasing. Where any units are to be made available for shared ownership leasing, the occupiers shall not be permitted to staircase above 50% of the value of such units at the date upon which the right to staircase is exercised.
5. To procure that those Affordable Housing Units which are to be let (as opposed to those which are to be made available for shared ownership leasing) are occupied by persons considered by an RSL to be in need of such accommodation and the RSL shall have regard to the categories of medical and social priority as referred to in the Council's Housing Needs Register and to those persons accepted by the Council as homeless and who fall within the Council's Occupancy Criteria.



6. If after using all reasonable endeavours the Developer has been unable to find an RSL which is prepared to take a transfer of the land for the provision of the Affordable Housing Units upon the terms specified above within an agreed timescale of entering into the Section 106 Agreement the Developer will notify the Council of this fact and comply with such alternative method of securing the affordable housing benefits and within such reasonable timescale as shall be specified by the Council. If after using all reasonable endeavours the Developer has been unable to comply with such alternative method within a further period of 12 months the Developer shall immediately pay to the Council the agreed value of the land which was allocated for the Affordable Housing Units for use by the Council to facilitate the provision of affordable housing within a specified area.

Council's obligations

To use the payment received from the Developer to facilitate the provision of affordable housing within a specified area.

In the event that the contribution towards affordable housing (or any part of it) has not been spent or committed within a period of five years from the date of payment to repay the part not spent or committed to the Developer together with interest on such sum from the date of receipt until the date of repayment.

MODEL LEGAL AGREEMENT 3

AFFORDABLE HOUSING PROVIDED AND MANAGED BY DEVELOPER WITH NO REGISTERED SOCIAL LANDLORD INVOLVEMENT

Developer's obligations

- 1 Not to commence the development until the Developer has obtained the approval of the Council to a programme and timetable for the provision of the Affordable Housing Units and to the location type cost standard size and level of servicing of such units.
- 2 To construct the Affordable Housing Units to the standard required by the Housing Corporation and in accordance with the approval referred to above.

- 3 Not to occupy or permit occupation of any of the dwellings which are to be sold or let on the open market until the Affordable Housing Units are all available for immediate occupation.
- 4 To procure that the Affordable Housing Units are occupied only by persons approved in writing by the Council (such approval not to be unreasonably withheld or delayed if such persons satisfy the criteria contained in the Council's housing allocations policy which is current at the date upon which the approval is requested).
- 5 Not to charge to its tenants of the Affordable Housing Units any rent in excess of the limit on rents which the Housing Corporation notifies to RSL's from time to time.
- 6 Where any of the Affordable Housing Units are to be made available for shared ownership leasing to procure that the occupiers are not permitted to staircase above 50% of the value of such units at the date upon which the right to staircase is exercised.

MODEL LEGAL AGREEMENT 4

OFF-SITE PROVISION

Developer builds and transfers off-site affordable housing units to

registered social landlord

Developer's obligations

- 1) Not to commence the development until the Developer has
 - A acquired the freehold interest in a site of sufficient size and within a specified area (to be approved by the Council) to provide the Affordable Housing Units
 - B obtained full planning permission for the Affordable Housing Units and
 - C obtained the approval of the Council to a programme and timetable for the provision of the Affordable Housing Units and to the

location, type, cost, standard, size and level of servicing of and element of subsidy in respect of such units.

- 2 To construct the Affordable Housing Units to the standard required by the Housing Corporation and the Registered Social Landlord (RSL) and in accordance with the approval referred to above.
- 3 Not to occupy or permit occupation of any of the dwellings comprised in the development which are to be sold or let on the open market until the Developer has transferred (either by freehold transfer or lease for a term of at least 125 years) the Affordable Housing Units (fully serviced and accessible by vehicles and pedestrians) to the RSL at a sum calculated using the Housing Corporation Total Cost Indicator and Grant Rates.

As an alternative to the immediately preceding obligation, (to be used only where that obligation is not practical).

- 1 not to occupy more than an agreed percentage of the dwellings comprised in the development which are to be sold or let on the open market until the Developer has entered into an unconditional contract with the RSL for the sale (either by freehold transfer or lease for a term of at least 125 years) of the Affordable Housing Units to the RSL at a sum calculated using the Housing Corporation Total Cost Indicator and Grant Rates when such units have been substantially completed and has produced to the Council evidence of such contract.
- 2 not to occupy the remainder of the dwellings to be sold on the open market until the Council has been provided with evidence that all of the Affordable Housing Units have been transferred to the RSL (either by freehold transfer or lease for a term of at least 125 years) in accordance with the contract referred to above.
- 3 To procure that the Affordable Housing Units are either let by an RSL in accordance with its objectives and with such published housing waiting list and allocation system as it may adopt

or are made available by an RSL for shared equity leasing depending upon the agreed split (if any) between Affordable Housing Units available for rent and those available for shared ownership leasing. Where any units are to be made available for shared ownership leasing, the occupiers shall not be permitted to staircase above 50% of the value of such units at the date upon which the right to staircase is exercised.

- 4 To procure that those Affordable Housing Units which are to be let (as opposed to those which are to be made available for shared ownership leasing) are occupied by persons considered by an RSL to be in need of such accommodation and the RSL shall have regard to the categories of medical and social priority as referred to in the Council's Housing Needs Register and to those persons accepted by the Council as homeless and who fall within the Council's Occupancy Criteria.
- 5 If after using all reasonable endeavours the Developer has been unable to dispose of the Affordable Housing Units to an RSL upon the terms specified above and within an agreed timescale from the date of occupation of the first of the dwellings which are to be let or sold on the open market it will notify the Council of this fact and comply with such alternative method of securing the affordable housing benefits (to a value no less than that which would have been achieved had the Developer disposed of the Affordable Housing Units to an RSL as provided for above) as shall be specified by the Council and within such reasonable timescale as the Council shall require. If after using all reasonable endeavours the Developer has been unable to comply with such alternative method within a further period of 12 months the Developer shall immediately pay to the Council a sum equal to the value which would have been achieved had the Developer disposed of the Affordable Housing Units to an RSL as provided for above such sum to be used by the Council to facilitate the provision of affordable housing within a specified area.



Council's Obligations

(where Developer pays a commuted sum in lieu of providing Affordable Housing Units)

To use the payment received from the Developer to facilitate the provision of affordable housing within a specified area.

In the event that the contribution towards affordable housing (or any part of it) has not been spent or committed within a period of five years from the date of payment to repay the part not spent or committed to the Developer together with interest on such sum from the date of receipt until the date of repayment.

MODEL LEGAL AGREEMENT 5

FINANCIAL CONTRIBUTIONS BY DEVELOPER

Developer's obligations

- 1 Not to commence the development until the Developer has paid to the Council a sum to facilitate the provision of affordable housing such sum to be calculated on the notional basis of a specified number of dwellings each containing a specified floor area and a specified number of bedrooms and by using the Housing Corporation Total Cost Indicators and Grant Rates applicable to such dwellings prevailing at the date of payment.

If the commuted sum is to be paid after the commencement of the development the Developer will be required to provide a Bond.

Council's obligations

To use the payment received from the Developer to facilitate the provision of affordable housing within a specified area.

In the event that the contribution towards affordable housing (or any part of it) has not been spent or committed within a period of five years from the date of payment to repay the part not spent or committed to the Developer together with interest on such sum from the date of receipt until the date of repayment.

MODEL LEGAL AGREEMENT 6

LOW COST MARKET HOUSING - Developer Provides Low Cost Market Housing

Developer's obligations

- 1 Not to commence the development until the Developer has obtained the approval of the Council to a programme and timetable for the provision of the Affordable Housing Units and to the location, type, cost, standard, size and level of servicing of such units.
- 2 To construct the Affordable Housing Units to the standard required by the Housing Corporation and in accordance with the approval referred to above.
- 3 Not to occupy or permit the occupation of any of the dwellings which are to be sold or let on the open market until the Affordable Housing Units are all available for immediate occupation.
- 4 To procure that the Affordable Housing Units are occupied only by persons approved in writing by the Council (such approval not to be unreasonably withheld or delayed if such persons satisfy the criteria contained in the Council's housing allocations policy which is current at the date upon which the approval is requested).
- 5 Not to dispose of the Affordable Housing Units at a consideration in excess of 75% of the open market value of the units at the date of sale.
- 6 Not to dispose of any one of the Affordable Housing Units to any person unless that person enters into a charge in favour of the Council (which shall have priority over all other charges affecting the unit) to the effect that upon any subsequent disposal of the unit that person will pay to the Council a sum of money equivalent to 25% of the open market value of that unit at the date of sale and to procure that subsequent purchasers of the unit enter into a similar charge.

Council's obligations

To use all payments received from the sale of the Affordable Housing Units to facilitate the provision of affordable housing within a specified area.

**If English is not your first language and you need a translation,
we can get one for you.**

Bengali

ইংরেজী আপনার মাতৃভাষা না হলে এবং আপনার কোন অনুবাদের প্রয়োজন হলে আমরা তা প্রদান করতে সক্ষম।

Cantonese

如果英文不是您的第一語言，而您需要翻譯的話，我們可以為您安排。

Gujarati

જો તમારી પહેલી ભાષા અંગ્રેજી ન હોય અને તમને ભાષાંતરની જરૂર હોય તો અમે તમને તે આપી શકીએ છીએ.

Hindi

यदि आंग्रेजी आप की पहली भाषा नहीं है और आप को अनुवाद की आवश्यकता है तो यह हम आप को प्रदान कर सकते हैं।

Italian

Se l'inglese non è la vostra prima lingua e vi occorre una traduzione, ve la possiamo fare noi.

Polish

Jeżeli angielski nie jest twoim podstawowym językiem i wymagasz interpretacji, skorzystaj z naszych usług.

Punjabi

ਜੇਕਰ ਇੰਗਲਿਸ਼ ਤੁਹਾਡੀ ਪਹਿਲੀ ਭਾਸ਼ਾ ਨਹੀਂ ਅਤੇ ਤੁਹਾਨੂੰ ਦੁਬਾਰਾ ਦੱਸਣ ਦੀ ਜ਼ਰੂਰਤ ਹੈ ਤਾਂ ਤੁਹਾਡੇ ਲਈ ਅਸੀਂ ਇਸਦਾ ਪ੍ਰਬੰਧ ਕਰ ਸਕਦੇ ਹਾਂ।

Somali

Haddii Ingiriisku aanu ahayn afkaagawaaad oo aad u baahan tahay turjumaad, annagaa kuu samayn karra.

Urdu

اگر انگریزی آپ کی پہلی زبان نہیں ہے اور آپ کو ترجمہ کی ضرورت ہے تو ہم آپ کے لئے فراہم کر سکتے ہیں۔

Vietnamese

Nếu quý vị không thạo Anh van và cần ban dịch, chúng tôi sẽ giúp quý vị một ban.

**If you need any of the information in this document reproduced
in a different form (such as on tape, in larger print or in Braille),
please contact us on ☎ (0117) 903 6725**

Acknowledgments

Hats off to all those individuals from all sectors who made this what it is! Special thanks to Lindy Morgan, Richard Phillips, Sue Webber, Ian White and Nick Hooper (BCC PAN 12 working group, 2001).

RJT.02

