

Affordable housing grant funding

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What is grant funding/public subsidy for affordable housing?

Although affordable housing grant has existed for decades, it's only since the 1980s and the introduction of the [Housing Act 1988 \(HA 1988\)](#), that a formal capital grant funding regime to help support the delivery of affordable housing gained real traction. Originally ringfenced to housing associations, grant funding in the form of 'social housing assistance' is now available to a wider class of recipient (see [Who can apply for grant funding/public subsidy for affordable housing?](#) below) and responsibility for the regime's operation is divided between the Homes and Communities Agency (trading as Homes England) and the Greater London Authority (the GLA). While other public bodies (including local authorities and combined authorities) may have grant-giving powers, the primary focus of this Practice Note is on the grant regime operated by Homes England and the GLA and on the provision of social housing assistance. References to grants in this Practice Note are references to social housing assistance made available through the government sponsored Affordable Homes Programme (see paragraph beginning 'The main funders in England' below).

Grant funding is intended to assist registered providers, local authorities and other organisations (such as Almshouses or private developers) to plug a funding gap between the costs of delivering affordable housing and the level of expenditure and borrowing that can be supported by the constrained income streams deriving from it. Its injection into projects is to encourage additional delivery of affordable housing within the country.

A grant is typically made available in cash form and if conditions are met and continue to be met, does not generally require repayment (although the requirements of individual funding programmes may differ). Grant funding is generally provided to support capital expenditure, although certain grant programmes may permit a grant to be applied to revenue costs.

Grants distributed by Homes England and the GLA ultimately come from central government and the budget is set by the Department for Levelling Up, Housing and Communities.

The main funders in England are the GLA (funding homes in London) and Homes England (funding homes outside of London). Grant funding has also been made available through government programmes which allocate a

References:

[Housing and Regeneration Act 2008, s 32\(13\)](#)

References:

[Affordable homes programme 2021-20226](#)

quantum of funding for the delivery of affordable housing on a cyclical basis (typically three to five years). Each programme will have its own specific conditions. The most prevalent programme is the Affordable Homes Programme for Homes England and the Homes for Londoners: Affordable Homes Programme for the GLA (together, the Affordable Homes Programmes).

Each Affordable Homes Programme is typically introduced with a formal briefing which sets out the funding available and what type of affordable housing the funding will support, as well as any associated policy aims or programme requirements.

Grant funding under the Affordable Homes Programmes is allocated by Homes England and the GLA following a formal bidding process.

Homes England's primary power to provide grant funding (as a form of 'Financial Assistance') arises under [section 19](#) of the Housing and Regeneration Act 2008 ([HRA 2008](#)) and the GLA can use its general power under [section 30](#) of the Greater London Authority Act 1999 ([GLAA 1999](#)) (as supplemented by section 333A-B of the [GLAA 1999](#)).

Homes England (and its predecessors) had other statutory powers to provide grant funding prior to the [HRA 2008](#) coming into effect (some of which have been preserved) but this Practice Note focuses on grant funding under the [HRA 2008](#).

What can grant funding/public subsidy consist of?

Public subsidy to support the provision of affordable housing can take a number of forms. While the provision of capital grant is generally the most common form of subsidy (by volume), the legislation underpinning the provision of subsidy in the case of Homes England and the GLA is widely drawn.

In the case of Homes England, subsidy (categorised as Financial Assistance and given with the consent of the Secretary of State) may 'be given in any form', but explicit reference is made to Financial Assistance being given by means of:

- grants
- loans
- guarantee or indemnity
- investment, or
- incurring expenditure for the benefit of the person assisted

References:

[Homes for Londoners: Affordable Homes Programme 2021-2026](#)

References:

[Housing and Regeneration Act 2008, s 19](#)
[Greater London Authority Act 1999, s 30](#)

References:

[HRA 2008, s 19, 19\(2\), 19\(3\)](#)

References:

[HRA 2008, s 10](#)

Provision of public sector land

The provision of public sector land is not expressly contemplated in the legislative provisions dealing with Financial Assistance and while the language may (depending on the facts of the transaction) be broad enough to encompass the provision of public sector land (for example, where used as an equity investment), practitioners should note that restrictions do apply to Homes England's ability to dispose of land, with transactions at an undervalue requiring the consent of the Secretary of State.

Social housing assistance

Financial Assistance which is given by Homes England under [HRA 2008, s 19](#) 'on condition that the recipient provides social housing (whether by itself or as part of a wider project) is termed 'social housing assistance' and is subject to further legislative requirements surrounding its use, recipients and recovery (see [The statutory protections](#) below). A person 'provides social housing' if the person acquires, constructs, converts, improves or repairs any housing or other land for use as social housing (as defined in [HRA 2008, s 32\(13\)](#)) or ensures such acquisition, construction, conversion, improvement or repair by another.

Housing financial assistance

In the context of the GLA, the giving of 'Financial Assistance' in connection with the provision of housing accommodation ('housing financial assistance') is a function of the GLA and forms part of the [London Housing Strategy](#). The London Housing Strategy contains a statement of the Mayor's spending proposals including those relating to the giving of housing financial assistance and the amount of financial assistance to be given for different activities. The form of available subsidy will therefore be dictated by the terms of the London Housing Strategy from time to time.

GLA's powers to deal with housing and regeneration

The statutory provisions surrounding the GLA's specific powers to deal with housing and regeneration are set out in Part 7A of the GLAA 1999. Its specific powers in respect of social housing assistance closely follow those of Homes England.

Can grant funding come from more than one source in respect of any one development?

It is possible to fund a development from different sources of grant, provided the rules applicable to each source of funding are complied with.

There is no general prohibition on combining sources of affordable housing grant funding but some programmes will identify specific requirements in respect of cross funding. For example, the agreement which governs local authorities' use of sales receipts pursuant to the Right to Buy prohibits the combination of grant paid by Homes England or the GLA with such receipts (see paragraph entitled '[Use of Right to Buy Receipts](#)' below).

References:

[HRA 2008, ss 19, 32\(13\), 31-35](#)

References:

[GLAA 1999, s 333A\(3\) \(b\)](#)

References:

[GLAA 1999, s 333ZE](#)

References:

[Housing Act 1985, Pt V](#)

Grant funding for affordable housing is a form of subsidy and therefore the rules applicable to subsidy control (known as 'State Aid' prior to Brexit) must be considered by the relevant public authority.

The [Subsidy Control Act 2022](#) came into force on 4 January 2023 and governs the provision of subsidy in the United Kingdom.

Current legislation and the [Subsidy Control Act 2022](#) do not restrict the combination of various sources of grant funding. The key principle is that subsidy should be provided by a public authority on terms which are equivalent to a commercial market operator unless one of the stipulated 'exemptions' apply.

Grant funding provided to fund the delivery of affordable housing will usually meet the statutory requirements for 'services of public economic interest' and will usually therefore be compliant with subsidy control requirements provided that the relevant rules are followed. A critical principle is that although subsidy may be provided to facilitate the delivery and operation of sub-market accommodation, the amount of such subsidy must be limited to what is necessary to plug the funding gap. In practice this will require an appraisal to be undertaken to assess the amount of grant funding which is permissible.

Who can apply for grant funding/public subsidy for affordable housing?

Both registered providers and non-registered providers may receive grant funding. Where, however, grant is provided by Homes England or the GLA on condition that the recipient provides 'low-cost rental accommodation', it is a legislative requirement that the landlord of such accommodation must be a registered provider when it is made available for rent. Registered providers include both not-for-profit and for-profit registered providers as well as local authorities registered with the regulator.

In practice, the majority of grant funding recipients are registered providers, although there is scope under some funding programmes for grant funding to be provided to non-registered providers where their role is limited to that of a developer in the context of low-cost rental accommodation or to developer/landlord relation to low cost home ownership homes (eg shared ownership).

Is any development eligible for affordable housing grant funding?

The terms of the relevant Affordable Homes Programme will identify what types of development are eligible for grant funding.

The Affordable Homes Programmes are focused on the delivery of affordable housing itself. Homes England and the GLA have on occasion

References:

[Subsidy Control Act 2022, s 29](#)

References:

[HRA 2008, ss 31, 115](#)

[Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010, SI 2010/844, para 3](#)

created other initiatives to provide grant towards infrastructure and land assembly costs which support the delivery of housing including affordable housing.

On a mixed tenure site there will be shared development costs (eg common spaces) and grant may only be applied to the proportion of such costs which are attributable to the affordable housing being funded.

While Affordable Housing Programme funding is primarily focused on supporting capital expenditure, revenue grant funding is sometimes provided as part of a grant programme (such as the London Community Housing Fund programme) to assist with initial enabling activities such as fees associated with design costs and planning applications. Typically the quantum of revenue grant funding is significantly lower than capital grant funding and is usually provided to relatively small entities with limited cash flow such as community-led housing groups.

References:

London Community Housing Fund programme

References:

Apply for affordable housing funding—funding routes

Broadly, what is the application process to obtain grant funding/public subsidy?

To secure grant funding from either Homes England or the GLA, it is conventionally a requirement of the applicable funding programme, that the recipient holds 'Investment Partner' status either on its own account or in conjunction with an existing investment partner. The latter is most typical in cases where a bid for grant funding has been made by a consortium of organisations. In that case, it is a requirement that the consortium appoints a lead organisation to engage with the grant giving body and coordinate and secure the consortium's performance under the resulting grant agreement. In the consortium context, it is usually only the lead organisation that must have Investment Partner status.

A contrasting approach is, however, taken under the Homes England Strategic Partnership regime—grant is channelled to a Strategic Partner who is expected to work with other organisations (delivery partners) to secure the delivery of the affordable homes which the Strategic Partner has bid for. In that case, the Strategic Partner and the delivery partners are required to hold Investment Partner status.

Securing the status of Investment Partner with Homes England or the GLA is subject to a formal and published application process

Potential applicants for Investment Partner status should consider the guidance applicable to the affordable housing grant funding programme they are seeking to benefit from. In each case, the guidance typically sets out the basis upon which Investment Partner status may be sought, by whom and provides guidance on the form of application and the process.

The latest published guidance for:

- the current Homes England Affordable Homes Programme 2021–26 can be found at: www.gov.uk/government/publications/apply-to-be-an-investment-partner-for-the-affordable-homes-programme/shared-ownership-and-affordable-homes-programme-2021-to-2026-investment-partner-qualification-guidance-accessible-version, and
- qualification as a GLA Investment Partner is found at www.london.gov.uk/what-we-do/housing-and-land/investment-partner-qualification

The requirements of Homes England and the GLA under their respective guidance documents are similar but not identical. Salient points to note are:

- the Investment Partner application process acts to verify the identity of applicants for affordable housing grant funding and assess their financial, commercial and technical standing and capacity
- existing Investment Partners do not generally have to reapply for qualification to participate in any new affordable housing grant funding programme
- Investment Partner status is separate from and does not confer registered provider status on the holder
- Investment Partner status with Homes England does not confer Investment Partner status with the GLA and vice versa
- capital grant funding will not be released until the relevant body holds Investment Partner status
- Investment Partner applications must be linked directly to an identified affordable housing grant funding programme
- the funding programme will determine when a bid for grant funding can be made. In the case of Homes England's Affordable Homes Programme 2021–26, there are two routes to funding: Strategic Partnerships and Continuous Market Engagement. Applications to participate in the Strategic Partnership fund closed in 2021 resulting in a finite class of participants. By contrast, the Continuous Market Engagement route remains open to applications for funding from new applicants and for new schemes for so long as the funds remain available in accordance with the programme's rules. In the case of the GLA, applications may be made at any time but must be linked to a bid for grant funding
- while Investment Partner status does not have to be held by an applicant for grant funding at the point of bid submission, it must be secured prior to any grant being released. Homes England and the GLA both recommend that Investment Partner status is applied for contemporaneously with bid submission
- the target turnaround time for each organisation to process the Investment Partner application is expressed to be approximately eight weeks from receipt of a fully completed application
- Investment Partner status is subject to regular review and may lapse or be removed by Homes England or the GLA. Each organisation's guidance documents provide non-exclusive examples of the circumstances which would result in the lapse or removal of Investment Partner status. Examples include delivery inactivity or changes in the underlying information provided as part of the application process, and
- Investment Partner status may be granted to an organisation by the GLA on a 'restricted' basis. In that case, the organisation will hold Investment Partner status only in respect of particular projects specified by the GLA

Is there a maximum amount of grant funding/ public subsidy for affordable housing which can be applied in respect of one development?

Different grant funding programmes use different approaches to establish the maximum quantum of grant funding which may be invested into a development.

Some programmes will 'fix' a grant rate to each tenure of affordable housing being developed on a per unit basis.

In other cases the amount of grant available will be calculated by the funder on a scheme-by-scheme basis, taking into account a variety of factors such as projected development costs, geography, tenures and delivery timescales.

The basis upon which the grant will be allocated is typically outlined in the guidance accompanying the applicable grant funding programme.

The key principle of affordable housing grant funding is that the recipient should not be compensated beyond what is necessary to deliver and operate the affordable housing in question.

This principle is embodied in the [Subsidy Control Act 2022](#) and the specific rules that will apply will depend upon the basis upon which the funder is providing the affordable housing grant funding.

How is grant funding secured and documented?

The conditions upon which grant funding is given are primarily set out in the terms of a grant agreement between the funder and the grant recipient(s).

Funding under the Affordable Homes Programmes to registered providers is not secured over the grant funded assets.

The position in respect of non-registered provider recipients, where the risk to public funds is perceived to be greater, is more nuanced (see paragraph entitled '[Conventional security](#)' below).

Grant agreements are typically supplemented by the provisions of the Capital Funding Guide (for Homes England) and The Affordable Housing Capital Funding Guide (for GLA) each of which contain supplemental and binding guidance on the grant funding regime set out by GLA or Homes England (including programme management, recovery, provisions on shared ownership and conditions for schemes for rent).

In addition to the terms of the grant agreement and relevant capital funding guides, both the GLA and Homes England also benefit from statutory protections in relation to that funding outside of the grant agreement, explored further below (see: '[The statutory protections](#)').

References:

[Subsidy Control Act 2022](#)

References:

[Capital Funding Guide](#)

References:

[Affordable Housing Capital Funding Guide](#)

The grant agreement

The grant agreement will typically:

- confirm the amount of grant funding allocated to that recipient under the grant agreement
- set out the conditions relating to the provision of the grant including:
 - obligations relating to the delivery of the housing supported by the grant
 - conditions precedent to payment of the grant
 - the tenure types which will need to be delivered including requirements on rent levels
 - post-completion operational obligations relating to management of the homes, and
- set out events that give rise to a default, any withholding of funding and/or its repayment

The applicable forms of grant agreement for a programme are usually published by both Homes England and the GLA on their websites.

Conventional security

In particular circumstances, for example where grant funding is provided to an entity which a non-registered provider, Homes England and/or the GLA may also require more conventional methods of protecting the funding through security arrangements which could include a legal charge, restrictions on title and parent company guarantees.

The statutory protections

Sections 32–36 of the HRA 2008 provides Homes England with powers of recovery in relation to ‘social housing assistance’ (see ‘[What can grant funding/public subsidy consist of?](#)’). These provisions are applied to the GLA by means of the [GLAA 1999, s 333ZE](#).

Most capital grant funding provided for the delivery of affordable housing under the Affordable Homes Programmes will be considered ‘social housing assistance’ for the purposes of the [HRA 2008](#).

[HRA 2008, s 32](#) provides the basis upon which such social housing assistance may be recovered (or recycled). Under [HRA 2008, ss 32\(1\) and 32\(8\)](#), the funder must determine the principles and events which govern recovery on or prior to the provision of the social housing assistance unless they are determined subsequently with agreement of the relevant recipient.

References:

[Grant Agreement examples for the Affordable Homes Programme 2021–2026](#)

[Homes for Londoners: Affordable Homes Programme 2021–2026](#)

References:

[HRA 2008, ss 32–36](#)

[GLAA 1999, s 333ZE](#)

References:

[HRA 2008, s 32](#)

The events determined by Homes England are currently set out in the 'Recovery of capital grants from registered providers general determination 2017'. For the GLA, the events are set out in the GLA's own Recovery of Capital Grant From Registered Providers and Recycled Capital Grant Fund (Greater London) General Determination 2017. The above determinations apply to registered providers and local authorities only.

Each of GLA and Homes England have separate determinations for unregistered entities. These are currently: 'Recovery of capital grants from unregistered bodies general determination 2017' (for Homes England) and 'The Recovery of Capital Grants from Unregistered Bodies (Greater London) General Determination' (for GLA) (together 'the Recovery Determinations').

All of these documents set out specific events (Relevant Events) which give rise to recovery/recycling of grant funding (and the exceptions to them) albeit there are differences between determinations issued by the GLA and Homes England.

The Recovery Determinations, coupled with the terms of the grant agreement and the relevant Capital Funding Guide, set out the basis of recovery and method of calculating the amount repayable on a Relevant Event.

The Recovery Determinations also allow providers which are able to hold a Recycled Capital Grant Fund to recycle grant into that fund rather than repay the grant back to Homes England or the GLA in specific circumstances.

Where non-registered providers or for-profit registered providers have been provided with grant, repayment may include an additional 'uplift' amount to account for any increase in values of land which has benefitted from social housing assistance.

The legislation affords some ongoing protection to grant funding. [HRA 2008, s 33](#) states that once 'social housing assistance' is given to a person and the social housing provided as a result of such assistance becomes vested in, or is leased for a term of years to, or reverts to another person, the liability for such grant transfers to that successor.

In certain cases, the funder may require a direct deed of covenant to be provided by the successor to the relevant funder to acknowledge the transfer of such liability and the conditions attached to the grant. Such deeds provide a useful audit trail for the funder if grant funded assets are the subject of future disposals and also assist in the protection of the public money invested in them.

[HRA 2008, s 33\(6\)\(A\)](#) contains a caveat to section 33 where an entity enforces security over land or the land is being disposed of as part of a winding-up or administration process to a body other than a registered provider. In such circumstances the grant liability is not deemed to be transferred to the successor.

References:

The recovery of Capital Grants from registered providers and Recycled Capital Grant Fund (Greater London) General Determination 2017

References:

HRA 2008, s 33

Housing Act 1996, s 27

References:

HRA 2008, s 33

What does planning policy say on grant funding/public subsidy?

The planning system is largely silent on the issue of grant funding. It does not generally set policies for securing or allocating grant, they are two separate regimes. There is no legal obligation on a developer to seek grant funding. However, there are some references to grant funding in planning policy, which we summarise below.

National Planning Policy Framework

The National Planning Policy Framework (NPPF) does not cover grant funding/public subsidy in detail but does state, in respect of other routes to home ownership, that in order to qualify as affordable housing and where public grant funding is being provided, the relevant homes should remain affordable for future eligible households, or for any receipts to be recycled to provide additional homes or refunded to the relevant government authority pursuant to the funding agreement.

Many agreements made under [section 106](#) of the Town and Country Planning Act 1990 ([TCPA 1990](#)) (Section 106 Agreements) state that if a registered provider receives capital receipts as a result of disposing of affordable housing units after the initial sale or letting (for example via staircasing of shared ownership units, or under the Right to Buy or similar) the capital receipt must be applied towards other affordable housing within the local planning authority's area. This affirms the principle that grant funding should be applied towards the delivery of affordable housing in perpetuity and aligns with the purposes to which recycled grant funding may be applied under the relevant Capital Funding Guides.

Planning practice guidance

Planning practice guidance (PPG) is an online resource produced and updated by the government covering many areas within the planning regime. In the context of grant funding, the purpose of the PPG is to enable local planning authorities to plan for new housing which includes housing in respect of which grant funding may be available to secure the delivery of affordable housing.

The PPG addresses housing supply and delivery and how plan-making authorities can demonstrate that there is a reasonable prospect that housing sites are 'developable' (as defined in Annex 2 of the NPPF). The PPG states that plan-makers can demonstrate a 'reasonable prospect' by using evidence including a written commitment or agreement that relevant funding is likely to come forward within the timescales indicated, such as an award of granting funding.

London Plan

The London Plan explores the relationship between the provision of affordable housing secured via Section 106 Agreements and grant funding in some detail. In summary, the London Plan currently provides as follows in respect of grant funding/public subsidy:

References:

[National Planning Policy Framework](#)

References:

[Town and Country Planning Act 1990, s 106](#)

References:

[Housing Supply and Delivery guidance](#)

References:

[The London Plan 2021](#)

References:

Affordable Housing and Viability Supplemental Planning Guidance

- it sets out a ‘threshold approach’ to planning applications which requires identification of a threshold level of affordable housing on gross residential development. Schemes are expected to deliver at least the threshold level of affordable housing without grant or public subsidy (including grant, public loans (including Mayor’s London Housing Bank) and any public land at reduced cost) and to increase this proportion through use of grant and other subsidy, where available
- schemes that do not meet or exceed the threshold or require public subsidy to do so will be required to submit detailed viability information which will be scrutinised and treated transparently. These viability review mechanisms are usually set out and secured via Section 106 Agreements, and
- all schemes are expected to maximise the delivery of genuinely affordable housing, so where grant or other public subsidy is available and would increase the proportion of affordable housing, this should be utilised and the higher proportion of affordable housing should be set out in a Section 106 Agreement as being subject to grant availability, alongside the proportion of affordable housing viable without grant

Affordable Housing and Viability Supplemental Planning Guidance

The Supplemental Planning Guidance (SPG) states that all schemes are expected to determine whether grant and other forms of subsidy are available and to make most efficient use of this to increase the level of affordable housing delivered.

Paragraphs 2.23–2.28 of the SPG are dedicated to the grant under the Homes for Londoners: Affordable Homes Programme 2016–21, which was available on a fixed grant per unit basis. The SPG has not been updated to reflect the current Homes for Londoners: Affordable Homes Programme 2021–26.

The SPG sets out various thresholds for non-registered provider-led schemes (referred to in the SPG as ‘developer-led’ schemes) which need to be obtained (with and without grant) which then dictates whether the fixed grant per unit will be available on all affordable units in the scheme. The position is also set out where less than these thresholds are achieved.

The approach to grant funding for registered provider-led schemes is also set out in the SPG. Under the Homes for Londoners: Affordable Homes Programme 2016–21, these are generally expected to deliver at least 50% affordable housing across their programmes.

In all cases, the SPG dictates that the higher proportion of affordable housing should be set out in a Section 106 Agreement as being subject to grant availability, alongside the proportion viable without grant.

Where public subsidy is available to increase the level of affordable housing on a scheme, the SPG also states that the tenure of additional affordable homes above the required threshold is flexible but should take into account the need to maximise affordable housing provision through the available public subsidy.

Local planning authorities

Largely, local planning policy is silent on grant funding/public subsidy, beyond stating that registered providers can apply for grant funding to help facilitate affordable housing delivery.

However, as with any development, the relevant local planning authority's local planning policy should be referred to in the event this contains policies on the use of grant funding/public subsidy in respect of the planning process, specifically in connection with planning obligations secured via planning agreements.

In some cases the local planning policy reiterates the NPPF policy that where public grant funding is provided, there should be provisions in planning agreements for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled into other affordable housing provision, or refunded to the government or the relevant authority specified in the funding agreement.

How do affordable housing obligations in the Section 106 Agreement tie in with any grant agreement entered into?

The default position in Homes England and the GLA's precedent grant agreements is that unless agreed otherwise with the funder, a grant recipient is unable to apply grant to affordable housing which has already been secured via a planning obligation (usually a Section 106 Agreement). The rationale being that the purpose of grant funding is to provide 'additionality', such that the grant secures a greater level of affordable housing than is required by planning policy.

However, exceptions are sometimes made where the grant will enable an increase in affordable housing above the level mandated by the planning obligations of where this affordable housing is to be delivered as part of a wider scheme which is 100% affordable (eg the GLA's developer-led route).

References:

**Homes for Londoners:
Affordable homes programme
2016-2021 funding guidance**

See Practice Note:

**Planning obligations—key
points for more information
on Section 106 Agreements
generally.**

Local authority affordable housing grant funding

Local authorities may use their resources to provide affordable housing grant funding to facilitate the development of affordable housing in their area accordance with the relevant statutory rules and government guidance.

Some of the principles of affordable housing grant funding explored in this Practice Note will also apply to affordable housing grant funding invested by local authorities but the variety of approaches between authorities means that further detail in respect of affordable housing grant funding provided by local authorities is outside the scope of this Practice Note.

Statute allows local housing authorities to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation.

The provision of such financial assistance includes:

- making a grant or loan
- guaranteeing of the performance of any obligation owed to or by a person (wholly or jointly)
- indemnifying a person in respect of any liabilities, loss or damage (wholly or jointly), or
- the acquisition of share or loan capital in a body corporate

The power for local housing authorities to provide financial assistance is subject to the Secretary of State's consent.

The Secretary of State has issued a General Consent [C] under [section 25](#) of the Local Government Act 1988 (LGA 1988) which allows a local housing authority to provide financial assistance for the purposes of, or in connection with, the matters mentioned in [LGA 1988, s 24\(1\)](#) other than the disposal of an interest in land or property. Disposals of land at an undervalue by a local authority are subject to a separate general consent regime.

Use of Right to Buy Receipts

Where an occupant purchases their home pursuant to the exercise of the Right to Buy, the local authority may retain and use the resulting receipt (Right to Buy Receipt) on the delivery of further affordable housing, provided they have entered into a form of agreement with the Secretary of State (issued under [section 11\(6\)](#) of the Local Government Act 2003) which governs the use of Right to Buy Receipts (RTB Retention Agreement).

The RTB Retention Agreement was issued to local housing authorities on 25 June 2021 and guidance on the rules was published in July 2021.

References:

Local Government Act 2003, Pt 1, ch 1

References:

LGA 1988, s 24(1)

References:

LGA 1988, s 24(2)

References:

LGA 1988, s 25

References:

General Consents for privately let housing

References:

Housing Act 1985, Pt V

References:

Retained Right to Buy receipts and their use for replacement supply: guidance

The local housing authority may either expend Right to Buy Receipts itself or grant these to another body (such as a registered provider) but these may not be granted to an entity in which the local authority has a controlling interest.

The person to whom the Right to Buy Receipts are granted must use these on affordable housing in the local authority's area or provide the authority with nomination rights.

It is the local authority's responsibility to ensure any person to whom the Right to Buy Receipts are granted comply with the rules of the RTB Retention Agreement. Typically this obligation will be secured by way of a grant agreement which flows down the relevant conditions to the recipient.

The key requirements of the RTB Retention Agreement are that:

- Right to Buy Receipts are expended on the delivery of the forms of affordable housing permitted under the RTB Retention Agreement within five years, and
- Right to Buy Receipts fund a maximum of 40% of the overall development costs, and expenditure of Right to Buy Receipts on the acquisition of existing housing (for conversion into affordable housing) is capped on a phased basis from 1 April 2022 in accordance with the RTB Retention Agreement requirements

If the local housing authority does not expend Right to Buy Receipts in accordance with the rules of the RTB Retention Agreement these must be returned to the Secretary of State. Where these are returned after the five-year deadline they will be subject to interest calculated at four percent above base rate on a day-to-day basis.

Combined Authority grant

Certain Combined Authorities have also been provided with funding allocations from the government to facilitate the delivery of affordable housing in their area. Such funding programmes will be subject to the powers which have been delegated to the relevant Combined Authorities and there are a range of funding models and approaches. Therefore, although some of the overarching principles of affordable housing grant funding apply to such Combined Authorities, this Practice Note is focused on grant funding provided by Homes England and the GLA under the Affordable Homes Programme.

Future changes to the planning regime

The relationship between grant funding and planning obligations secured via planning agreements may be subject to significant change if the proposed Levelling-up and Regeneration Bill is passed (the Bill).

References:

HA 1996, s 159(4)

References:

**Levelling-up and
Regeneration Bill**

The Queen's Speech delivered on 10 May 2022 outlined the Bill which, as proposed, will reform the planning system including the system of developer contributions.

Current proposals include replacing the community infrastructure levy (which requires developers to pay contributions towards infrastructure (excluding affordable housing) calculated on the floor space of new development) with a new 'Infrastructure Levy' which will require developers to pay a contribution towards infrastructure (which will include affordable housing) based on the final gross development value of completed development.

The Bill also includes a power to limit the use of Section 106 Agreements. It gives broad remit for the new Infrastructure Levy regulations, for example it states that they may include provisions about how [TCPA 1990, s 106](#) is to be used, or is not to be used. Once the new Infrastructure Regulations are published, a revision of the relationship between grant funding and planning obligations may be required.

Much of the detail is still to be determined by future regulations. There may be a retained role for Section 106 Agreements, particularly on large development sites but this is not yet certain and such changes are years away from being implemented, assuming the Bill is passed. Therefore any impact the Bill may have on the relationship between grant funding and planning obligations is not yet discernible.

References:

[The Queen's Speech 2022](#)