



TORFAEN TOWN CENTRE PLACEMAKING FUND

Guidance notes for applicants



Llywodraeth Cymru
Welsh Government



Glossary

Within the application pack there are a number of terms used. The glossary below provides definitions of some of the terms used:

Contingency Sum - *A contingency sum is a sum of money allowed in the project budget, for expenditure on aspects of the project that were unforeseen or unforeseeable at the time of preparing documents*

Enterprise – *this includes, but is not limited to, any entity engaged in an economic activity, irrespective of its legal form. This includes self-employed persons and partnerships or associations regularly involved in an economic activity.*

Large enterprise - *Any enterprise that is not an SME.*

Medium enterprise - *Employs fewer than 250 people and either has an annual turnover that does not exceed EUR 50 million, or an annual balance sheet not exceeding EUR 43 million.*

Small enterprise - *Employs fewer than 50 people and has an annual turnover or annual balance sheet total that does not exceed EUR 10 million.*

Micro Enterprise - *Employs fewer than 10 employees and with an annual turnover or balance sheet below EUR 2 Million*

Variation - *is an alteration to the scope of the works in a construction contract in the form of an addition, substitution or omission from the original scope of works.*

1. Introduction

1.1. The Fund offers applicants the opportunity to apply for a grant (subject to planning) to –

- Physically improve their town centre property by offering the opportunity to apply for a grant for a new / commercial property frontage and associated external and internal works. The intention of the fund is to enhance building frontage and bring vacant or underutilised commercial floor space back into beneficial use.

The improvements undertaken must be within the applicant's ownership or leasehold with a seven year minimum period remaining, of the property. Projects incorporating external improvements of a building must be in accordance with Council Supplementary Planning Guidance and internal works should assist the sustainability of the property alongside the achievement of outputs.

- Convert vacant floor-space on upper floors into new residential accommodation. Undertake external and internal works to improve vacant space above shop / commercial frontages, with the intention of assisting applicants to bring that space back into use for residential purposes. The scheme will offer the opportunity to enable the conversion of empty floor space into new homes, maximise opportunities to revitalise empty properties and provide mixed use opportunities for applicants.

Works

The following guide includes examples of the type of works that could be supported. Each scheme will be assessed by officers on a case by case basis to determine eligible works.

Residential

- The minimum requirement from each scheme is 1 x 1 bedroom self-contained flat. Eligible expenditure includes works deemed necessary to create new residential accommodation.
- Schemes should comply to the minimum floor space as recommended in the most up to date Welsh Housing Quality Standards, currently this is:-
 1. 46m² per one bedroom flat
 2. 59m² per two bedroom flat

Information confirming size of flats must be provided with the application form.

- Student accommodation, bedsits and studios are not eligible for grant funding

Commercial - External

- Shopfronts
- Signage
- Windows & doors
- External lighting
- Roofs & chimneys
- Rainwater goods (guttering and down pipes)
- Rendering, stone cleaning and repairs, re-pointing
- Structural works

Commercial - Internal

- Windows & doors
- Improved accessibility
- Walls, ceilings, lighting

- Energy Efficiency measures when included as part of the overall scheme;
- Utilities and services, including heating
- Welfare facilities (e.g. essential washroom and cleansing facilities only)
- Structural works

Ineligible expenditure includes:

- Repair and general maintenance costs
- Certain types of fixtures and fittings – eligibility to be confirmed by the Council
- Cost of works being carried out as a legal statutory requirement
- Legal and accounting fees
- Cash and/or credit card payment to Agents/contractors
- Costs of applying for statutory consents
- Works carried out prior to grant offer (unless approved by the Council in writing)
- Any invoices paid for using cash/credit card

2. The Grant

2.1. The grant will be a maximum of 70% of reasonable eligible costs, up to a maximum grant award of £250,000. Each application will be considered on the basis of its specific circumstances.

2.2. All grants are at the discretion of the Council and are subject to budget availability.
The amount of any grant offered will be assessed on an individual project basis, taking into account environmental and economic benefits arising. There is a limited allocation of grant funding and will be awarded on a competitive basis.

2.3. The grant is normally only available to micro, small and medium enterprises. A Large enterprise would only qualify if the property is deemed to have a detrimental impact on the townscape as determined by the Council.

2.4. Grants will normally be awarded exclusive of VAT. If the applicant cannot recover VAT this may be accepted as an eligible cost at the discretion of the Council, subject to the applicant undertaking to repay to the Council any VAT element, which later becomes reclaimable from HMRC as a result of a change in the applicant's VAT status.

2.5. The Grant will usually be paid in agreed instalments on the production of invoices, interim certificates, defrayment evidence etc.

2.6. A minimum of 10% of the total Grant award may be withheld (Retention) until the Council is satisfied that all of the work has been completed to the required

standard, as declared by an independent Quantity Surveyor, and a copy of the practical completion certificate has been received.

2.7. Any variance to approved works will need to be agreed in advance with the Council.

3. Eligible applicants

3.1. The programme is open to Freeholders/Property Owners, Sole Traders, Partnerships, Limited Companies, Community Businesses, Co-operatives and Registered Social Landlords.

3.2. Grants for works to properties **will only be available to owners of the freehold interest in the property or to lessees holding a minimum 7-year lease remaining on the property, at the time of receipt of a valid application.** If a leaseholder, applicants must provide a letter of consent from the freeholder to the proposed works and a copy of the lease agreement.

It is the applicant's responsibility to ensure that all the necessary land ownership requirements are in place to implement the scheme

4. Agents

4.1. Independent Agents must be used to coordinate/manage projects from inception to completion. Agents' fees are eligible expenditure, at the discretion of the Council.

4.2. Agents' fees can include the following services: -

- Supplying Drawings
- Preparing measured Bill of Quantities
- Scheduling
- Tendering
- Obtaining Permissions
- Site Supervision/Contractor Management
- Supplying of Invoices
- Other services e.g. structural engineers
- Managing the project on a day to day basis
- Submitting Grant claims – including detailed valuation sheets

4.3. Agents will produce a detailed *Tender Pricing Document* to include an itemised bill of quantities outlining **all** aspects of work and specifications (i.e. measurements, materials and workmanship).

4.4. Agents must not make payments to any contractors on behalf of the applicant.

4.5. Professional advisers' fees (Agent/Architect/Surveyor) may include costs incurred within a reasonable time prior to grant approval; however, any costs incurred prior to grant approval are at the risk of the applicant. These costs will be ineligible

should the project not be awarded grant funding or the project does not comply with the Terms and Conditions of the grant.

4.6. Please note that Agents must be professionally qualified; architects should be members of the RIBA or RIAS, and chartered surveyors will be members of the RICS with an appropriate level of specialist experience and understanding and have valid Professional Indemnity Insurance. Any other Agents should be members of appropriate bodies e.g. CIOB (Chartered Institute of Builders). Evidence of membership will be required at the start of the process.

4.7. Where the property is a listed building, the Agent should be able to evidence experience of working on heritage/conservation projects.

4.8. A Final Report detailing all work undertaken will be required from the Agent.

Note: - The Council will reserve the right to request a change of Agent if the Agent cannot demonstrate the required skills and experience.

5. Application Process

5.1. Agents must assist in the application process.

5.2. The application process will require the submission of the following supporting documentation to accompany the application form:

- Applicant Photo ID (such as Passport / Drivers Licence)
- Value of works between £15,000 - £149,999: 3 invitations to tender
- Valuation of works over £150,000: 4 invitations to tender
- Evidence of Tender process undertaken & Tender Report
- Itemised schedule of works / Bill of Quantities (must include measurements, materials and workmanship)
- 2 copies of scaled drawings (minimum 1:50 scale) showing the existing building and the proposed works. (1:5 – 1:10 scaled drawings may be required for specific details.). These should be prepared by a suitably qualified professional
- Detailed Programme for the works
- Confirmation of contractor Public Liability & Employer's Liability Insurance
- For residential proposals confirmation will be required of flat sizes and evidence will be required of accreditation to Rent Smart Wales and if applicable, Houses in Multiple Occupation Licenses/s.
- Recent photographs of the property
- Copies of all relevant statutory consents
- Copy of building insurance certification
- Confirmation of Freehold ownership
- Letter of consent from Freeholder (if Leaseholder)
- Copy of lease agreement from Freeholder (if Leaseholder)
- Mortgage details (on property) – if applicable

- Loan details (on property) – if applicable
- Evidence of match funding – please confirm how you intend to finance your contribution to the whole project. Confirmation should be in the form of a bank letter or other official documentation (original paperwork will be required) such as a bank statement
- Detailed Business Plan
- Last 3 years audited accounts
- Survey Report (if applicable)

6. Contractors

6.1. Contractors wishing to tender may be required to demonstrate a track record of working on similar projects.

6.2. The following references may be required:

- Professional reference (i.e. from an architect/chartered surveyor)
- Customer reference

6.3. Where applicants have an interest in companies wishing to tender for the work, this will be permitted, but restricted to a maximum of one company per project.

6.4. It is possible that project applicants, or persons connected with them (such as relatives, business partners or friends) may wish to tender for a contract being offered by the project applicant. Whilst this is not unacceptable, such relationships must be declared, and the applicant will still need to ensure that they conduct the transaction in an open and transparent manner. The estimates/tenders must be from registered trading companies.

6.5. Before tendering, prospective contractors must carry out a mandatory site visit to ascertain the nature of the site, access and local conditions and restrictions likely to affect the execution of the works.

6.6. Contractors must price all items on the bill of quantities.

6.7. A detailed Programme of Works must be produced (on MS Project or similar) by the main contractor prior to work beginning on site. The Programme shall be updated accordingly.

6.8. Each contractor will also be required to submit a copy of their current Public Liability Insurance minimum cover £5M and Employer's Liability Insurance minimum cover £7.5M, unless otherwise agreed in writing by the Council.

6.9. Contractor management is the responsibility of the Agent unless agreed in writing by the Council.

Note: - The Council will reserve the right to request a change of Contractor if the Contractor cannot demonstrate the required skills and experience.

7. Procurement

7.1. When procuring goods or services, Agents should aim to get value for money whilst offering a range of businesses the opportunity to provide those goods or services in a fair and transparent manner. Agents should ensure that contractors have the appropriate licences/qualifications. The Agent must therefore ensure that the following procurement procedures are adopted according to the estimated maximum value of the contract at estimate/pre-tender stage.

7.2. Applicants will be required to invite a minimum of the following estimates/tenders as part of the application process:-

7.3.

Estimated Value of Works	Estimate/ tender action required
£15,000 - £149,999	3 invitations to tender
£150,000+	4 invitations to tender

7.4. A full audit trail of the tender process carried out must be provided with the application. The lowest tender will be favoured as part of a grant approval. In instances where the lowest tender contractor cannot undertake the work, the second lowest contractor can be considered. Evidence will be required to show that the lowest contractor cannot do the work e.g. letter from contractor confirming they cannot do the work in the timeline required

7.5. Estimates and tenders will be assessed by an independent Quantity Surveyor, appointed by the Council. The amount of the grant offered to each project will be determined by the Council and will be subject to the Quantity Surveyor report on the reasonable costs for the works which are considered eligible for grant aid.

8. Outputs

8.1. Applicants should note that projects will be expected to deliver against the following outputs –

Output	Number of additional market housing units (Built or ready for Occupation - as a direct result of TT support)
Reference	TT 10
Definition	The number of market housing units developed as a result of support and are ready for occupation. Market housings units: All housing units, excluding affordable (social/Intermediate) housing units.
Evidence requirements	<ul style="list-style-type: none"> • The number of residential units recorded at the time a site is sold. • The planning permission will define the total number of units and either the sale contract or S106 Agreement will specify how many of these units will be 'affordable' homes. • Sales to Registered Social Landlords (RSLs) will almost certainly result in the total number of units consented falling into the affordable category. <p>The WG may instigate an audit process to review a sample of the residential units</p>

Output	Number of additional social housing units delivered (Built or ready for Occupation - as a direct result of TT support)
Reference	TT11
Definition	This output/outcome measures the number of social houses that are built in Wales and are ready for occupation.
Further Detail	Social Housing is that provided by local authorities or social landlords where rent levels have regard to the Welsh Government's policy on Social housing rents (as amended or replaced)
Evidence requirements	<ul style="list-style-type: none"> • The anticipated number of social units to be created at the time a site is sold • Copy of planning consents defining total number of units. • Sale contract or S106 Agreement specifying how many units will be social units. • Number of units built by Local authorities or RSLs or sold to RSLs. <p>An audit process to review a percentage sample of the units to check the final outcome may be instigated to verify final outcome is in line with outputs recorded.</p>

Output	Number of additional intermediate housing units delivered (Built or ready for Occupation - as a direct result of TT support)
Reference	TT 12
Definition	This output/outcome measures the number of additional affordable housing units delivered and available for occupation in Wales each year.

Further Details	<p>Intermediate housing is that where prices or rents are above those of social rent but below market housing prices or rents.</p> <p>The measure is the number of self contained housing units reserved as “intermediate” developed as a result of support, e.g.</p> <ul style="list-style-type: none"> • Units for letting by Councils and other Registered Social Landlords (RSLs) • Units for sale at less than market value • Co-ownership units.
Evidence requirements	<ul style="list-style-type: none"> • The anticipated number of affordable residential units to be created at the time a site is sold • The number of actual residential units when released back into the market as affordable homes. • Copy of planning consents defining total number of units. • Sale contract or S106 Agreement specifying how many units will be affordable home. • Number of units sold to RSLs. <p>An audit process to review a percentage sample of the units to check the final outcome may be instigated to verify final outcome is in line with outputs recorded.</p>

Output	Number of empty homes brought back into use
Reference	TT 14
Definition	This output/outcome measures the number of private sector dwellings that had been vacant for more than six months at the beginning of the financial year (1 April) which have been returned to occupation during the year through direct action by the local authority such as housing renewal or group repair.
Evidence requirements	Addresses of the properties improved and available for occupation.

Output	Gross jobs created
Reference	TT 01*
Definition	The gross number of jobs created (excluding construction jobs reported at TT 02)
Further details	<p>Job:</p> <ul style="list-style-type: none"> • A new permanent post, i.e. not of a fixed duration and there is a reasonable belief that it will last indefinitely;

	<ul style="list-style-type: none"> • The post itself should be counted, not an estimate of the number of people that may occupy the post over time. • A seasonal job may also be counted, so long as the job is expected to recur indefinitely. In this case the project should report, in addition to the number of hours per week, the proportion of the year worked. • Project management/administration jobs within a project cannot be included. <p>NB Jobs should be reported as full Time Equivalents (FTEs), based on a 30 hour week. For example</p> <ul style="list-style-type: none"> • If a post involves working 30 hours or more per week then it is 1 FTE. • If a job is not full-time, then the hours worked each week will need to be divided by 30 to give the proportion of FTE represented e.g. 18 hours per week would be 0.6 FTE. • Excluding construction jobs already reported at TRI 03 <p>Gross: The total number achieved through this activity (irrespective of the proportion of the project funded) and has not been adjusted for deadweight, displacement, leakage and multiplier effects.</p> <p>Created: Achieved through assistance or financial support and did not exist prior to the activity. <u>This does not include jobs that have been relocated.</u></p>
Evidence requirements	<p><u>Evidence</u></p> <ul style="list-style-type: none"> • Written confirmation that the jobs are to be created. • Personnel records showing the increase in headcount • Any other documents showing that these directly relate to the project.

Output	Number of jobs accommodated (enabled through regeneration investment)
Reference	TT 02*
Definition	Number of jobs accommodated within the sites and premises referred to in output/outcome TT 09 Non residential Premises created or refurbished')
Further Detail	<p>Accommodated: The maximum number potentially located at any one time. <u>This is not the number accommodated over the life of the premises.</u></p> <p>NB</p> <ul style="list-style-type: none"> • If the project involves the refurbishment of a premises then this should be the number of <u>additional</u> jobs accommodated <p>The Homes and Communities Agency Employment Densities Guide (3rd Edition, 2015) may be used when calculating jobs accommodated.</p>
Evidence requirements (as appropriate)	<p>Buildings should be complete and ready for occupation before reporting jobs accommodated.</p> <p>Evidence:</p> <ul style="list-style-type: none"> • Floor plans, building specifications to support the number of new desks/positions provided.

Output	Enterprises accommodated
Reference	TT 06*
Definition	<p>Number of enterprises accommodated within the sites and premises referred to in output/outcome TT 09</p> <ul style="list-style-type: none"> • 'Non-Residential Premises created or refurbished' <p>Accommodated: The maximum number of Enterprises potentially located at any one time. This is <u>not</u> the number accommodated over the life of the premises.</p> <p>Enterprise: Any entity engaged in an economic activity, irrespective of its legal form. This includes:</p> <ul style="list-style-type: none"> • Self-employed persons • Partnerships or associations regularly engaged in an economic activity
Evidence requirements	<p>Evidence required includes:</p> <ul style="list-style-type: none"> • Floor plans • Building specifications to support the number of new desks/positions provided.

	The building should be complete before reporting enterprises accommodated.
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Output	Non-Residential Premises created or refurbished (sqm)
Reference	TT 08*
Definition	<ul style="list-style-type: none"> • The number of square metres of building space created or refurbished for non-domestic use • Extensions to existing buildings also count as new floor space. • All floor areas are to be measured in Square Metres on gross external area, except offices which are to be measured net internal, both as defined by the RICS Code of Measuring Practice. <p>NB This does not include area used for car parking or external landscaping.</p> <p>Created: A new building.</p> <p>Refurbished: Refurbishing an existing building.</p>
Evidence requirements	Works – certificate of practical completion of the works. QS certification of works carried out, e.g. site services/utilities and infrastructure, foundations laid, walls and roof built.

Output	Non-Residential Premises created or refurbished (number)
Reference	TT 09
Definition	<p>The number of buildings created or refurbished for non-domestic use.</p> <p>Created: A new building.</p> <p>Refurbished: Refurbishing an existing building.</p>
Evidence requirements	Works – certificate of practical completion of the works. QS certification of works carried out, e.g. site services/utilities and infrastructure, foundations laid, walls and roof built.

Output	Non-residential units brought back into use
Reference	TT 15
Definition	This output/outcome measures the number of non-residential units which have been vacant for more than six months at the beginning of the financial year (1 April) which have been returned to occupation during the year through direct action by the local authority.
Evidence requirements	Addresses of the properties improved and available for occupation.

8.2. Successful applications will be expected to fulfil the outputs indicated on the application form. Failure to comply may result in forfeiture of the grant and may

prevent further applications. Applicants are therefore reminded to keep estimates to realistic levels. 8.3 It is the applicant's responsibility to ensure that evidence to support any outputs is made available to the Council, even if the property is leased out to a third party.

8.3. Applicants will be expected to maximise the Community Benefits delivered through the scheme where applicable. These include –

1. **Training and Employment opportunities:** contractors being encouraged to recruit and train economically inactive persons as part of the workforce delivering any contract let, directly and/or indirectly through the supply chain. This could include employment; apprenticeships; work experience; work trials; or other relevant training opportunities.

2. **Supply Chain opportunities for SMEs based in Wales:** Successful contractors in any procurement must consider opportunities for SMEs, including social enterprises. This could include:-

- advertising subcontracting opportunities on Sell2Wales
- Using the Welsh Government's Supplier Development Service to promote tender opportunities and hold 'Meet the Buyer' events

3. **Contributions to the Community & Education:** Successful contractors considering other benefits for the community such as:-

- working with local schools and colleges to support work experience placement; careers day; support for school projects
- Make a contribution to community regeneration by donation; in-kind donation; support for local projects; consultation; education.

9. Statutory requirements and expectations

9.1. Applications should provide confirmation of any required consents, such as Planning Permission, Building Regulations, Change of Use, SAB/SUDS or Listed Buildings consent.

Applicants are responsible for seeking the appropriate consent(s) needed to carry out the project and ensure that all works comply.

9.2. Applicants will be expected not to be in arrears with payments or in dispute with the Council at the grant approval stage and payment stage of the project.

9.3. All works need to comply with the guidance within the schedule letter and Council Supplementary Planning Guidance.

9.4. Listed properties or properties within a Conservation Area will be subject to further conditions as advised by the Council.

9.5. The applicant must ensure that their business and premises are compliant with all relevant environmental health, trading standards and consumer protection

legislation and have no history of non compliance or convictions in respect of the current or former businesses operated by the same.

10. Decision making Process

- 10.1. An assessment of the completed application and full supporting documentation will be undertaken by Council Officers. During this process additional information may be sought from applicants.
- 10.2. Successful applicants will be issued with a grant offer letter together with relevant terms and conditions.
- 10.3. Unsuccessful applicants will be issued with a notifying letter.

11. Insurance

- 11.1. For a period of five years from the grant award date, the applicant must comprehensively insure the property with a reputable insurance company and, if requested, provide the Council with evidence of such insurance.

12. Statutory Authority and Subsidy Control

- 12.1 In order to minimise distortion of competition the UK-wide subsidy control regime sets limits on how much assistance can be given to organisations operating in a competitive market. Each application will be considered on the basis of its specific circumstances.

13. Payment of grants

- 13.1. Payment of the grant will not be made until all works are completed to the satisfaction of the Council and subject to the following:
 - I. Submission of original invoice(s) and Grant claim form.
 - II. Submission of bank statement evidencing payment of all paid invoice(s).
 - III. Satisfactory revenues check (confirmation that applicant is not in arrears with the Council).
 - IV. Confirmation that all necessary statutory consents relating to Environmental Health and/or public protection (if applicable) have been complied with.
 - V. Confirmation that all necessary statutory consents including but not limited to *Planning Permission, SAB/SUDS, Building Regulations, Change of Use, or Listed Buildings Consent* have been complied with.
 - VI. Confirmation from an independent Quantity Surveyor (as appointed by the Council) that the works have been satisfactorily undertaken. Final Grant payment will be based on a fair and reasonable cost as assessed by an independent Quantity Surveyor.
 - VII. If the independent Quantity Surveyor deems the work to be unacceptable, the applicant will have to rectify the work, at their own cost, and may incur a further cost for the Quantity Surveyor to reassess the work. If the work is not rectified to a satisfactory standard, the Council may have the work corrected and will withhold part or, whole of the Grant.
 - VIII. Production of Interim/Final Certificates.
- 13.2. Interim payments are considered at the discretion of the Council.

13.3. Invoices paid through credit card /hire purchase/extended credit agreements/finance leases/contra invoices and cash purchases **will not** be considered for grant funding; Payments must be in the form of BACS, Faster payments, CHAPS or cheque.

14. Publicity

14.1. Projects must erect a sign on site during the construction phase, acknowledging funding sources. This will be supplied by the Council.

14.2. The Council and Welsh Government reserves the right to publicise any project supported.

15. Transfer conditions / repayment of grant

15.1. **Grant recipients who are awarded up to £49,999 will have a restriction registered** in favour of the Council against the Grant funded Property/registered estate. The restriction must remain registered against the property for a period of 5 years from the date of the final payment of such part of the Funding.

The restriction recorded shall be in the following terms or such similar terms required by Land Registry: -

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by Torfaen County Borough Council, Civic Centre, Pontypool. NP4 6YB or their Conveyancer.

15.2. **Grant recipients awarded £50,000 or more will have a legal charge (together with a restriction) registered** in favour of the Council against the Grant funded Property/registered estate. The legal charge and restriction must remain registered against the property for a period of 5 years from the date of the final payment of such part of the Funding.

The legal charge/restriction shall be in the form annexed to this guidance, to prevent a disposal of the property without the Councils written consent.

15.3. Should the Property title/estate have any existing charges or restrictions recorded against it then the Applicant is required to assist the Council, as it so requires, in order to agree and complete any deed of priority that may be required to be entered into with any other party.

15.4. The applicant shall give the Council prior notice of any intention to vacate, transfer or register a charge against the property (or part of) to which the grant relates within 5 years of the date of the final payment of grant. In this event the Council reserves the right to clawback the full level of grant funding that was

provided. Should the building receive planning permission for change of use prior to disposal, then 100% of grant will be reclaimed.

- 15.5. If a project receives Grant aid to bring a vacant floor in to use, should this floor be utilised for anything other than the previously agreed end use then up to 100% of the Grant will be reclaimed. This will apply for five years after the final Grant payment.

16. Monitoring

- 16.1. Officers of the Council will be permitted full access to the property in order for them to evaluate the effectiveness of the grant aid and compliance with its terms and conditions. The applicant will be contacted in due course in order to arrange a monitoring visit. Visits to the grant-aided scheme by representatives of the Council will take place to monitor the progress of works. Thereafter, these visits will be arranged at 6 monthly intervals until all conditions and outputs are attained and demonstrated.

17. Terms and conditions

- 17.1. A copy of the terms and conditions for the Grant will be provided with the formal grant offer.

18. Welsh Language

- 18.1. Applications in Welsh will not be treated less favourably than applications in English, in accordance with the Welsh Language (Wales) Measure 2011.

19. Submission of applications

- 19.1. Applications should be sent to Torfaen's Economy & Strategic Regeneration Team:- rebecca.hartley@torfaen.gov.uk / ryland.llewellyn@torfaen.gov.uk

Annex 1 Legal Charge

DATED _____ **20[]**

(1) []

(2) [] County [Borough] Council

**LEGAL CHARGE
RELATING TO**

[]

THIS DEED OF LEGAL CHARGE made on the [] day of [] 20[]

BETWEEN:

THE MORTGAGOR [] [(Company No: [])]
[whose registered address is] [of] []

THE MORTGAGEE [] **County** [Borough]
Council of []

WHEREAS pursuant to the Agreement the Mortgagee has agreed to execute this Charge in favour of the Mortgagee as security for the liabilities of the Mortgagee to the Mortgagee under the Agreement

WITNESSETH as follows:

1. Definitions and interpretations

The following expressions shall (unless the context otherwise requires) have the following definitions and/or interpretations:

“the Agreement” shall mean the Award of Funding letter dated [] which was accepted by the Mortgagee on the []

“this Charge” shall mean this Deed of Legal Charge as from time to time varied or supplemented whether by deed or otherwise

“LPA 1925” shall mean the Law of Property Act 1925

“the Property” shall have the meaning ascribed to it in the First Schedule to this Charge and shall include all additions thereto and all fixtures and fittings in the nature of fixtures now or hereafter in or about the Property and shall include any part or parts thereof

“Secured Obligations” shall mean all monies obligations and liabilities from time to time due owing or incurred by the Mortgagee to the Mortgagee under or pursuant to the Agreement and which relate to the Property

- 1.1 The expressions “the Mortgagee” and “the Mortgagee” shall have the meanings respectively ascribed to them at the commencement of this Charge and shall include their respective successors in title and assigns and covenants entered into by the Mortgagee are entered into by the Mortgagee for and on behalf of the Mortgagee and the successors in title and assigns of the Mortgagee

- 1.2 Where “the Mortgagor” includes two or more persons or bodies the liabilities of such persons or bodies shall be joint and several and the

default of one of such persons or such bodies shall be deemed to be the default of all

- 1.3 The Clause headings do not form part of this Charge and shall not be taken into account in the construction or interpretation thereof
- 1.4 Reference to any Act or legislation includes reference to that Act or legislation as for the time being amended replaced or re-enacted and includes reference to any subordinate legislation order regulation or direction made under or by virtue of that Act or legislation
- 1.5 The singular includes the plural and vice versa and words importing one gender only include all other genders
- 1.6 Where a restrictive obligation is imposed on the Mortgagor it shall be deemed to include an obligation on the Mortgagor not to permit or suffer such restrictive obligation to be breached by any other person
- 1.7 This Charge incorporates the Schedules annexed hereto

2. Charge

The Mortgagor with full title guarantee and as a continuing security hereby charges the Property in favour of the Mortgagee by way of legal mortgage as security for the payment and discharge of the Secured Obligations

3. Perform Agreement

The Mortgagor hereby covenants with the Mortgagee that it shall duly and punctually perform and discharge all its obligations and liabilities under or pursuant to the Agreement

4. Repair and Insurance

The Mortgagor shall keep the Property in a good and substantial repair and condition and will keep it insured against the normal comprehensive risks with an insurance company or underwriters of repute and in their full reinstatement value from time to time to the satisfaction of the Mortgagee. The said insurance shall be effected in the sole name of the Mortgagor with the interest of the Mortgagee being noted on the policy. If the Mortgagor fails to maintain or insure the Property the Mortgagee may do so at the expense of the Mortgagor (and any costs and expenses so incurred by the Mortgagee shall form part of the Secured Obligations) without thereby becoming a Mortgagee in possession. If the Property is leasehold and the property insurance is the obligation of the Landlord of the Property

then if the Mortgagor shall procure the due compliance by the
Landlord with its insuring the obligations the Mortgagor shall be

deemed to have complied with the Mortgagor's obligations under this Clause in relation to the Property.

5. Restrictions on Disposal etc

The Mortgagor agrees that during the subsistence of this security it will not without the prior written consent of the Mortgagee:

- 5.1 sell or dispose of the Property;
- 5.2 grant any lease of the Property at a premium reserving less than the open market rent of the Property with vacant possession with the intention of realising the capital value of the Property
- 5.3 mortgage charge or otherwise encumber the Property

6. Compliance with legislation

The Mortgagor shall observe and perform all covenants and all statutory requirements affecting the Property

7. Powers of Sale

Section 103 of the LPA 1925 shall not apply to this Charge and the statutory power of sale and other powers shall be exercisable at any time after demand

8. Rights of Enforcement

The Secured Obligations shall be deemed to have become due within the meaning of Section 101 of the LPA 1925 immediately upon a demand for repayment being served by the Mortgagee

9. Power to Appoint and Powers of Receiver

At any time after the Mortgagee has made demand for the payment or other discharge of any of the Secured Obligations or after any breach by the Mortgagor of any provision of the Agreement or of this Charge or if requested by the Mortgagor the Mortgagee may without further notice appoint one or more persons to be a receiver or receivers of the Property. Any such appointment may be made in writing under the hand of any officer of the Mortgagee. Any receiver so appointed shall be the agent of the Mortgagor who shall be solely responsible for his acts and defaults and for the payment of his remuneration costs charges and expenses. Such remuneration shall be at the rate agreed between the Mortgagee and the receiver and Section 109(6) of the LPA 1925 is hereby excluded. Any receiver appointed hereunder shall

have all the powers conferred by statute on receivers in addition to the following express powers:

- 9.1 to take possession of the Property
- 9.2 to alter improve develop complete construct modify refurbish or repair any building or land forming part of the Property
- 9.3 to sell lease or otherwise dispose of or deal with the Property
- 9.4 to take any proceedings as he shall think in respect of the Property
- 9.5 to conduct any business carried on or in the opinion of the Mortgagee or any receiver capable of being carried on in or from the Property
- 9.6 to enter into any agreement arrangement or compromise as he shall think fit
- 9.7 to insure the Property as he shall think fit
- 9.8 to appoint employees managers officers and workmen
- 9.9 to raise or borrow money ranking for payment in priority to the security constituted by this Charge
- 9.10 to do all such other things as may seem to be necessary or beneficial for the realisation of the security hereby constituted

All or any of the powers hereby or otherwise conferred on the receiver may be exercised by the Mortgagee without first appointing a receiver or notwithstanding any appointment

10. Power of Attorney

The Mortgagor hereby irrevocably appoints the Mortgagee and any nominee of the Mortgagee and/or the receiver and any nominee of the receiver jointly and also severally to be the Attorney of the Mortgagor (with full power of substitution and delegation) and in the Mortgagor's name or otherwise and on the Mortgagor's behalf and as the Mortgagor's act and deed to sign seal and execute deliver perfect and do all deeds instruments acts and things which may be required by the Mortgagee or the receiver for the purposes of this Charge or the exercise of any of the powers granted hereby

11. Further Assurance

The Mortgagor shall do all such acts and things and shall execute all such assurances and instruments as the receiver shall reasonably require in the exercise of any of the powers hereby conferred upon him

12. Consolidation

Section 93 of the LPA 1925 (restricting the Mortgagee's right of consolidation) shall not apply to this Charge

13. Notices

Notices and demands by the Mortgagee may be given or served:

- 13.1 personally or by leaving the same at the registered office or last known address of the person to be served which shall thereupon be good and effective service
- 13.2 by first class pre-paid post. Service shall be deemed to have been effected 2 working days after posting
- 13.3 in the case of a deceased Mortgagor on his personal representatives notwithstanding that no grant of representation has been made of his estate in England and Wales if the notice is addressed to the deceased Mortgagor by name or to his personal representatives by title and is left at or sent by first class pre- paid post or by telex facsimile or other electronic means to the usual or last known address of the deceased Mortgagor

When sending by post service shall be deemed to have been effected 2 working days after posting.

14. Indemnity for Costs etc

The Mortgagor shall indemnify the Mortgagee in respect of all reasonable and proper costs and expenses (including without limitation legal costs) incurred by the Mortgagee in connection with any enforcement of the Mortgagee's rights hereunder and any amounts which the Mortgagor shall be liable to pay to the Mortgagee under this Clause shall form part of the Secured Obligations

15. Certification

A certificate by an officer of the Mortgagee as to the amount for the time being due in respect of the Secured Obligations shall be (in the absence of manifest error) conclusive evidence for all purposes against the Mortgagor

16. H M Land Registry Restriction

The Mortgagor requests the Chief Land Registrar to enter the following restriction on the Register of the Property:-

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not

being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [] in favour of [] County [Borough] Council referred to in the charges register or its conveyancer”

17. Delivery

This Charge is intended to be and is hereby delivered on the date hereof

18. Enforcement by Third Parties

The parties to this Charge do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

19. Law and Jurisdiction

This Charge is governed by and shall be construed in accordance with the laws of England and Wales and the Mortgagor submits to the exclusive jurisdiction of the courts of England and Wales.

FIRST SCHEDULE

The Property

The Property shall mean all that piece or parcel of land known as [] which is registered with absolute title at the Land Registry under Title Number []

[EXECUTED as a DEED by [
]]

..... in

the presence of:

Witness Signature:.....

Witness Name:.....

Witness Address:.....

Witness Occupation.....]

[EXECUTED as a DEED by [
]]

acting by

[]

a director

in the presence of:

Witness Signature:.....

Witness Name:.....

Witness Address:.....

Witness Occupation.....]