

CITY OF WOLVERHAMPTON COUNCIL	Cabinet 11 July 2018
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Report title	Right to Buy Policy Update		
Decision designation	AMBER		
Cabinet member with lead responsibility	Councillor Peter Bilson City Assets and Housing		
Key decision	Yes		
In forward plan	Yes		
Wards affected	All Wards		
Accountable director	Kate Martin, Service Director, City Housing		
Originating service	City Housing		
Accountable employee(s)	Mila Simpson	Service Lead Housing Strategy	
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Report to be/has been considered by	Strategic Executive Board 26 June 2018		

Recommendations for decision:

The Cabinet is recommended to:

1. Adopt the set of criteria as set out at paragraph 3.3 of the report when considering an application to purchase a former Right to Buy property is received by the Council.
2. Delegate authority to the Cabinet Member of City Assets and Housing, in consultation with the Service Director City Housing, for agreeing the buy back of a former Right to Buy property as set out at paragraph 3.7 of the report.
3. Delegate authority to the Service Director City Housing for refusing applications to buy back former Right to Buy properties as set out at paragraph 3.7 of the report.

4. Approve the use of discretion to waive some or all of the repayment of Right to Buy Discount when a former Right to Buy property is sold on within five years in the exceptional circumstances set out in paragraph 4.4 of the report.
5. Approve the use of the 'Request to Waive Repayment of Discount Awarded Under The Right to Buy Scheme' form at appendix 1 to assist in the collation of evidence to prove exceptional circumstances and minimise the risk of abuse and the risk of fraud as set out at paragraph 4.8 of the report.
6. Approve as per paragraph 5.6 of the report, the Council charging professional fees to cover both legal and valuation work required when served with a notice to extend the lease of a former Right to Buy property.
7. Approve as per paragraph 6.7 of the report, the Council charging professional fees to cover both legal and valuation work required when served with a notice for the collective purchase of the freehold of a block of flats, where the Council currently holds the freehold.

1.0 Purpose

- 1.1 This report sets out policy that deals with situations arising from former secure tenants who have exercised their Right to Buy (RTB):
- 1.2 **Right of First Refusal** – This report sets out the factors to be considered and the decision-making process when receiving offers to purchase back properties sold through RTB. Under covenant of sale owners must offer their property back to the Council when selling within 10 years of first purchase.
- 1.3 **Repayment of RTB Discount** – This report sets out the procedure the Council will follow to consider and make decisions on requests for discretion to be applied in the repayment of RTB discount when the property is sold within 5 years of purchase.
- 1.4 **Extension of leases** – This report sets out the procedure the Council will follow to consider and make decisions on requests to extend leases on RTB leasehold properties, including the mechanism for the Council to introduce recharging for professional fees to undertake this work on behalf of the leaseholder.
- 1.5 **Enfranchisement** – This report sets out the procedure the Council will follow to consider and make decisions on requests by a group of leaseholders to collectively purchase the freehold on their block, including the mechanism for the Council to introduce recharging for professional fees to undertake this work on behalf of the leaseholder.

2.0 Background

- 2.1 The RTB provides secure tenants of the Council, the right to purchase the home they rent, under part 5 of the Housing Act 1985. Qualifying tenants receive a discount on the property's market value starting at 30% for houses and 50% for flats following at least 3 years as a public sector tenant. This increases dependent on the length of their tenancy currently to a maximum of £80,900 outside of London, as is subject to increase on 6th April each year in line with Consumer Price Index (CPI).
- 2.2 Wolverhampton Homes has a dedicated team that takes receipt of and processes applications for the RTB of Council housing stock. This is done in-conjunction with the Council's Legal services who lead on all conveyancing matters on behalf of the Council.
- 2.3 The Council currently deal with these matters following regulation however this report seeks to clarify the Council's approach to those areas where local authorities have the gift to apply discretion or local adjustments to ensure these matters are dealt with in an efficient and consistent manner.

3.0 Right of first refusal

- 3.1 Owners wishing to resell or dispose of their property bought through the RTB scheme within 10 years of purchase are required to offer it back to the Council as the former landlord at the full market value.
- 3.2 This is the Right of First Refusal and is set out in covenants as part of the sale of property as introduced in the Housing Act 2004 and set out in the Housing (Right of First Refusal) (England) Regulations 2005.
- 3.3 Whilst the Council is not obliged to buy back properties offered to it in this way, it will determine whether or not a property will be repurchased by considering the following factors:
 - Capital funds are available AND;
 - Purchase of the property supports wider regeneration or development objectives;
 - Purchase of the property will avoid a future compulsory purchase order (CPO);
 - Housing need and demand is established for that property type in the locality it is being offered;
 - Assists in meeting housing need for those requiring supported living such as bringing bungalows or other level access properties into Housing Revenue Account (HRA) stock;
 - Supports the Council's wider objectives as a landlord of social housing for making best use of stock and meeting housing need;
 - Where it is being added to the HRA's portfolio of Council housing, additional costs for refurbishment work to bring it up to the Decent Homes Standard is minimal;
 - Purchase of the property offers value for money.
- 3.4 In accordance with the regulations, the Council will only consider offers which must include the following;
 - a statement from the owner or trustee saying that they wish to dispose of the property;
 - the full postal address of the property being offered;
 - state there is a covenant regarding buy-back under Right to Buy legislation;
 - information about the type of property, the number of bedrooms and details of the heating system;
 - details of any improvements or structural changes made since purchasing from the council;
 - an address where correspondence can be sent.
- 3.5 Where the Council wishes to purchase a property it has been offered, it must agree the market value with the owner. If a price cannot be agreed it will be determined by the District Valuer (the government will pay the costs of employing a District Valuer).
- 3.6 As per the regulations the Council must respond to a Right of First Refusal offer within 8 weeks, with either an acceptance or rejection notice. Where the Council does wish to purchase the property and issues an acceptance notice, it then has 12 weeks to enter a binding contract for the purchase of the property, or 4 weeks within receipt of a written

notice from the owner saying that he is ready to complete the transaction, whichever is longer.

- 3.7 The appropriate officer within the Housing Development Team, Housing Services will make a determination on whether or not the property will be repurchased in line with the criteria set out at 3.1.4. If so Cabinet Member approval will be sought from the Portfolio Holder for City Assets and Housing via an Individual Executive Decision Notice. If it is to be refused they will seek approval from the Service Director City Housing.

4.0 Repayment of RTB discount

- 4.1 Owners wishing to resell or dispose of their property bought through the RTB scheme within 5 years of purchase are required to repay some or all of the discount they received.
- 4.2 This is set out in section 155 of the Housing Act 1985. Updated in section 185 of the Housing Act 2004 it clarified that former landlords have discretion not to demand that former tenants repay part or all of the discount they received. The discretion applies to any sale that would trigger repayment of discount which takes place on or after 18 January 2005.
- 4.3 The Ministry for Housing, Communities and Local Government (MHCLG) issued guidance in respect of when the use of discretionary powers would be appropriate. Whilst it is for the Council to decide if the circumstances of a particular case would justify the exercise of discretion under section 155, MHCLG advise that landlords should only exercise their discretion where the former tenant cannot afford to repay part or all of their discount and would therefore not be able to move home where they are required to do so due to particular exceptional circumstances as the opportunity cost of the Council not demanding repayment is a net cost to the public purse.
- 4.4 The following are examples from the MHCLG guidance of where the use of discretion may be justified.
- a. where an owner of the property wishes to move because otherwise he or she and/or other family members (especially children) face a demonstrable threat of violence or of significant harm; for example, due to:
 - relationship breakdowns involving actual or threatened domestic violence
 - racial, religious, homophobic or any other kind of harassment
 - extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property
 - b. where the sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds;

- c. where an early move is essential to return to employment; for instance where an individual has a firm offer of a job in another area and would thereby be able to return to work, either:
 - after long term unemployment; or
 - after having been made redundant, when his/her skills are such that there is no prospect of getting another job locally.
 - d. where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons
- 4.5 In each case it will be necessary to establish both the facts justifying the move and that such a move could not take place unless part or all of the discount repayable were waived.
- 4.6 In order for the Council to make a decision on waiving RTB discount, requests for discretion must be made in writing with decisions made on a case by case basis.
- 4.7 Requests will be required to include:
- Details of the amount of the waiver of the repayment they are seeking and the reason why;
 - Clear objective evidence in support of the request, setting out their circumstances and facts justifying their imminent need to move for example police reports or correspondence, medical evidence, letters from their employer;
 - Financial circumstances demonstrating the move could not take place unless some or all of the discount is waived for example a mortgage assessment carried out by an FSA approved advisor, the amount of any outstanding mortgage, the value of sole or joint savings and equity, estate agent or solicitors fees;
 - A current valuation of the property;
 - Details of any other property the client is seeking to purchase or move to.
- 4.8 As per the MHCLG guidance the Council as landlord need to fulfil their fiduciary duty, to ensure accountability as not demanding repayment will lead to a net cost to the public purse. Officers from Legal Services, Housing Services and Audit have drafted a form as set out in appendix 1 that can be sent to those applying for discretion. This will assist in gathering the required information which will help to verify; if the application fulfils the qualifying criteria, that circumstances are expectational, that the client cannot afford to repay part or all of the discount and that repayment of part or all of the discount would lead to demonstrable personal hardship. It will also help to minimise the opportunity for fraudulent abuse of the discretion.
- 4.9 On receipt of this information an assessment of the evidence will be undertaken by Housing Strategy officers, with input from Legal Services and Finance, with additional information requested if necessary.

- 4.10 The Service Manager for Housing Strategy will review the evidence collated and make a decision in consultation with Finance. The amount to be waived should be the lowest amount necessary to enable the move to go ahead. The client will be advised in writing of the outcome of the request for discretion to be exercised.
- 4.11 The customer will have the right to appeal this decision, as will be set out in the letter. They will be given 28 days to request in writing a review of the decision, including the grounds for the review. Appeals will only be considered where additional information can be provided. Reviews will be carried out by a head of service not involved in the original decision. They will consider if the policy and/or procedure have been applied correctly.
- 4.12 The outcome of the review will be made in writing to the customer. They will also be advised of their right to make a formal complaint through the Council's complaints procedure; and of their right to refer the matter to the Local Government Ombudsman.

5.0 Extension of leases

- 5.1 The Council offers 125 year leases as standard when a RTB property is sold. A lease extension is achieved by granting a new lease in place of the existing one, but for 90 years longer as per the Leasehold Reform, Housing and Urban Development Act 1993. The Act sets out the procedure the leaseholder and the Council should follow.
- 5.2 Lease extensions are usually requested when the amount of time left to run on the lease is approaching 80 years, as lease extension becomes much more expensive when a lease falls below 80 years and as the number of years on the lease runs down, this may also eventually affect a leaseholder's ability to get a mortgage against the property.
- 5.3 This formal procedure is started when the leaseholder serves a Tenant's Notice on the landlord, which is received by Legal Services. This prompts a number of eligibility checks and actions to be taken by professional services within the council.
- 5.4 Legal Services are required to:
 - check that the lease is a long lease that has been owned by the applicant for more than 2 years;
 - check that the owner or others within the block have not made an application for collective enfranchisement (the right of leaseholders to collectively purchase the freehold of a block of flats);
 - check with Housing Services that there is no intention by the Council to redevelop the building as the Council can resist a claim on the grounds of redevelopment;
 - serve counter-notice stating if the claim is admitted. If it is state which of the proposals contained in the tenant's notice are acceptable and which are not acceptable and what the counter-proposals are.
- 5.5 The Council must also instruct a valuation of the flat for the purpose of calculating the price of the new lease.

- 5.6 As the leaseholder is liable for the landlord's professional fees (including both legal costs and valuation fees) from the service of the notice regardless of whether the application is successful, it is proposed that the Council will recoup these costs from the leaseholder with estimated fees from Legal Services circa £500 and for valuation circa £500.

6.0 Enfranchisement

- 6.1 This is the right for leaseholders of flats to act together to collectively purchase the freehold and any headleases of their building.
- 6.2 In order to be a qualifying leaseholder the tenant must have a long lease which means a lease which, when originally granted, was for a term of more than 21 years, but they cannot own three or more flats in the building.
- 6.3 This follows a statutory process as set out in the Leasehold Reform, Housing and Urban Development Act 1993. The process is only likely to be triggered where there is a large group of leaseholders who are dissatisfied with the management of the block.
- 6.4 Whilst the Council can negotiate with such leaseholders before the statutory process has been commenced, for reasons of clarity and costs, it is recommended that the statutory procedure is closely followed from the beginning.
- 6.5 It begins with the service of a notice by the tenant following which the Council would need to make investigations to determine whether the right is in fact exercisable (this would need to be done by Legal Services in conjunction with Wolverhampton Homes). If the right is exercisable, officers would need to be certain that the Council has got no intention to develop or demolish the property, which would require input from Housing Services.
- 6.6 The Council would also need to instruct a valuer to determine whether the price proposed by the leaseholders is a realistic valuation.
- 6.7 As the leaseholder is liable for the landlord's professional fees (including both legal costs and valuation fees) from the service of the notice regardless of whether the application is successful, it is proposed that the Council will recoup these costs from the leaseholder with estimated fees from Legal Services circa £500 and for valuation circa £500.

7.0 Evaluation of alternative options

- 7.1 The alternative option would be not to introduce any locally determined policy, but to be reliant on the legislation and regulations. This however would not provide for areas of discretion set out within the regulations, which may make applications longer and more difficult to assess

8.0 Reasons for decision

- 8.1 The recommendations if agreed will lead to a consistent approach across Council officers when dealing with requests relating to former Right to Buy properties. This in turn will

ensure applications are assessed more quickly and should result in fewer reviews on decisions.

9.0 Financial implications

- 9.1 A decision to buy back a former Right to Buy property can only be made if a capital budget is available and approved within the Housing Capital Programme.
- 9.2 Decisions to waive some or all of the Right to Buy discount will be made in consultation with Financial Services as this will result in a net cost to the Housing Revenue Account.
- 9.3 The legislation governing the extension of leases and purchase of the freehold provides guidance on that applicants can be made responsible for the payment of legal costs and administration charges.
[JM/18062018/F]

10.0 Legal implications

- 10.1 The Right to Buy scheme was introduced by the Housing Act of 1980 and amended by the Housing Act 1985 and Housing Act 2004
- 10.2 The Housing Act 2004 introduced covenants requiring owners wishing to dispose of their property during the first ten years after purchasing under the RTB scheme to offer the property back to the Council before placing it on the open market. The Housing (Right of First Refusal) (England) Regulations 2005 set out the procedures for owners to follow in offering their properties back and also for the Council in accepting such offers which the Council will observe.
- 10.3 The standard lease issued by the Council is for 125 years. The Leasehold Reform, Housing and Urban Development Act 1993 allows for the grant of a new lease for a term of 90 years plus the unexpired term. The Act sets out the procedure the leaseholder and the local authority should follow.
- 10.4 The conditions under which leaseholders may purchase the freehold of a property and the statutory procedure are covered by the Leasehold Reform, Housing and Urban Development Act 1993 and will be observed by the Council.
[26062018/DC/C]

11.0 Equalities implications

- 11.1 An equalities analysis has been completed and there are no equality implications.

12.0 Environmental implications

- 12.1 There are no environmental implications associated with this report.

13.0 Human resources implications

13.1 There are no human resources implications associated with this report.

14.0 Corporate landlord implications

14.1 There are no Corporate Landlord implications associated with this report.

15.0 Appendices

Appendix 1: Request to Waive Repayment of Discount Awarded Under The Right to Buy Scheme