

Committee:	Cabinet	Date:	9 July 2020
Title:	Applications to Homes England for waiver of conditions imposed on housing associations relating to their shared ownership leases		
Portfolio Holder:	Cllr Lees, Portfolio Holder for Housing, Youth and Health		
Report Author:	Roger Harborough, Director - Public Services rharborough@uttlesford.gov.uk Tel: 01799 510457	Key decision:	No

Summary

1. This report concerns conditions imposed on some shared ownership housing within Uttlesford, the circumstances in which conditions can be waived and a request by two housing associations for waivers of these conditions. The report also recommends delegating authority to officers to consider future requests, subject to consultation with the Portfolio Holder for Housing, Youth and Health.
2. The waiver requests have been made by and Chelmer Housing Partnership and Greenfields Community Housing.

Recommendations

3. Cabinet is recommended:
 - a. To authorise officers to apply to Homes England for waivers of the requirement to impose conditions limiting the acquisition of a 100% share or providing for repurchase of the shared ownership properties identified in this report.
 - b. To delegate authority to the Director of Public Services to apply for waivers when requested by registered housing providers, subject to him being satisfied that the conditions for granting a waiver are met and subject to consultation with the Portfolio Holder for Housing, Youth and Health.

Financial Implications

4. Officer time would need to be allocated to preparing a case for each waiver application, but this can be managed within existing resources

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are published as an appendix to this report.

Correspondence and enclosures with CHP (Chelmer Housing Partnership)
Greenfields Community Housing and Homes England.

Impact

- 6.

Communication/Consultation	It is proposed to review the council's Housing Strategy during 2021-22. A policy on waiver applications could be included. The Housing Strategy would be informed by consultation.
Community Safety	
Equalities	
Health and Safety	
Human Rights/Legal Implications	
Sustainability	
Ward-specific impacts	As a waiver application can only be made for a specific site, the relevant ward would be dependent on the location of the site. However, impacts would potentially be broader if the consequences of decisions were to lead to a shift in housing association investment priorities in future programmes.
Workforce/Workplace	Relationships management with Registered Providers falls within the role of the Housing Enabling Officer, which is currently vacant.

Situation

7. Shared ownership schemes are seen as an important element in the delivery of more affordable homes and increase home ownership. Usually shared ownership schemes work like this. Purchasers buy an initial minimum share of 25% of the equity of a home owned usually by a Registered Provider (RP), and pay rent on the remainder. The provider retains the freehold and grants a long lease to the purchaser. The leaseholder may then buy further equity shares (known as 'staircasing') until the property is owned outright.

8. However, if a leaseholder of a shared ownership property comes to own it outright, they will be able to sell it and it will cease to meet an affordable housing need. Legislation passed in 2008, and associated Regulations, recognise that this can be a significant problem in some rural areas and so some protection has been provided.
9. The Housing and Regeneration Act 2008 provides a mechanism to ensure that shared ownership houses in defined areas where they would be difficult to replace, can be leased on terms that do not include the usual entitlement to gain full ownership, whilst ensuring that such leaseholders cannot acquire the freehold through “leasehold enfranchisement”. The aim is to avoid such homes being lost to the affordable housing sector; and to remove the risk of financial loss to housing providers resulting from early acquisition of full ownership by the leaseholder. The 2008 Act terms such areas as DPAs.
10. Homes England requires that if a development site is in a DPA, the registered provider granting the shared ownership lease must include one of the two DPA fundamental clauses, either:
 - to restrict the maximum share to 80%; or
 - if the lease allows purchase of a share exceeding 80%, an obligation for the leaseholder to sell their share back to their RP landlord (or a nominee, which must also be an RP) at market value when they wish to sell the property (to enable the RP to resell the property on shared ownership terms to another local person in housing need).
11. Registered Providers are required to record all shared ownership homes within their development programmes with Homes England, and consequently any such homes within a designated area are subject to the requirement for restrictions on shared ownership leases.
12. All parishes within Uttlesford are “Designated Protected Areas” at least in part, with the exceptions of Great Dunmow, Saffron Walden and Stansted Mountfitchet.

Waiver applications

13. As the availability of shared ownership stock is no longer such an issue in some of the areas designated as DPAs (such as planned urban extensions, new towns and suburban sites where levels of existing or proposed development indicate that shared ownership homes would not be hard to replace), Homes England is able to waive the particular conditions of grant relating to the DPA status of a site.
14. Where a waiver is granted, the RP can grant shared ownership leases without the requirement to include one of the two DPA Clauses.
15. Applications for waiver need to be made through the local authority; i.e. locally through UDC.

16. Homes England also points out that registered providers developing grant funded shared ownership housing where staircasing is restricted can sometimes be affected by the limited availability of mortgages for purchasers; also many providers have raised concerns over their financial ability to guarantee to buy back properties as required by the shared ownership lease if the leaseholder wishes to sell.
17. Homes England has therefore agreed that under certain conditions, it will waive the particular conditions of grant relating to Designated Protected Area status. All other conditions of grant would remain. This would enable providers to develop grant funded shared ownership stock on these sites allowing buyers to staircase to 100% without an obligation on the provider to buy back the property if the leaseholder wished to sell.
18. To consider waiving the DPA lease requirements Homes England requires the support of the relevant Local Authority (i.e. UDC). If the Authority considers that a particular site to be developed does not meet the criteria set out in the original classification of why an area should be protected, or indeed has other reasons why they think that grant funded shared ownership stock does not need to be protected in perpetuity, they can approach Homes England to request that the conditions of grant pertaining to Designated Protected Area status be removed.
19. Homes England points out that this relaxation specifically relates to its conditions of grant for shared ownership homes developed in DPAs. It is not related to rural exception sites or other section 106 agreements. If the Local Authority wishes to impose conditions through a section 106 agreement then those cannot be waived by Homes England. However Homes England would suggest that the Authority carefully consider the merits of such a restriction if it imposes the same barriers to development that Homes England is seeking to overcome in these particular areas.
20. This policy can equally be applied to existing sites and leases, for example where some shared ownership homes have been sold on shared ownership terms but further sales are proving difficult. In these cases the Local Authority can make a request in the same way as for new sites.

Current approaches received by the Council

21. There are different drivers for the two approaches that the council has received.
22. None of the developments benefited from grant funding provided by Homes England or its predecessor body the Homes and Communities Agency (HCA), so there is no potential for the housing associations being put at risk of having to repay any grant in respect of delivery of the shared ownership homes. However, as noted above, housing associations are required to record all shared ownership homes within their development programmes with Homes England, and consequently any homes within a designated area are subject to the requirement for restrictions on shared ownership leases.

CHP – Chelmer Housing Partnership

23. The request from CHP relates to 13 sites containing 52 of their properties in total.

<i>Site</i>	<i>No of shared ownership homes</i>	<i>Developer of market homes on site</i>
Brewers End, Takeley	12	Bovis
Elms Farm, Stansted	6	Crest
Chickney Road, Henham	2	Abbey Developments
Ersamine, Lt Canfield	1	Cala
Flitch Green	3	
Foxley Ho, Rickling Green	2	Cala
Hailes Wood, Elsenham	1	Persimmon
Jubilee Works, Clavering	3	Weston Homes
Northview, Lt Canfield	5	Matthew Homes
The Poppies, Priors Green, Takeley	2	Persimmon
Walden Road, Radwinter	4	Enterprise
Watch House Green, Felsted	3	Taylor Wimpey
Wedow Road, Thaxted	6	Linden Homes/ Galliford Try
Wyndhams Croft, Newport	2	Amherst Homes

24. The above properties have been let over several years on standard HCA/Homes England leases, without restrictions on staircasing or any requirement for CHP to buy back the property should the shared owner staircase out to 100%. This practice has been in breach of the Homes England's conditions.

25. CHP advises that actually it is unusual for shared owners to staircase out to 100%, notwithstanding the absence of restrictions in the leases. There have been exceptions where this has occurred and subsequently a property has been sold on the open market.

26. It is unlikely that CHP could retrospectively reach voluntary agreements with the shared owners to change the terms of their leases to include such provisions, as to do so would disadvantage the shared owners' interests.

27. CHP has been in contact with Homes England. It is aware that CHP has approached the council with a request that the council applies for a waiver in

respect of each of the sites in question. CHP is also having to ask other local authorities to apply for waivers for sites in their areas.

28. Homes England has advised that processing of local housing authority waiver applications is a routine process and is commonplace.

Greenfields Community Housing

29. The second approach is from Greenfields. It is currently negotiating a contract with the developer of a scheme at Watchhouse Green in Felsted which will provide the 11 affordable homes (7 Affordable Rent and 4 Shared Ownership) as required under the S106 obligation.

30. The scheme sits within a designated area and consequently a staircasing restriction is required on the shared ownership homes. Greenfields is concerned because, in its experience, such a restriction does limit the mortgage products that are offered to prospective shared ownership purchasers, in that lenders view the inability of the shared owner to progress to full ownership as a potential risk factor.

31. As a result, shared owner lenders will restrict the range of products they offer, and/or will not offer the most attractive interest rates. This adversely affects its ability to market the properties.

Assessment

32. The key issues that the council needs to consider in deciding whether to make a waiver application are:

- a) Would it be hard to replace shared ownership homes in the general locality if owners staircase out to 100%;
- b) The impacts on affordability of homes to owners from a limited choice of mortgage products and lack of access to the most advantageous interest rates;
- c) The impact of Registered Providers' investment programmes on a broader perspective, including other housing authority areas, being influenced by site by site decisions on staircasing restrictions.

33. The CHP portfolio of completed sites comprises shared ownership homes in settlements where the scale of development would mean that it would not be hard to replace the limited number of homes sold either in the same settlement or equivalent settlements in the district. The list does not include any homes on rural exception sites.

34. Lack of interest from Registered Providers in providing shared ownership homes with restrictions in leases could result in this element of affordable housing on sites being delivered as low cost market homes. Both CHP and Greenfields have emphasised that their primary concern about restrictions in leases is the response of mortgage providers. House prices are high in Uttlesford, and the pool

of purchasers who can afford shared ownership is limited. Restrictions which increase the cost of mortgages to owners exacerbate the situation.

35. As affordable homes in Uttlesford on market housing sites do not attract Homes England grant, there is no ability to recycle grant as shared owners purchase an increased share of the equity in their homes, and consequently the potential to use recycled grant to purchase replacement homes is not available, even if restrictions were to apply.

36. As the lease restrictions relate to housing policy rather than planning policy set out in the Development Plan, the S106 agreements for each of the sites in question do not require such restrictions to be in place.

Conclusion

37. In all the circumstances, the officers are of the view, for the reasons set out in the section above, that UDC should make the applications to English Homes for waivers.

38. As issues such as those raised by Greenfields are likely to arise on an ongoing basis, consideration should be given to how to deal with requests for other sites in a designated area, acknowledging that each site will need to be considered on its particular merits. There may be other Registered Providers with existing portfolios of sites, who like CHP have not used leases with restrictions in past shared ownership sales. Officers currently do not have delegated authority to deal with such cases. Such delegation could be authorised for an interim period until substantive policy has been confirmed in a reviewed Housing Strategy. There could be multiple requests to deal with, each raising the same common issues. These could be brought to Cabinet each time, but that is likely to prove repetitive.

Risk Analysis

1.

Risk	Likelihood	Impact	Mitigating actions
Restrictions in leases cause mortgage providers to increase the cost of their products to shared owners	3. This is normal practice for mortgage providers	3. House prices are high in Uttlesford, and the pool of purchasers who can afford shared ownership is limited. Restrictions which increase the cost of mortgages to owners exacerbate	

		the situation.	
Homes whose owners had staircased to 100% of the equity could not be replaced with new shared ownership homes, diminishing the stock of affordable housing	<p>1. Low:</p> <p>a) CHP's experience indicates that few owners acquire full equity in their homes.</p> <p>b) The scale of housing growth that needs to be planned in Uttlesford means that there is likely to be a continuing supply of shared ownership homes, including rural settlements.</p>	3. Significant impact – shared ownership homes are an important element of affordable housing supply to meet needs in the district	Each site will need to be assessed on its particular merits.
Refusal to consider applying to Homes England for waivers could influence future investment decisions of RPs in Uttlesford sites	<p>2 Some risk</p> <p>a) Other housing authorities are using the waiver application process</p> <p>b) In current financial circumstances RPs are looking to de-risk investments</p>	2 Some impact Other factors will be taken into account too in investment decisions by RPs	

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix
Background Papers – Correspondence

From: Christmas, Ian [mailto:ian.Christmas@GreenfieldsCH.org.uk]
Sent: 04 May 2020 11:58
To: Judith Snares
Cc: Smith, Nicole
Subject: [External]..Land R/O Maranello, Watch House Green, Felsted

Hi Judith,

I hope you are keeping well.

Apologies for raising this with you, but as I understand Stephanie has now left for Suffolk, I wasn't sure if a replacement had been recruited/who at UDC is dealing with affordable development matters.

We have negotiating a contract with the developer of the above mentioned scheme to provide the 11 affordable homes (7 AR/4 SO) required under the S106. The scheme is due to go to our Board for final approval in early June and then once the developer has secured reserved matters approval, we will finalise and enter contract with them.

The scheme sits within a Designated Protected Area and as a result, a staircasing restriction of 80% would apply. Our experience of this restriction is that it limits mortgage products that are offered to prospective SO purchasers, in that lenders view the inability of the shared owner to progress to full ownership as a potential risk factor. As a result, SO lenders will restrict the range of products they offer and/or will not offer the most attractive interest rates. This can be a major disincentive to prospective purchasers.

This is an issue at the best of times, but is a particular issue in the current time of uncertainty about the future of the property market and values. Consequently, it will be viewed a potential risk factor by our Board.

We would therefore be grateful if Uttlesford could consider applying to Homes England for a waiver of the DPA status in respect of this scheme, thus removing the staircasing restriction. In the hope that the Council will agree to this, I have taken the liberty of completing the necessary waiver application form, which is attached along with the site plan (the affordable homes are plots 3 & 4 and plots 8-16 in the south eastern part of the site).

Many thanks for your assistance with this.

Regards

Ian

Ian Christmas

Development Manager

Text-only Customer Services number: 07860 024511

Web: www.GreenfieldsCH.org.uk

Office Address: Greenfields House, Charter Way, Braintree, Essex, CM77

8FGFrom:

Helen Shackleton [mailto:Helen.Shackleton@chp.org.uk]

Sent: 05 May 2020 16:27

To: Judith Snares

Cc: Doug Malins; Gemma Harris

Subject: RE: [External]..FW: Designated Protected Areas

Hi Judith,

Thanks for your email.

At present the properties are let on a standard Homes England lease, which has no restrictions on staircasing or any requirement for CHP to buy back the property, should the shared owner staircase out to 100%. If CHP wanted to change the terms of the lease, it could only do so with the shared owners agreement. It is unlikely that this will be forthcoming, as there is no benefit to them. It could be argued that having the provision for the RP to buy back the property on 100% staircasing is an advantage but it is not straightforward. If the RP is not able to buy the property back, then they can nominate another RP, but if they don't the shared owner can eventually sell on the property on the open market. However, this process can take up to 6 months. Having any restriction in the lease, reduces the number of lenders willing to provide a mortgage, this could impact on existing shared owners trying to re-mortgage, to get better payment terms, or if they want to sell their share of the property on.

There are 13 schemes, covering up to 52 properties requiring a waiver (I believe at least 1 property has been stair cased to 100% and sold on the open market). It is very rare for a shared owner to actually staircase out to 100%. As it has not really come up before, CHP does not have a policy of buying back properties where occupiers have stair cased up to 100%. I think we would have to look at each instance on a case by case basis.

Until recently CHP (and it would seem many RP and LAs) were unaware of the full requirements of the DPA legislation. CHP is used to UDC putting any

stair casing restrictions into the s106 Agreements and that these tended to be on Rural Exception Sites. On a developer led s106 scheme, which all of these are, although we did check the s106 for any specific restrictions on stair casing, we were unaware that another piece of legislation took president over the s106 Agreement. We have been in contact with Homes England and they are aware that we are doing a housekeeping exercise to ensure that any historic scheme in a DPA has the necessary waiver, so that it is formally excluded from the requirements, which would be difficult and expensive to introduce retrospectively.

Since the legislation came into force in 2009 (although I believe the list of parishes and maps were drawn up some years previously), the scale of development in Uttlesford has changed significantly. The aim of the legislation was to ensure that in areas where it would be difficult to replace, a supply of shared ownership properties is maintained. It can be argued that some of the areas covered by the legislation no longer need this protection, due to the scale of development that has taken place in recent years.

For example, four of the schemes listed below, are along the B1256, the old Takeley Road, and these cover only some of the new developments that have occurred in this area alone. Most of the other schemes are in villages, where new homes have been provided via a number of developer led s106 developments, plus rural exception sites, where the restrictions on staircasing would have been part of the s106 and so the supply of shared ownership properties would be maintained.

For reference I have attached a letter Braintree DC sent to Homes England to support a request for a waiver. I'm pleased to advise that HE has granted a waiver for the scheme that this letter refers to.

Becky Ashley from Homes England used to be the HE guru on DPAs. I understand that she is now the Senior Manager – Affordable Housing Growth for Essex, (Becky.Ashley@homesengland.gov.uk) if you want to clarify any matters with her.

I hope UDC will be able to assist with our request for waivers to be applied for, and I will be happy to supply any additional information required for the applications, eg maps and address.

Kind regards and hope you are all keeping well.

Helen
Helen Shackleton
Assistant Director of Development (New Business), Development

D: 01245 613164 M: 07738 885075 W: www.chp.org.uk

CHP, Myriad House, 33 Springfield Lyons Approach
Chelmsford, Essex, CM2 5LB

On 19 May, at 11.44, Helen Shackleton Helen.Shackleton@chp.org.uk wrote:
Hello Roger,
Thanks for your email.

CHP has sought clarification from Homes England, as the waiver form does seem to imply that you only need a waiver if a scheme receives grant funding. However, if the scheme has been included in the Homes England affordable housing programme, even as a nil grant scheme, then a waiver is needed.

Please see extract from an email from Homes England, to my manager Carl Hockey, confirming this point.

'On 13 Mar 2020, at 09:43, Becky Ashley
<Becky.Ashley@homesengland.gov.uk> wrote:

Good Morning Carl

I do apologise for the delay responding to your email. I can confirm that the advice of your solicitors is correct and that nil grant s106 schemes brought into the Homes England programme are subject to our grant conditions, despite no grant having been awarded to the individual scheme. As such schemes must meet our grant requirements which requires either staircasing restrictions or buyback in leases for both flats and houses in DPA areas.

The processing of requests for DPA waivers from Local Authorities is a commonplace routine for us. It would be helpful if you could please give us some details of how many sites you will be liaising with Local Authorities to seek retrospective waiver for? I am happy to talk this through over the telephone and I am in office all day today and Monday and my number is below.

Kind Regards

Becky Ashley
Senior Manager - Growth

Homes England | Northstowe House| Rampton Road | Longstanton |
Cambridge | CB24 3EN

I will give you a call shortly, so that we can discuss further, if that is okay.

Kind regards
Helen

Helen Shackleton
Assistant Director of Development (New Business), Development

CHP, Myriad House, 33 Springfield Lyons Approach
Chelmsford, Essex, CM2 5LB

From: Becky Ashley <Becky.Ashley@homesengland.gov.uk>
Sent: 15 June 2020 17:34
To: Roger Harborough <rharborough@uttlesford.gov.uk>
Subject: [External]..RE: DPA waiver applications

Dear Roger

Thanks for your enquiry. Homes England grant conditions apply to any scheme or properties brought into the Homes England affordable housing grant funding programmes and therefore for example nil grant schemes brought into the current Shared Ownership and Affordable Homes Programme 16-21 must meet Homes England grant funding conditions. Providers must bring affordable rented tenancies through the Homes England programme (including nil grant) to comply with the legislation which enable them to let affordable rent tenancies however there is no such requirement for lcho. Many Registered Providers will bring their nil grant s106 lcho units through our programme, particularly where the whole site is being delivered for affordable housing.

Homes England grant funding conditions require that Landlords of low cost homeownership/ shared ownership flats and houses developed in a Designated Protected Area either restrict staircasing or offer buyback through the lease conditions. If a Local Authority requests that Homes England waive its grant condition in respect of the restriction in DPA areas then Homes England will do this and the Local Authority must follow the following guidance if it wishes to seek a waiver Homes England - Designated Protected Areas - GOV.UK. In granting a waiver Homes England is not seeking to waive the legislation, which of course it is unable to do, but instead Homes England is able to waive its own grant conditions that require the DPA restrictions to be

implemented. It is important to note that the DPA SI is enabling and not restrictive.

I understand that CHP are seeking a number of retrospective waivers for nil grant schemes that have already been brought into our programme and we are able to waive our grant conditions retrospectively if the Local Authority wishes to submit a waiver application for the schemes in question. I hope that this answers your query however please do call me if you require further clarification.

Kind Regards

Becky
Becky Ashley
Senior Manager – Affordable Housing Growth

Homes England | Northstowe House| Rampton Road | Longstanton |
Cambridge | CB24 3EN @HomesEngland