

# CHAPTER 6

## Tenure options

### CASE STUDY St Minver CLT

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‘The CLT approach has  
a real future. With  
less money in the  
government coffers, the  
CLT approach provides  
a way of communities  
delivering their own  
services, housing, pubs,  
community enterprises.  
I really think it’s the  
way of the future’

David Graham, Chair, Lyvennet Community Trust

# CASE STUDY

## Tenure Options: St Minver CLT

The village of Rock, in North Cornwall, is reputedly one of the most expensive places in the world to purchase a home, with high levels of second home ownership and holiday lets making it virtually impossible for first time buyers to access the market. The high levels of housing need in the parish were not being met by existing schemes, and a group of concerned local people, including the parish council, came together to take direct action on the shortfall. Inspired by a local builder, they managed to acquire land from a local farmer on the edge of an existing development site, sparking high levels of interest in the village for a local community self-build scheme.



St Minver CLT

Phase One of the St Minver development was completed in 2008, on time and on budget. The 12 affordable self-build homes developed were valued for local people at less than a third of their open market value. A further saving for the original self-build occupants reflected their “sweat equity” in the homes. Funding to develop the homes was provided by the local authority by way of an interest-free loan.

To ensure the long-term sustainability of the scheme, the freeholds sold to the self-builders were affected by a resale price covenant, the terms of which protect the sustainable affordability concerns which had motivated St Minver CLT from the beginning. The covenant covers three key areas of concern to the Trust, providing that:

- Future sales of the properties are subject to the same disposal requirements that the first purchasers met. The original 12 self-build applicants were selected from local people in housing need; the same criteria will apply to any future purchasers of the houses.

- The homes must remain affordable in the future. A formula in the resale covenant limits the resale price to a maximum of 31.3% of open market value. The percentage was fixed following the independent valuation of the first phase of development. The mechanism allows the owners to profit from inflation in the value of the properties, but keeps the houses affordable for future generations.
- A pre-emption agreement gives St Minver CLT first refusal to reacquire or nominate a purchaser when one of the homes is sold, keeping control of the property in the hands of the community. This same mechanism protects the Trust from future repossession of the homes by mortgage lenders, for example, by giving it time to nominate a new purchaser.

St Minver CLT has since completed a second phase of development, providing a further 8 homes on a rural exception site in the village. These make use of the resale price covenant developed by the Trust for the first phase of development, which has been widely used as a model of good practice. The Trust is now contemplating a third phase.



## 6.1 Tenure options for CLT schemes

When making homes available for sale or rent, a CLT's choice of tenure is important to secure long term affordability. The tenures currently suitable for CLTs are explained below.

### Resale Price Covenant sales

This is a method by which a buyer buys the property outright at a percentage of its market value, but enters into a covenant with the CLT not to sell the property except at the same percentage of market value. For example, in the first phase of St Minver CLT, the properties were bought at 31.3% of open market value and any resales will be restricted to this percentage.

This is a very simple method, is easily understood by buyers and CLTs alike and **guarantees that the homes remain permanently affordable**. However, it is a relatively crude model. There is no ability for the buyer to acquire further shares or a greater interest in the property and, crucially for the CLT, there is no remaining equity left in the property for the CLT's and wider community's benefit. Work is underway to devise new provisions in this method of sale that would address both of these shotfalls.

Please check the National CLT Network website [www.communitylandtrusts.org.uk](http://www.communitylandtrusts.org.uk) for template documents and examples of best practice.

### Equity Loan

Equity Loan (otherwise known as equity mortgage) is where the buyer acquires the property outright (including the freehold) with a mortgage from a High Street lender for (say) 70% of open market value. This is a first charge on the freehold interest of the property on a conventional basis. The CLT then grants the buyer an equity loan on the remaining 30% secured by a second legal charge. The CLT will need to register and obtain a licence under the Consumer Credit Act – the CLT should seek separate legal advice in relation to this.

When the buyer comes to sell the property in the future, the amount required to be repaid to the CLT under their charge is the same percentage of open market value at point of repayment as the equity loan represented when it was first granted. No repayment is due on the second charge until the property is sold by the buyer and in some cases no interest is payable on the loan (note – under the Homes and Communities Agency funding rules interest payments kick in after five years).



In practice the model might work as follows:

Equity Loan Example	£	% of OMV
Full Open Market Value	150,000	100
Loan amount affordable to the buyer	90,000	60
Plus Savings	10,000	7
TOTAL Resources available from buyer	100,000	67
CLT 'Equity Mortgage	50,000	33

In the example on the previous page the buyer is financing 67% of the open market value which might equate with the CLT's build costs.

The equity loan product is very similar to the HCA's First Buy Project, which is widely known and accepted by lenders.

However, it is important to bear in mind that an equity loan **does not create permanent affordability** in the unit. The owner must, by law, have the right to pay off the mortgage and sell the property outright.

An equity loan is therefore **not appropriate in rural exception sites**, where a Section 106 agreement (see section 6.2) requires units to remain affordable in perpetuity, or where the CLT wishes the properties to remain affordable in perpetuity.

However, the CLT can often put in place **pre-emption** rights to buy the property back on the open market. This should be on the condition that completion is achieved within 12 weeks from notification that the buyer wishes to sell, otherwise the property will be sold on the wider open market. The CLT would need to ensure that it has sufficient reserves to purchase the property.

The CLT can also have a **nomination right** to put forward purchasers in housing need who may themselves buy the property through an equity mortgage. This right remains in place provided that the purchase is completed within a twelve week time limit, otherwise the property will be sold on the open market.

The other alternative is to use the receipt from the sale of the property to offer an equity loan on another property in the local community. This is the approach taken by Holsworthy CPT. However, there is a risk that buying another home could cost more than the sale proceeds from the original home.

This model is therefore only suitable for use in communities where:

- It is not a strategic requirement of the CLT or a legal requirement of the local planning authority under a Section 106 agreement to retain a unit as permanently affordable;
- House prices are no more than two or three times the affordability level; and
- Where suitable homes are available on the open market for the CLT to purchase as replacements for those sold under this scheme.

**The CLT should also use the following points and language when liaising with potential lenders:**

- The equity loan will always stand as a second charge behind the lender's first mortgage and no interest will be payable on the equity loan;
- There is no obligation on the borrower to repay the equity loan within a specific time;

**Health warning! A CLT should bear in mind that many mortgage lenders will only make a definite decision as to whether a S106 agreement or a method of sale is acceptable to them if and when a mortgage application is submitted.**

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## Shared ownership sales

This model involves selling a lease of a share in the property for (usually) 125 years. The shared owner pays rent on the unsold share. They would have the ability to acquire further shares at open market value ('staircasing').

In urban areas, this method is not really feasible for CLTs because it does not guarantee permanent affordability of the unit; any shared ownership lessee has a legal right to 'staircase out' and acquire a 100% interest in the property. However, in "protected areas", designated by the Department for Communities and Local Government (being mainly rural areas), a CLT can restrict staircasing to a maximum of 80% of market value, thus preventing a property ever being sold outright. This model is therefore used in **rural exception sites or other sites where the Section 106 agreement requires the units to remain permanently affordable**. However, a CLT may find that 80% of market value in a rural area is still far above a house price which would be affordable to people on average incomes.

The CLT will have the following rights under the lease:

- A **pre-emption right** to buy the property back when the buyer wishes to sell (so as to be able to retain it in affordable use) within a twelve week time limit from the date the buyer notifies the CLT that he or she wishes to sell, otherwise the property will be sold on the open market.
- A **nomination right** to put forward purchasers in housing need who may themselves buy the property under a shared ownership lease provided the purchase is completed within a twelve week time limit, otherwise the property will be sold on the open market.
- The CLT would also charge either a ground rent of (say) £150 per annum on the property or (if viable) a rent of up to 2.75% of the unsold equity, rising annually with RPI to cover its administration costs and a fee of up to (say) 0.5% of open market value on sale to cover its costs of sale.

In the case of developing on rural exception sites, as with the equity loan model, lenders are likely to be appreciative of early discussions with a CLT and local authority at the time the Section 106 agreement is being negotiated, to iron out any potential problems. In addition, in order to ensure that the model is **acceptable to lenders**, the S106 will need to include the following:

- That it would require the homes to be owned for no more than a specific percentage of open market value or let at not more than a specific percentage of the market rent/local reference rent;
- That it would specify the range of percentages of open market value required on each initial sale, normally between 40-70% of open market value;

- That it would require the homes to be made available first to people with a local connection and then through a cascade to those from surrounding areas and to those from the whole district. The optimum period for this process is within 12 weeks and should never exceed 6 months or 24 weeks.
- That it would allow a mortgagee in possession to sell to a person without a local connection and free from the cascade rules if no buyer has been found within 6 months or 24 weeks.

Shared ownership has a proven track record with lenders and may therefore be attractive to CLTs.

The CLT should also use the following points and language when liaising with potential lenders:

- that the shared ownership lease will be based on the Homes and Communities Agencies' model and will contain all the fundamental clauses in that model;
- that (where applicable) the CLT will not charge the full rent permitted under the HCA model but will only charge a fixed ground rent subject to increases linked to RPI;
- indicate the provisions in the Section 106 Agreement as above or as applicable to individual cases.

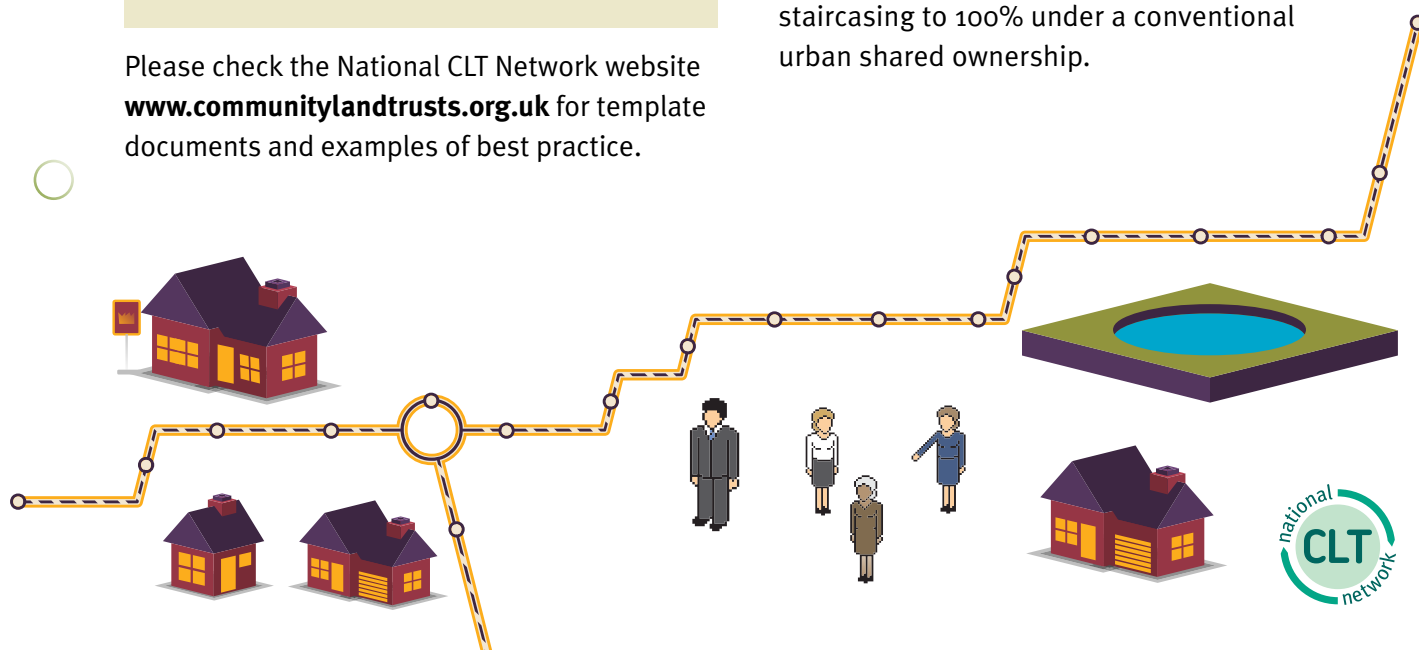
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## Leasehold enfranchisement

In urban areas and rural areas that are not 'Protected Areas' (see definition on previous page), long leases not protected by statute (the HCA model shared ownership lease is protected by statute) are subject to leasehold enfranchisement. This means that leaseholders who own a share of their home on land owned and provided by a CLT have the right (under the Leasehold Reform Housing and Urban Development Act 1993, if the home is a flat) to buy the freehold, known as leasehold enfranchisement. If this happens, the land and property ceases to be an asset owned by the CLT and the homes move into the open market and cease to be permanently affordable to the community the CLT has been set up to serve. Only rural areas that have Protected Area status and leases protected by statute such as the HCA model shared ownership lease are exempt from these enfranchisement rights. The HCA model shared ownership lease in an urban area is also exempt from enfranchisement, but does allow 100% staircasing.

However, the Localism Act extends the exemption from leasehold enfranchisement rights to homes on land the development of which is authorised by a **Community Right to Build Order**. As set out in Chapter 10, under the Community Right to Build communities can obtain planning consent for their development proposals if they achieve a simple majority in a local referendum. A CLT may choose to use this route in order to gain exemption from leasehold enfranchisement or avoid a lessee staircasing to 100% under a conventional urban shared ownership.



## Renting

Renting can be offered as an alternative to affordable home ownership.

The new definition of ‘affordable rent’ (as set out in the National Planning Policy Framework) is important here. If a CLT is intending to use grant from the HCA to deliver a scheme then any units that are rented will need to be offered at Affordable Rent levels **up to 80% of local market rents**. Depending upon the strength of the local housing market this could have differing consequences. In high value areas 80% of market rent might be deemed to be unaffordable for those in housing need. In low value housing areas the 80% restriction on rents may make it difficult to generate sufficient development finance to build the homes. Different local authorities also have different attitudes to this model that may affect a project. Further details on the Affordable Rent model are available from the HCA’s website:

**[www.homesandcommunities.co.uk](http://www.homesandcommunities.co.uk)**

As stated in Chapter 3: Proving housing need and allocating CLT homes, if HCA funding has been used then it will be necessary for the CLT to agree its allocations arrangements with the local housing authority.

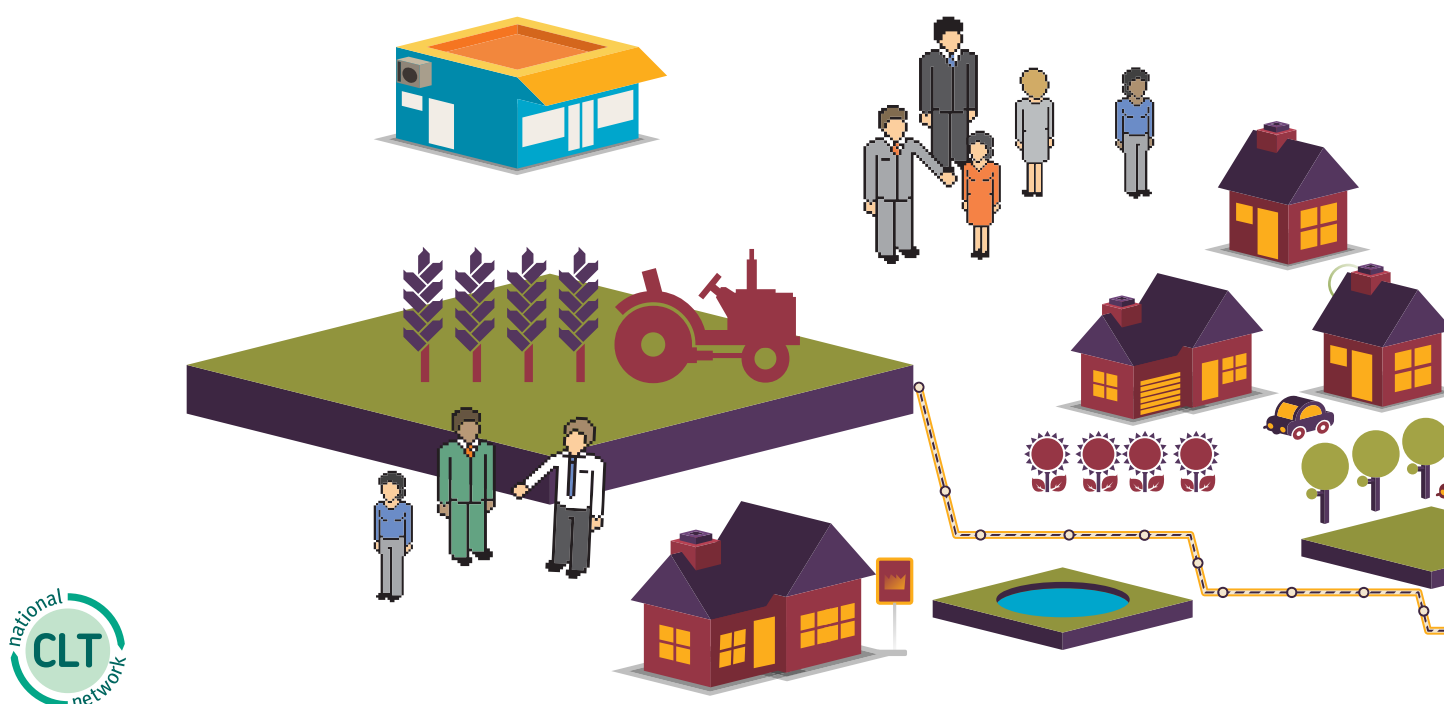
## Other models

### Mutual Home Ownership

An alternative method of disposal that may be suitable for CLTs is a Mutual Home Ownership scheme on CLT owned land. In such a scheme, instead of residents owning an individual property, the homes built on the land owned by the CLT are owned by a Mutual Home Ownership Society (MHOS).

The MHOS is a co-operative controlled by its members who live in the homes that it provides. Each member has a lease which gives a right to occupy a specified house or flat owned by the MHOS. The cost of building the homes by the MHOS is financed by a single corporate mortgage loan from a long-term investor. Under the terms of their lease, each member makes monthly payments to the MHOS to cover maintenance, insurance, loan interest and capital repayments.

Mutual Home Ownership is a housing model that is in common use in continental Europe and has been successfully developed at LILAC in Leeds. For more information on Mutual Home Ownership see **[www.cds.coop/about-us/mutual-home-ownership](http://www.cds.coop/about-us/mutual-home-ownership)**



## 6.2 Section 106 agreements

When planning permission is granted subject to requirements relating to matters other than the physical nature of the building, a Section 106 agreement (referring to S106 of the Town and Country Planning Act 1990) is drawn up between the local authority and the developer of a site, which could be the CLT. It runs with the land and is therefore binding in perpetuity.

When one of the requirements for granting a planning permission is that some or all the homes are affordable to local people, the S106 agreement will set out how the authority will ensure the homes are 'affordable in perpetuity'. This includes defining what is meant by 'affordable housing', which will be in line with the definition provided in the NPPF, what is meant by 'local occupation', and arrangements for securing affordability in the long term.

Whilst CLTs have as one of their core purposes the aim to maintain affordable housing in perpetuity, they also need to ensure that finance can be raised for the scheme and, in the case of any low-cost home ownership homes, that the purchasers can raise a mortgage on the CLT properties. A CLT will therefore need to bear in mind the following in negotiating a S106 agreement:

- The agreement should include a mortgagee in possession clause that states that the affordability requirement will not apply to a mortgagee in possession i.e. the bank or building society or other lender can take possession to recover a mortgage debt and is not required to keep the home affordable. This runs counter to 'perpetuity' but provides the certainty and simplicity that lenders require;
- The definition of local will involve a 'cascade' mechanism where households from the parish have top priority, followed by those from surrounding parishes, and then those from the whole district. Mortgage providers will want to see a process in which choosing an applicant takes no longer than 12 weeks. This relates to sale by the owner of the property, not just by a mortgagee in possession. Mortgagees may also insist that the owner has the ability to dispose of the property to a person not in housing need after a property has been on the market for a specified period, for example 24 weeks;
- In the case of affordable home ownership, the risk of repossession and loss onto the market can be minimised by inclusion of a pre-emption clause in the Section 106 agreement which allows a window of opportunity for the CLT to buy back the home, settle with the lender, and re-sell the home as affordable. This would require the building up of reserves or fundraising to ensure that the necessary funds are available as required.

The CLT will need to obtain legal advice on the S106 agreement.



## 6.3 Ensuring mortgages are affordable and available

In order for CLTs to prosper in the market place low to moderate income households wishing to part-purchase must have unfettered access to appropriate mortgage products that are themselves generally available in the market place.

To achieve this, the CLT must make sure that the disposal model is acceptable to as wide a number of lenders as possible. This is particularly important given the wider tightening in mortgage lending and the general rule that any given lender will not lend on all the units in a single development, however small.

In particular the CLT must ensure that if a Section 106 agreement is entered into with the local planning authority it does not restrict the ability of a mortgagee in possession to dispose of the site or an individual unit free of affordable housing requirements and to recover their losses as a result of either the CLT itself and /or the part purchaser defaulting on their loan obligations.

A CLT should take note of the summary of points and language to use in liaison with potential lenders.

**Health warning! A CLT should bear in mind that many mortgage lenders will only make a definite decision as to whether a S106 agreement or a method of sale is acceptable to them if and when a mortgage application is submitted**

CLTs should try to obtain general guidance issued by the Council for Mortgage Lenders and individual lenders. Information on lenders' criteria is also available from The Housing Hub, an information hub for lenders and housing associations, as well as CLTs, that operate Shared Ownership and Equity Loan schemes in England, Wales and Scotland – see [www.thehousinghub.co.uk](http://www.thehousinghub.co.uk)

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In all circumstances and particularly in the current economic climate it is suggested that the CLT should take a **pro-active and pastoral role** with regard to part equity owners as follows:

- The CLT should carry out robust checks as to the financial circumstances of the buyer before agreeing that they can proceed to purchase a share in a property to ensure that they really can afford to meet mortgage repayments and all other outgoings.
- Agree the terms of any mortgage the buyer enters into again to ensure that they are not over committing themselves.
- Collect a small rent charge or ground rent on the property (see disposal methods) as a way of keeping connection with the buyer and providing an early warning of financial difficulty. In the CLT movement in the United States, it has been found that a borrower in difficulty defaults on the rent charge or ground rent first. At that point the CLT can intervene to try to resolve problems before more serious mortgage arrears arise.

As the CLT will retain either the freehold interest in the property or an equity mortgage over it permanently as a community asset, it is of paramount importance to the CLT, as well as the lender, that any buyer can continue to sustain his or her mortgage payments to ensure stability in the local community.

## 6.4 Finding and communicating with buyers and renters

Depending on how the CLT carried out its housing needs survey it may already have a list of people needing housing and information on what people can afford. This will have been the basis on which the scheme was developed. However, whatever information the CLT has, it will need to implement a variety of strategies in order to reach the people it wants to ensure the CLT helps, including those who have left the community but wish to return.

For rental housing, local authority choice-based lettings arrangements involve advertising affordable housing opportunities and selecting from those who apply those who best meet the agreed local lettings policy or nominations arrangement.

In the case of shared ownership, potential buyers will need to register with their regional HomeBuy agent (or First Buy agent in London) who can tell them about all the schemes available by local authority area.

Information about HomeBuy agents is at **[www.homebuy.co.uk/contact\\_us.aspx](http://www.homebuy.co.uk/contact_us.aspx)**

As well as informing people who might qualify for the available housing opportunities, the CLT will also need to provide information about the CLT model itself and the tenures on offer. Some of the disposal models outlined above may not be generally well known and will need to be explained. It is therefore advisable for a CLT to prepare and distribute a leaflet that explains to potential applicants the nature of the opportunities and how the CLT will operate.



Participatory dance festival at High Bickington Community Property Trust, Devon

