



Policy on the buy back of properties sold under the Right to Buy

1. Aims

- 1.1 The Housing Revenue Account Business Plan set out a number of objectives, one of which is to invest in the provision of new affordable housing. It is identified that this can be achieved by either direct investment in purpose built new build housing or through strategic acquisitions on the open market or through buy-back opportunities.
- 1.2 This policy sets out the council's approach to the re-purchase of properties previously sold by the council under the Right to Buy (RTB) scheme.
- 1.3 The aims of the policy are:
 - to make best use of the housing to meet local needs
 - to enable qualifying vulnerable tenants to move into more suitable accommodation
 - to support the council's approach to the prevention of homelessness
 - to increase the supply of affordable housing within Stevenage through the acquisition of properties that will be let as social housing through the council's Choice Based Lettings (CBL) scheme
 - to provide a framework to assess viability and value for money of acquiring of a particular property, delivering the flexibility to be able to act within timescales, as opportunities arise
 - to ensure that the council complies with legislation
 - to ensure that the council spends receipts raised from RTB sales, to avoid having to repay them to the government

2. Policy Context

- 2.1 In April 2012, the Government implemented policy changes aimed at incentivising tenants to exercise their Right to Buy. The Right to Buy discount cap is currently £82,800, this will increase to £84,200 from 6 April 2020.

There has been a significant increase in the number of RTB sales in Stevenage.

- 2.2 The implementation of Housing Revenue Account (HRA) self-financing in 2012 has enabled the council to use surplus rental income to invest in a new affordable homes programme. The council has also opted to retain net capital receipts from RTB sales to fund new homes. The government set out the arrangements for recycling these receipts in its guidance document, 'Reinvigoration the Right to Buy and One for One Replacement: Information for Local Authorities' (DCLG, 2012). In the case of buy-back, councils are allowed to fund up to 50% of the cost of re-purchasing former council homes, up to a maximum of 6.5% of additional net receipts (i.e. receipts available to support one-for-one replacement).
- 2.3 The policy sets out the circumstances under which the council may consider the re-purchase of former council homes. It applies to properties identified from the following sources;
 - properties sold by the council under the RTB since January 2005, which are offered back to the council within ten years of purchase under the 'right of first refusal'
 - other limited circumstances where the council has the 'right of first refusal' former council owned properties, owned and occupied by persons who are assessed as being in need of support and eligible to move to a property within one of the council's sheltered schemes.
- 2.4 The policy does not apply to the compulsory purchase of properties that are included in the council regeneration schemes.
- 2.5 The policy does not apply to the re-purchase of an occupier's share in a Low Start Shared Ownership (LSSO) property.
- 2.6 The decision whether to buy a former council is at the discretion of the council. Each potential purchase will be considered on a case by case basis and purchase will depend on the property offering the council value for money and on funding being available for that purpose.

3. Legal Framework

- 3.1 The Right to Buy scheme was introduced by the Housing Act 1980 and amended by the Housing Act 1985 and allows secure tenants to buy their new homes (with some exceptions) from their local authority landlord.
- 3.2 The Housing Act 2004, which came into force in 2005, made several significant changes to the Right to Buy scheme, including extending the qualifying period for a tenant wishing to purchase their home from two to five

years. The period during which a property could not be sold without the owner paying back a proportion of their discount was increased from three to five years,

- 3.3 The Housing Act 2004 also introduced a requirement for a covenant to be included in the conveyance of a freehold or grant of a lease, giving the local authority landlord the 'right of first refusal' on resale within a prescribed period. The Housing (Right of First Refusal) (England) Regulations 2005 set out the procedures that must be followed in such circumstances.
- 3.4 The council has a statutory duty under the Housing Act 1996 as amended by the Homelessness Act 2002 to assist certain vulnerable households at risk of homelessness and also to prevent homelessness wherever possible.
- 3.5 Section 1(1) of the Localism Act 2011 provides that 'local authority has the power to do anything that individuals generally may do'. This 'general power of competence' was brought into force on 18 February 2012.

4. Right of first refusal

- 4.1 All council properties sold under the RTB (or sold voluntarily at a discount by the council if applicable) since 18 January 2005 are subject to the covenant of the 'right of first refusal'. If an owner wishes to sell their property within 10 years of purchase, they must first offer the property back to the council by submitting a formal offer notice.
- 4.2 There are other limited circumstances under which a council may have the 'right of first refusal', where the property was sold by a registered social landlord or Housing Action Trust and:
 - in the case of a leasehold property, the interest in the property has been transferred from the former landlord to the council; or
 - in the case of a freehold property, the former landlord is no longer in existence and the property is situated in the local authority's area
- 4.3 On receipt of the offer notice, the council has a period of 8 weeks in which to either accept the offer, nominate another Registered Social Landlord who may accept it, or reject the offer.
- 4.4 In considering and responding to such offers, the council will ensure its procedures comply with the requirements and statutory timescales set out in the Housing (Right of First Refusal) (England) Regulations 2005 (SI 2005/1917)
- 4.5 If the decision is to accept an offer the Council will send an acceptance notice either accepting the offer ourselves or nominating a Registered Provider (RP)

to accept the offer. The acceptance notice does not give any right that means the Council or RP is required to purchase the property until a binding contract is entered into.

5. Buy Back Criteria

.5.1 In **all** cases, the council's decision to make use of its powers to buy properties will be determined by the following factors:

- a) The property must previously have sold by the council under the RTB and be available for purchase free of encumbrances;

AND

- b) Purchase of the property would free up land or enable access to a site suitable for the development of the affordable housing;

OR

- c) Housing need and demand is established for the type of property being offered and in the area in which it is located; **and**
- d) The initial cost of any refurbishment work required to bring the property up to the council's lettable standard is minimal; **and**
- e) The property must have a potential financial impact on the HRA Business Plan;

5.2 Where the property is available for purchase the decision to proceed would be subject to the property being sold with vacant possession and the purchase must not lead to any existing tenants being made homeless.

5.3 Properties meeting the criteria above will only be considered for purchase where capital funds have been identified for this purpose.

6. Financial Considerations

6.1 The financial resources available for this policy will be dependent on the ability of the HRA Business Plan to fund acquisitions. Any proposal to buy back properties would have to be considered within the overall new provision capital budget. The proposed increase in the new build and regeneration plans for Stevenage may limit the funds available to acquire properties.

6.2 A financial assessment of each property under consideration will be made, to ensure that there is not a significant adverse financial implication for the HRA, based on the gross purchase cost, the gross post-purchase investment cost and the net revenue stream.

- 6.3 The costs of any works required to bring the sold property up to the council's lettable and decent homes standard will be reflected in the purchase price.
- 6.4 Administration and legal fees will also be taken into account when making an offer.

7. Repayment of the Discount

- 7.1 Should the council buy back the property within 5 years of the RTB purchase the owner will be required to pay back a percentage of the discount, applied on a sliding scale, in accordance with the Housing Act 2004. If the owner would face demonstrable personal hardship having to repay the discount, the council's RTB – Use of Discretionary Powers in the Repayment of Discount' policy will be applied. Under this policy, the council's discretion to waive part or all of the discount repayable is exercised only in exceptional circumstances.

8. Approval

- 8.1 Properties will be considered for buy back on a case by case basis. Subject to an appropriate business case for each prospective transaction being in place, a Non-Key Decision will be made by the Strategic Director (Community) in consultation with the Executive Portfolio Holder for Housing to determine whether to re-purchase suitable former RTB properties.
- 8.2 The Council is not required to purchase back any property that is offered back therefore if the decision is not to purchase the property there is no right of appeal. However if a resident feels that Officers have not applied the policy correctly or followed the correct procedures they may register a complaint within 28 days of receiving the Council's decision.

9. Process

- 9.1 This policy will be supported by robust process and procedure documents. Officers will use an evaluation matrix, to make an assessment of viability and to establish the Net Present Value (NVP) and the impact on the HRA Business Plan.

10. Monitoring and Review

- 10.1 This policy will be reviewed by the Strategic Director (Community) in consultation with the Portfolio-Holder for Housing after the first year of implementation and further reviews will be conducted every 3 years thereafter.

11. Associated Documents

11.1 Internal

- Housing Revenue Account Business Plan
- Housing Revenue Account Capital Programme
- Housing Asset Management Strategy
- Right to Buy – Use of Discretionary Powers on Repayment of Discount Policy
- RTB buy-back procedures
- Allocation Scheme
- Open Market Acquisition Policy

11.2 External

- Housing Act 1985
- Housing Act 1996
- Housing Act 2004
- The Housing (Right of First Refusal)(England) Regulations 2005 (SI 2005/1917)
- Re-invigorating the Right to Buy and One for One Replacement: Information for Local Authorities, DCLG, 2012
- Housing (Right to Buy) (Limit on Discount) (England) Order 2012 (SI 2012/734)
- Draft Deregulation Bill
- Localism Act 2011