



Housing Policy Sub Committee 20th September 2018

Voluntary Right to Buy and Stock Transfer Restrictions

Purpose of report

This report advises of the Voluntary Right to Buy Pilot in the Midlands and seeks approval to waive the restrictions imposed in the stock transfer agreements for properties sold under the pilot.

Attachment

Appendix 1: **Equalities Impact Assessment**

1.0 Background

- 1.1 Since 2015 the Government has been seeking to extend the Right to Buy (RTB) to housing association tenants in England. As a result of negotiations with the National Housing Federation it was agreed that legislation would not be needed and instead Registered Providers agreed to participate in the Voluntary Right to Buy. Discounts under the Voluntary RTB are the same as under the Statutory RTB.
- 1.2 There has been a series of small pilots across the country and a larger pilot is now in place across the Midlands. Housing association tenants were able to register their interest in purchasing their property between 16th August and 16th September 2018. Thereafter, a random ballot will determine those tenants who can proceed to purchase, subject to eligibility and affordability criteria. The pilot will run until Spring 2020 to give successful candidates adequate time to complete the purchase.
- 1.3 The Government has made £200 million available for the Midlands Voluntary Right to Buy Pilot to repay the tenant discounts to the housing associations, so they will receive the full market value of the properties sold. Housing associations will use the receipts from the sales to fund replacement homes on a one for one basis nationally. *Replacement homes will not, however, have to be provided by the same housing association or in the same local authority area.*
- 1.4 Housing associations will have discretion over which properties they sell. If a home is exempt from the pilot, the tenant will have the opportunity to use their Voluntary RTB discount to buy another housing association property.
- 1.5 The Government will assess the impact of the pilot before deciding on the next steps for this policy.

2.0 The impact in East Northamptonshire

- 2.1 Housing association tenants in East Northamptonshire are able to register for the ballot and will be able to purchase their properties if they meet the eligibility criteria. This will have implications for the restrictive clauses in the transfer agreements with Spire Homes and Rockingham Forest Housing Association (RFHA).

- 2.2 These clawback clauses were put in place to ensure that if transferred properties were sold to anyone who would not use them as affordable housing the council would be entitled to some of the sale proceeds.
- 2.3 Councillors will recall that there have been a series of reports to Policy and Resources Committee in recent years requesting that the clawbacks be waived on sales of properties by both Spire and RFHA to enable further affordable housing to be developed.
- 2.4 Clawbacks have been waived for Spire Homes to enable developments at Nippendale in Rushden and at Charles Street and Home Court in Thrapston. Policy and Resources Committee also agreed on 15th September 2014 that should RFHA sell any vacant properties the clawback would be waived and a fund established to reinvest the proceeds into affordable housing in the district. In the event, RFHA merged with Grand Union Housing Association and the proposed sales did not proceed.

3.0 The restrictive clauses

- 3.1 The restrictive clauses for Spire Homes and RFHA are different as described below.

3.2 *Spire Homes*

- 3.2.2 The Large Scale Voluntary Stock Transfer Agreement was entered into in 2001 with East Northamptonshire Housing (now Spire Homes). The vast majority of the stock transferred under this agreement was tenanted and existing tenants retained the Preserved Right to Buy. New tenants following transfer have the Right to Acquire but this has never been popular as the discount rates are less generous than under RTB.
- 3.2.3 Any sales by Spire under the Preserved RTB are subject to a clawback to the council based on a formula which takes account of the rent lost by Spire as a result of the sale and a cost allowance for processing the sales. Net receipts are paid to the council annually. Any receipts from the Right to Acquire are kept by Spire with no clawback to the council. There is also a formula for sales on a shared ownership basis.
- 3.2.4 There are further clawback provisions in the event that Spire sells to anyone other than through the Preserved RTB or Right to Acquire which would mean that whilst the initial purchaser (i.e. the tenant in this instance) would not have to pay the clawback, subsequent purchasers would, thereby rendering the properties unsaleable and mortgage companies would not lend on them. The clawback would not be the same as under the Preserved RTB formula but would be 50% of the net sale proceeds.
- 3.2.5 Legal advice has confirmed that the Voluntary RTB would attract a clawback unless East Northamptonshire Council treats the sold properties as 'exempt', whereby either the proceeds of the sales are to be used solely for the provision of social housing in the East Northants area, or where ENC agrees that the disposals will not be subject to the clawback.
- 3.2.6 The clawback obligation runs with the land so the council would also need to remove the covenant and to issue certificates that the disposals are 'clear' disposals.

3.3 *Rockingham Forest Housing Association (RFHA)*

- 3.3.1 The RFHA Trickle Transfer Agreement in 1993 allowed for empty council properties to be transferred to RFHA as they became vacant, with a number of covenants which

would remain in place for 80 years. The properties were let under ENC's Housing Allocation Policy with the new tenants not having the Right to Buy.

- 3.3.2 RFHA also have to offer any properties they wish to sell back to the council. The council has the right to purchase the property back or to nominate another purchaser.
- 3.3.3 These terms are, however, also binding on any purchasers of the properties. So if RFHA sell a property to a sitting tenant under the Voluntary RTB regulations the covenants remain in place and the purchaser would have to offer the property back to the council before they could sell it on.
- 3.3.4 These terms are not acceptable to owner-occupiers or to mortgage companies and this means that if RFHA sell a property, they have to ask the council to provide them with a Deed of Release from the covenant. The council has to decide in each case whether, and on what terms, they are prepared not to insist on compliance, or to release or vary the covenants.
- 3.3.5 In addition, if RFHA sell to a sitting tenant or to another person not bound by these covenants, they have to pay to the council the difference between the price they paid the council for the property, increased in line with the National House Price Index, and the sale price.

4.0 The way forward

- 4.1 If the council insists on imposing the clawbacks on properties sold under the Voluntary RTB, Spire Homes and RFHA would have to use a considerable amount of the government compensation to pay the clawback to the council. As such their Boards are likely to exercise their discretion and exclude all properties from the Voluntary RTB where the full Government compensation cannot be retained to enable replacement on a one for one basis.
- 4.2 In addition, if the council insists on imposing the covenants, the properties will be unsaleable as the terms will not be acceptable to owners or mortgage companies.
- 4.3 In both instances the Government's intention to assist tenants into home ownership and to replace affordable homes on a one for one basis would be frustrated. It is unknown how many purchases would successfully complete under the pilot in East Northamptonshire, but given the funding covers both East and West Midlands, numbers are likely to be relatively small.
- 4.4 On 7th September 2016, the Housing Policy Working Party considered this issue. Although a firm decision was deferred pending further detail on how the VRTB would work and on the compensation arrangements, Members agreed that whilst not mandatory for the council to facilitate the operation of the VRTB, it would be appropriate and reasonable to do so. It was therefore considered that requests to clear title restrictions contained in transfer agreements should be viewed favourably, subject to a legal agreement that any proceeds would be reinvested into affordable housing in the East Northamptonshire District.
- 4.5 If the Council were minded to treat Voluntary RTB sales as exempt, it would need to issue a certificate confirming the properties were clear and exempt for each sale. As it is unknown which properties would be sold, the council would need to make an in principle decision to exempt properties under the Voluntary RTB pilot. Were the council to do so, an agreement could also be put in place to ensure that the sale

proceeds were reinvested in social housing in the district.

- 4.6 It is therefore suggested that the council should make an in principle decision to agree to requests to clear title restrictions in transfer agreements for any properties sold under the Midlands Voluntary Right to Buy Pilot, subject to agreements that the receipts from sales are reinvested into affordable housing in East Northamptonshire. This would facilitate the VRTB whilst ensuring that sale proceeds are reinvested in the district.
- 4.7 The pilot will inform the future VRTB policy which is likely to amend the scheme. A further report will be brought to members for consideration once the detail of the final scheme is known.

5.0 Equality and Diversity Implications

- 5.1 An initial Equality Impact Assessment has been carried out and only neutral or positive impacts have been identified. The positive impact will be for housing association tenants who are successful in the ballot and eligible to purchase under the Voluntary Right to Buy Pilot. Housing association tenants are often on relatively low incomes and unable to purchase a property on the open market. The pilot will provide successful tenants with the opportunity to purchase their home. The Equality Impact Assessment is attached as an Appendix. The accompanying agreement to reinvest the monies raised into affordable housing within the District will mitigate the impact on other people unable to access market housing.

6.0 Privacy Impact Implications

- 6.1 There are no privacy impact implications associated with the proposal.

7.0 Legal Implications

- 7.1 The proposal would involve the council removing restrictive clauses from the title of properties to be sold. Legal agreements would also need to be put in place to ensure that receipts from sales would be reinvested in East Northamptonshire District.

8.0 Risk Management

- 8.1 If the covenants and clawbacks are lifted ENC would risk losing both capital receipts and control over how the receipts are spent. There is also a risk that if housing association properties are sold they are lost from the affordable housing sector and this will impact on the council's ability to rehouse those on our housing register and those who are homeless. However, the Government compensation is designed to enable one for one replacement properties to be provided and the legal agreement proposed would ensure that the replacement properties are provided in the district.
- 8.2 There is a further risk that as ENC becomes part of the unitary council, receipts received by housing associations after 1st April 2020 could be spent in another part of North Northamptonshire. However, the successful tenants in the ballot will only have until Spring 2020 to complete the purchase and numbers still outstanding at that time are likely to be very small. This risk could be mitigated by ensuring that the legal agreement entered into would ensure that receipts are spent within the district, or within the former district area, if received post April 2020. Once the full Voluntary RTB scheme is rolled out, a further report would be put either to this council or to the new unitary council, dependant on timescales, to determine how councillors wish to

proceed.

9.0 Resource and Financial Implications

- 9.1 Current capital receipts that the council receives from sales of Spire Homes under the Preserved Right to Buy would not be affected under the proposal. The council will continue to receive these receipts for use in the General Fund.
- 9.2 Changes to the covenant and clawback arrangements would result in a potential loss of capital receipts to the council on the sale of Spire and RFHA properties subject to the Voluntary RTB. However, this is not income which is currently being received, and nor is there any prospect of receiving it, as both Spire and RFHA are likely to exempt these properties from the pilot, so there would be no additional sales. Foregoing the capital receipts and entering into legal agreements would facilitate the Voluntary RTB pilot whilst ensuring that properties sold are replaced within the district.
- 9.3 Legal and administrative costs in drawing up the legal agreements and dealing with applications for the certificates to release the covenants would be recoverable from Spire Homes and RFHA.

10.0 Constitutional Implications

- 10.1 There are no constitutional implications from this proposal.

11.0 Implications for our Customers

- 11.1 There are no implications for our customers other than that successful tenants will be able to purchase their properties.

12.0 Corporate Outcomes

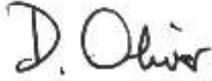
- 12.1 The Corporate Outcomes are:
- Good Quality of Life – Increasing home ownership and providing new affordable homes
 - Effective Partnership Working – Improved partnership working with housing associations.

13.0 Recommendation

- 13.1 The Sub-Committee is requested to resolve to recommend to full Council that:

- (1) In principle approval be granted for requests from Spire and RFHA to clear title restrictions in transfer agreements for any properties sold under the Midlands Voluntary Right to Buy Pilot
- (2) Delegated authority be given to the Executive Director (Monitoring Officer) to enable the necessary changes to the Land Register for individual pilot purchases
- (3) Delegated authority be given to the Executive Director (Monitoring Officer) to commission and sign legal agreements put in place to ensure that the receipts from sales are reinvested into affordable housing in East Northamptonshire.

Reason – to enable the facilitation of home ownership amongst housing association tenants and the development of new affordable housing in the district.

Legal	Power: S123 Local Government Act 1972				
	Other considerations:				
Background Papers:		Housing Policy Working Party Report and Minutes 7 September 2016 – Item 7 Policy and Resources Committee 15 September 2014 – Item 10			
Person Originating Report:		Carol Conway, Housing Strategy and Delivery Manager ☎ 01832 742078 ✉ cconway@east-northamptonshire.gov.uk			
Date: 3rd September 2018					
CFO 7.9.18		MO 5.9.18		CX 6.9.18	

Initial Equalities Impact Assessment

Title of proposal being assessed:	Waiver of transfer document restrictions to enable the Voluntary Right to Buy
What type of proposal is this an assessment of?	Policy - Change
What are the aims and/or objectives of the proposal and the intended outcomes?	To enable the Voluntary RTB to proceed in respect of Spire and Rockingham Forest properties
Who is intended to benefit from this proposal?	Tenants eligible for the VRTB
Who are the main stakeholders in relation to the proposal?	ENC, Spire Homes, RFHA
How is the success of the proposal to be measured?	Completed purchases
Name of person completing Initial Screening:	Carol Conway
Job title / role of person completing Initial Screening:	Housing Strategy and Delivery Manager
Date of Initial Assessment	30.8.18

Instructions: For **every** category in column A, below, submit a positive, negative or neutral assessment by entering an **x** in the relevant cell. Add an explanation in the Reason box, where applicable, including a specification of any sub-group affected. There may be both a positive and negative impact for the same category (e.g. a policy may be positive for young children but negative for older people).

Equality Group	Positive Impact	Negative Impact	Neutral Impact	Explanation and Evidence (e.g. description of elements of the proposal, data held, consultation results, customer feedback)
Gender:				
Consider Women/Girls, Men/Boys, Transgender individuals.			x	
Sexual Orientation:				
Consider, for instance: Lesbians, gay men and bisexuals Any other sexual orientation			x	
Race/Ethnicity:				
Consider, for instance: • White British people, • White non-British people • Asian or Asian British people • Black or Black British people • Chinese people • People of mixed heritage • Travellers (Gypsy/Roma/Irish heritage) • People from any other ethnic groups • People who do not have English as their first language			x	
Disability:				
Physical impairment, e.g mobility issues which mean using a wheelchair or crutches.			x	
Sensory impairment, e.g blind/having a serious visual impairment, deaf/having a serious hearing impairment.			x	
Mental health condition, e.g depression or schizophrenia			x	
Learning disability/difficulty, e.g. Down's syndrome or dyslexia, or cognitive impairment such as autistic spectrum disorder			x	
Long-standing illness or health condition, e.g. cancer, HIV. Diabetes, chronic heart disease or epilepsy			x	
Other health problems or impairments (<i>please specify if appropriate</i>)			x	
Marriage and Civil Partnership:				
People in a Marriage or Civil Partnership			x	
Pregnancy and Maternity:				
People who have just had a baby or who are pregnant.			x	
Age:				
Older People (60+)			x	
Children and Young People (see guidance for definition)			x	
Religion/Belief:				

Consider, for instance: <ul style="list-style-type: none"> • Christian • Hindu • Muslim • Sikh • Buddhist • any other religion or belief (including holding no belief) 			x	
Other Potentially Affected Groups				
Rural Isolation - People who live in rural areas e.g isolated geographically, lack of internet access			x	
Socio-economic Exclusion – e.g. people who are on benefits, have low educational attainment, single parents, people living in poor quality housing, people who have poor access to services, the unemployed or any combination of these and the other protected strands	x			Housing association tenants are often on lower incomes than the population as a whole and therefore have limited access to home ownership. The Voluntary Right to Buy will enable some tenants to access home ownership who may otherwise not be able to purchase a property.
Any other potentially affected groups (<i>please specify</i>)			x	