

Decision by Portfolio Holder

Report reference: HSG-001-2018/19
Date of report: 05-June-2018



Portfolio: Housing Portfolio Holder

Author: Ioanna Tsiachri (Ext 4007) **Democratic Services:** J Leither

Subject: Authority for Right to Buy (RTB) sales and post-completion related matters

Decision:

1. Officers continue the sale of freehold and the lease of Council properties in accordance with the requirements of the Right to Buy legislation as is current at the time of sale.
2. That the post-completion related matters are undertaken in accordance with the then current statutory requirements
3. That the Director of Communities be given delegated authority to determine requests for the release of covenants restricting development within the curtilages of properties previously sold under the Right to Buy, and whether or not the release should be agreed, having regard to what would be the reasonable viewpoint of both parties, noting that the Council is not entitled to any payment for the release of the covenant (other than payment of the Council's reasonable legal costs), in accordance with current case law.
4. That consequent on the decision above the Monitoring Officer be asked to make alterations to the existing Scheme of Delegation to Officers to reflect the matters set out in paragraph 3 of the report.

ADVISORY NOTICE:

*A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest.
A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.*

I have read and approve/~~do not approve~~ (delete as appropriate) the above decision:

Comments/further action required:

Signed: Cllr S-A Stavrou

Date: 6th June 2018

Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:

None

Dispensation granted by Standards Committee:
Yes/No or n/a

N/A

Office use only:

Call-in period begins: 7th June 2018

Expiry of Call-in period: 13th June 2018

**Initialed as original copy by
Portfolio Holder:**

***After completion, one copy of this pro forma should be returned to
Democratic Services IMMEDIATELY***

Reason for decision:

In 1977 the Council adopted its policy for Right to Buy (RTB) Sales. Since that date the legislation has changed and new regulations introduced and the existing generic authorities used for RTB sales and post-completion related matters require modernisation.

Options considered and rejected:

To not modernise the existing, old generic authorities. Not to update the authority would mean that some aspects of the new legislations/regulations would not be explicitly covered by the authority.

Background Report:

1. Since the 1970s the Council has been using a generic authority to enable it to sell properties under the Right (RTB) scheme. Since that date the Housing Act 1985 was introduced which varied the requirements for the RTB sales and subsequently this Act has been amended and Regulations introduced which change and add to the conditions of sale. The legislation has also imposed requirements on Councils in relation to properties that arise after completion.
2. A new, up-to-date delegated generic RTB consent is requested to allow the Council to sell the freehold or leases of properties in accordance with then current legislation. Example as of the terms of sale that are prescribed by legislation are:
 - The discount level applicable at the time of sale of a property,
 - which tenants fulfil the criteria for purchasing their properties (freehold or leasehold)
 - the method of valuation of a property.
3. After the sale of a property, the new owners of a property have a number of statutory rights and obligations which are also subject to change from time to time, for example:
 - To re-mortgage the property without repaying the discount. If the reason the loan is requested for is one specified by statute the Council has no discretion but to consent. There may also be additional borrowing involved (which the Council would agree to postpone its charge for in accordance with statute).
 - Re-mortgages where the Director of Communities agrees, if the Council wishes to exercise its discretion and agree to postpone its charge in respect of additional borrowing, which is not to be used for one of the statutory 'approved purposes'.
 - If the owner of a RTB property intends to sell within 10 years, the Council must first be offered the right to buy it back. The Council would either proceed to buy the property back (the purchase being in accordance with statute) or issue a consent to the Land Registry allowing the property to be sold on the open market.
 - To the release of a restriction / charge on the title to a property if the owner repays the discount or the relevant time period has lapsed. (i.e for matters relating to repayment of discount, discharge of legal charge, redemption of mortgage(s) etc.).
 - For leaseholders, to extend the term of a lease for an additional ninety years from the end of the current lease term. The provisions of the new lease and method of valuation are specified by statute.
 - For leaseholders, to purchase the freehold of a block of flats and the estate if sufficient numbers of tenants apply to the Council. Again the process to be followed is set out in legislation.

- For subsequent purchasers of freehold properties to enter onto a Deed of Covenant to ensure that they are bound by the positive covenants mentioned in the Transfer (which do not run with the land).
 - To enter into Deeds of Rectification / Variation to enable us to rectify errors relating to title, plans etc.
4. Authority is sought for matters where no discretion on the Council's part to authorise RTBs and subsequent matters where they are governed by statute. This Authority also allows for the continuation of sales etc. in compliance with changes in legislation and the Council has no discretion as to the way in which it must proceed. If agreed, the Monitoring Officer will be asked to reflect the matters listed above in the Scheme of Delegation to Officers.
 5. Authority is sought for the Director of Communities to be given delegated authority to consider requests for the release of covenants restricting development within the curtilages of properties previously sold under the Right to Buy. In *R v Braintree DC (ex parte Halls) (2000)*, Halls sought the Council's consent to release a covenant prohibiting development within the curtilage of that property. The Council agreed provided Halls paid a monetary consideration for the release of the covenant. The Court of Appeal held that a covenant requiring a property to be used as a single dwelling house is unlawful where the purpose of the covenant was to reserve to the local authority a share of future profits on granting a release since such purpose did not promote the policy and objectives of the Right to Buy legislation. This decision prevented Braintree Council from imposing a restrictive covenant preserving its right to enjoy the profits resulting from any future development value. In addition, in the Braintree case the Court also held that paragraph 5 of Schedule 6 to the Housing Act 1985 allowed for a conveyance or grant to include such other covenants and conditions as are reasonable in the circumstances, provided that such a covenant was considered to be reasonable from the viewpoint of both parties (for example, a covenant to keep noise to a reasonable level).

Resource Implications:

None

Legal and Governance Implications:

The Housing Act 1985 and various other acts and subsequent legislation (i.e. statutory instruments) govern the Right to Buy sales and other related matters; the list mentioned above is not exhaustive. Any future legislation will also impact the way such matters are dealt with.

Safer, Cleaner and Greener Implications:

None

Consultation Undertaken:

None

Background Papers:

Housing Act 1985 (as amended), Leasehold Reform, Housing and Urban Development Act 1993

Impact Assessments:

None

Risk Management:

N/A. This consent is limited to the cases where there is a statutory requirement to undertake the sale, grant a lease etc.

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at Appendix 1 to the report.

Key Decision Reference (Y/N): N/A