

## **Report to Portfolio Holder for Growth and Regeneration**

**Subject:** Voluntary Right to Buy

**Date:** 7<sup>th</sup> August 2018

**Author:** Development and Economic Regeneration Manager

### **Wards Affected**

All wards.

### **Purpose**

To update the Portfolio Holder for Growth and Regeneration on proposals to launch a pilot Voluntary Right to Buy scheme in the East Midlands.

To seek the Portfolio Holder for Growth and Regeneration's support of the Council's strategic approach to the East Midlands pilot.

To propose a further report is provided to the Portfolio Holder for Growth and Regeneration when the findings of the pilot are circulated.

### **Key Decision**

This is not a key decision.

### **Background**

- 1.1 The Government is proposing to extend the Right to Buy legislation to the tenants of Housing Associations (HAs) and has invited HAs in the East Midlands to participate in a Voluntary Right To Buy (VRTB) Pilot which went live in July 2018 and will run until March 2020.
- 1.2 The National Housing Federation (NHF), working with the Ministry of Housing, Communities and Local Government (MHCLG) has produced guidance on the VRTB pilot. This is further to an earlier pilot in January 2016 involving five specific HAs and supports the objective to deliver the Governments manifesto pledge. The pilot will test two new aspects of the draft Right to Buy scheme. These are the 'one for one' replacement model and the portable discounts aspects of the scheme.
- 1.3 The pilot will offer more generous discounts to eligible tenants of HAs who can either buy their current home or 'port' the discount to buy another social property.

1.4 For HAs to take part in the pilot they need to:-

- Decide which properties will be excluded from the pilot (e.g. sheltered housing) and develop a Local Sales Policy;
- Obtain approval to remove any restrictions preventing disposal of those properties (e.g. approval from any lenders with a charge over the properties, approval from the relevant Local Authority where a section 106 agreement prevents disposal);
- Develop a Local Portability Policy in respect of how tenants may be able to port their discount;
- Develop a Local Replacement Policy dealing with how they will replace those properties sold; and
- Consider how their processes will support fraud prevention.

1.5 The Government's expectation is that all housing associations with over 1,000 general needs properties will participate in the pilot, and the NHF advises that they understand that all their members who exceed this threshold are participating in the scheme.

1.6 Gedling Borough Council has been contacted by Derwent Living, who has advised that they are taking part in the pilot. Whilst Derwent Living may decide which of its own stock is included in the pilot, Gedling Borough Council's consent is required to dispose of any property which has a restriction preventing disposal via Section 106 Agreement, as the Council would need an agreement to vary the Section 106 agreement to remove the restriction.

1.7 It is also understood that Gedling Homes will be participating in the pilot. Derwent Living have 109 properties across the borough, both for social rent and shared ownership, and a proportion of these properties may be included in the VRTB pilot. Gedling Homes have 3,362 properties and Gedling Homes have estimated that of those, 580 could fall within the scheme. Of those 580 tenancies, only 380 have been held for over three years (this is part of the eligibility criteria) and, from this, Gedling Homes predict that between 10 – 15 properties could be sold per year under the Voluntary Right to Buy. There are over 21 HAs with stock in the borough and therefore further requests are anticipated.

1.8 To try and gauge the potential number of properties which could be included in the pilot, a review of the affordable housing properties secured via Section 106 agreements delivered over the last three years is included below

2015/16	18 in total 12 social rent
2016/17	39 in total 27 social rent
2017/18	51 in total 48 social rent

However, this could be reduced once the HAs have decided which properties they wish to exclude from the pilot. It does however show that the potential number of properties at risk, as opposed to the 50k approx. households in the borough is small.

1.9 This proposal raises a wide range of concerns for the Council including:

1. A potential risk that the number of affordable homes in the borough will be reduced at a time of significant housing need. Currently there are 847 applicants on the Council's Housing Register of which 231 are in band 1 and 2 and therefore in urgent need of housing.

2. Concerns relating to the actual 'replacement' homes as whilst the guidance advises that replacement homes will be delivered on a one-for-one basis they do not need to be:

- The same size;
- The same type;
- The same tenure; or
- In the same location

MHCLG have advised that the total number of replacement homes will be monitored to check that the one-for-one requirement has been achieved. However MHCLG have acknowledged that some HAs will not be able to achieve this and therefore other HAs will be expected to deliver additional replacement homes. The guidance does not advise how this will be implemented, monitored or what will happen if the target is not delivered.

3. The impact of the time lag which will occur between the sale of a property and the replacement property becoming available.

4. If tenants purchase their homes, they are at risk of losing that home and presenting to the Council as homeless. For example if the tenant has not been fully informed / is not able to cope with the financial burdens of home ownership.

5. A number of research papers have indicated that there have been historic cases where the scheme has been abused. One such example is when companies lease the property from the tenant once they have purchased it for a period of three years (to avoid re-paying any of the reduction) after which point the property passes over from the former tenant to the company. Another model sees the tenant being paid an upfront fee to purchase their home and then lease it over to the 'incentive' company who rent it out.

Equally there have been cases when elderly tenants have purchased their home, when there is a strong suspicion that it is actually the friends / family of the elderly tenants who have funded to property and who would expect to have rights to the property in the future.

This is a national problem and there have been cases of tenants exercising their right to buy then losing that home through either an 'incentive' company or because they received poor advice and were not able to meet the financial requirements of owner occupation.

6. Should the eligible tenant of an exempt property wish to purchase their home under the pilot, then they will be able to 'port' their discount to another property, for example a property that is currently void or a new build. The tenant could either purchase from their current HA landlord or another one. This could see properties within the borough being purchased by tenants who do not have a local connection to Gedling.

7. The HAs decide which properties they would like to exclude from the pilot. One provider has suggested that this could include their sheltered stock, so a further concern here would be that the general needs (single and family accommodation) for which we have the greatest need will be at a disproportionate risk either directly through the VRTB of the existing tenant or from those tenants who cannot purchase their own home but can 'port' that discount to a general needs property anywhere in the UK.

8. As the pilot is voluntary, the legal obligations of the scheme cannot be supported by the RTB legislation and therefore the ability to enforce obligations such as :-

- Right of First Refusal;
- Tenant repayment of discount – onward sale or subletting need to be included in the contract for sale.

Has to be covered in the contract produced by the HA.

9. Neighbouring LA's have also been contacted by HA's seeking approval for the pilot. One authority has advised that they are not supportive of the pilot and will not therefore be granting approval to vary any section 106 agreements related to affordable housing.

## **2. Proposal**

That the Council's strategic approach is that section 106 agreements should not be varied to allow the disposal of affordable homes in the borough under this pilot unless the housing association can evidence to the Council exceptional circumstances. The decision to vary individual agreements or a series of agreements will be determined by planning committee.

- 2.2 To monitor the implementation of the pilot, and if the potential impact on residents is considered to be significant, then a further report will be produced as it is difficult at this stage to gauge the level of impact on our residents.
- 2.3 A further report will be provided to the Portfolio Holder of Growth and Regeneration on the findings of the pilot.

### **3. Alternative Options**

- 3.1 To give approval for the potential disposal of properties in the Borough as part of the East Midlands Voluntary Pilot Right to Buy - not recommended due to the significant need for affordable housing in the borough and the concerns set out above that affordable housing properties may be sold to residents from outside of the borough and / or the replacement homes delivered by HA's will not be provided in the borough resulting in a loss of affordable housing.

### **4. Financial Implications**

- 4.1 None arising directly from this report.

### **5. Appendices**

- 5.1 None

### **6. Background Papers**

- 6.1 None

### **7. Recommendation(s)**

#### **THAT**

- The strategic approach of the Council is not to support the sale of housing association properties, unless the Housing Association has demonstrated to the Council that there are exceptional circumstances which justify disposal of the affordable home.
- The Portfolio Holder receives a further report detailing the findings of the East Midlands Voluntary Right to Buy Pilot when it has concluded in March 2020 and the subsequent findings are published.

## **8. Reasons for Recommendations**

- Supporting VRTB has the potential to result in the loss of affordable homes in the borough at a time when there is significant demand for affordable homes.
- There is a risk that any replacement homes may not be in the borough, be of the same type, of the same size or of the same tenure and that there may be a delay in the provision of the new homes.
- There is a potential risk for new owners to lose their homes and present to the Council as homeless, as well as potential for exploitation of the scheme.
- There is a risk of tenants without a local connection to the borough using their portable VRTB discount to purchase properties in the borough.
- There is a risk that clauses relating to future sales, sub-letting or the right of first refusal are not included in the contract for sale by HA's, and therefore these obligations would not be enforceable.
- The need to provide a consistent response to all housing associations.
- As this is a pilot scheme, a further report on the findings will be undertaken to ensure Councillors are updated of potential changes in the social housing sector.

## **9. Further information on the subject of this report is available from:**

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