

<b>MAYOR AND CABINET</b>		
<b>Report Title</b>	Changes to the Right to Buy Scheme	
<b>Key Decision</b>	Yes	Item No.
<b>Ward</b>	All Wards	
<b>Contributors</b>	Executive Director of Customer Services Executive Director of Resources & Regeneration	
<b>Class</b>	Part 1	Date: 30 May 2012

## **1 Summary**

- 1.1 In December 2011 the Government launched its consultation document 'Reinvigorating Right to Buy and one for one replacement'. The proposals included increasing the caps on discount from £16,000 to £50,000 and suggestions around how to re-provide the homes on a one to one basis.
- 1.2 On the 12<sup>th</sup> March the Government published its response to the consultation. Contained within the document was notification that the Government would be introducing a £75,000 cap rather than a £50,000.
- 1.3 Local authorities wishing to participate in the one for one replacement of the sold properties at a local level will be required to sign an agreement with the Department for Communities and Local Government (DCLG) – the details of which have recently been published and are laid out in this report.
- 1.4 This report outlines the new scheme and makes proposals for how to best replace the units sold through Right to Buy.

## **2 Policy Context**

- 2.1 The contents of this report are consistent with the Council's policy framework. It supports the achievement of the Sustainable Community Strategy policy objective:
  - Empowered and responsible – where people are actively involved in their local area and contribute to supportive communities;

- Clean, green and liveable – where people live in high quality housing and can care for and enjoy their environment;
- Dynamic and prosperous – where people are part of vibrant communities and town centres, well connected to London and beyond.

2.2 The Council has outlined ten corporate priorities which enables the delivery of the Sustainable Community strategy. Entering into the 'retention agreement' meets the priority to provide decent homes for all, to invest in social housing and affordable housing in order to increase the overall supply of new housing and to reduce the number of households in temporary accommodation, tackle homelessness and address housing need and aspirations.

2.3 Lewisham's Housing Strategy 2009-14 'Homes for the future: raising aspirations, creating choice and meeting need' has 5 strategic priorities the second of which is:

- **Widening housing choice and managing demand:** We will ensure a comprehensive range of housing types and tenures are available to local people, giving them real housing choices that are flexible to their needs and are able to adapt to their changing circumstances. We strive to make residents' housing choices as easy as possible and are working to make movement between tenures as straight-forward as possible, by providing clear and timely information and support to those that need it, and exploring new housing options that might better suit the needs and aspirations of our residents and communities.

### 3 Recommendations

It is recommended that the Mayor:

- 3.1 note the information contained in this report;
- 3.2 agree to enter into the Retention Agreement with the Department of Communities and Local Government relating to the use of Right to Buy receipts for replacement affordable housing;
- 3.3 delegate authority to the Executive Director of Customer Services and Executive Director of Resources & Regeneration to sign the Retention Agreement with the Department of Communities and Local Government;

- 3.4 delegate authority to the Executive Director of Resources & Regeneration to manage and report the use of receipts to Mayor & Cabinet and the Department of Communities and Local Government in accordance with the Retention Agreement;
- 3.5 note that subsequent decisions in relation to the use of receipts for particular affordable housing schemes will be made in accordance with the Mayoral Scheme of Delegation.

## **4 Background**

- 4.1 In its paper *Laying the Foundations: A Housing Strategy for England*, the Government announced its intention to increase the caps on Right to Buy discounts and “hence the average discount received by buyers in England would be up to half the value of their homes – which would be roughly double the current average discount”.
- 4.2 The consultation document ‘Reinvigorating Right to Buy and one for one replacement’ was published in December 2011 and outlined the Government’s proposal for increasing the Right to Buy discount and the use of the receipts for replacement affordable housing. Lewisham responded to the consultation by the deadline of the 2<sup>nd</sup> February 2012.
- 4.3 Key points for the new scheme:
  - Increased discount cap of £75,000;
  - Every additional home sold under RTB will be replaced by a new home;
  - Councils will be able to retain the receipt for replacement housing if signed up to an agreement with the DCLG otherwise the receipt will return to Treasury;
  - Councils can deduct the necessary amount to cover the debt assumed against the property;
  - Councils can deduct a sum from the receipt for the cost of withdrawn applications;
  - Buy back provision retained to allow Councils to buy back properties sold under the RTB;
  - Cost floor retained and extended from 10 to 15 years to allow Councils to apply for exemption from pooling arrangements (Cost floor is the mechanism by which the costs of major refurbishment and other capital expenditure on properties can be taken into account in determining the minimum sales price irrespective of discounts).

Summary of the key changes:

Policy	Current Policy	From 2 <sup>nd</sup> April 2012
One for one replacement	Not applicable.	If the new homes are provided by a Registered Provider through this mechanism they are required to be delivered utilising the <b>new affordable rent model</b> (up to 80% of market rent) in order to maximise the return from the rental stream. There is more flexibility for Councils developing directly however there are restrictions on the investment that forms the RTB receipt contribution.
Qualifying period	Public sector tenants for 5 years before qualifying for RTB	Same as before
Discount Rates and Caps	<p>Houses: 35% of property value plus 1% for each year beyond the qualifying period up to a maximum of 60%.</p> <p>Flats: 50% plus 2% for each year beyond the qualifying period up to maximum of 70%</p> <p>£16,000 cap in most of London restricts this calculation (Barking &amp; Dagenham and Havering had discounts of £38,000)</p>	Same calculation but with cap of £75,000 across England
Use of RTB receipts	75% of the receipts paid to Treasury, 25% retained by LAs	Once the requirement in the self financing settlement has been met, LAs can retain all receipts to fund replacement housing less the transaction cost and the Government assumed income from projected RTB receipts and sign up to the legal agreement.
Administration Costs	LAs deducted the actual transaction cost of successful RTB sales from	London - fixed at £2,850 Rest of England - £1,300

Policy	Current Policy	From 2 <sup>nd</sup> April 2012
	the receipt but no allowance for abortive sales	
Preserved RTB	<p>No requirement for use (or repayment to Treasury) of PRTB receipts but expectation that it would be used for new affordable homes or other programmes with public benefit</p> <p>(Calculations and use of PRTB is a local issue. In Lewisham a formula for the Councils share and timetable for payment is included in the Transfer Contract).</p>	<p>Incentives for RPs to reinvest receipts:</p> <ul style="list-style-type: none"> <li>• For providers not developing under the Affordable Homes Programme, the Homes and Communities Agency will offer to broker a relationship with an investment partner.</li> <li>• RPs fully utilising their own receipts for new affordable homes will be prioritised when the DCLG are considering bids for RTB receipts returned to them.</li> </ul>
Buy Backs	<p>Around 50% of the cost of buy backs claimed from RTB receipts. (Lewisham currently only buys back homes on housing regeneration schemes where the unit is identified for demolition).</p>	<p>Buy back facility to be retained allowing councils to claim (from receipts) up to 50% of the value of each property – capped at 6.5% of the value of the net RTB receipts (after admin costs, debt and assumed income).</p>
Cost floor	<p>S131 of the Housing Act 1985 limits the RTB discount to ensure that the purchase price does not fall below what has been spent on building, buying, repairing or maintaining it over a certain period of time.</p>	<p>The period of time the cost floor covers is increased from 10 to 15 years. The DCLG will retain the option for councils to apply for an exemption from pooling receipts for new homes built in the future.</p>

## 5 Stock Transferred Properties

5.1 The right to buy includes housing stock transferred from Local Authorities to Registered Providers (RP). This right is referred to as the preserved

right to buy (PRTB). To qualify for the PRTB, a tenant must have been a public sector tenant for five years.

- 5.2 The right is attached to the tenant resident at the time of the transfer, not the property and as the property becomes vacant the right will no longer apply.

## **6 Signing the Agreement**

- 6.1 In order for the Council to keep Right to Buy receipts to fund the provision of replacement stock, it is required to enter into a Retention Agreement with DCLG.

- 6.2 If a decision is taken not to sign the Retention Agreement then all the receipts will be returned to DCLG and will be passed to the GLA for it to invest in replacement stock. Although this will still lead to the delivery of affordable homes, this may be in areas that do not include Lewisham and the Council will have no control over this.

- 6.3 Guidance on the Retention Agreement states the following:

- *... the Secretary of State will agree to*
  - i. *allow your authority to retain additional Right to Buy receipts to fund the provision of replacement stock, and*
  - ii. *allow your authority two years (from commencement of the agreement) to invest those receipts before asking for the money to be returned.*
- *It is worth emphasising that the agreement will not require a local authority to complete the building of any home within two years. All that is required is that the local authority should have incurred expenditure sufficient that Right to Buy receipts form no more than 30% of it.*
- *In return your authority will agree;*
  - i. *that Right to Buy receipts will not make up more than 30% of total spend on replacement stock, and*
  - ii. *to return any used receipts to the Secretary of State with interest.*

- 6.4 In response to concerns raised by local authorities, the Government subsequently extended the period for investment from 2 years to 3. The Agreement therefore recognises that new homes cannot realistically be completed within 3 years, but that the local authority should incur

- expenditure of no more than 30% of the development costs of new homes within that time period.
- 6.5 An authority can either deliver the new homes directly, via an RP or a mix of both. However if an RP is delivering the homes then they commit to the match funding (the 70%).
  - 6.6 The Guidance issued so far indicates the Government's preference that new homes are let at the new affordable rent levels, however where the Council is building directly the rents are at the Council's discretion. In theory, if the Council opts to build the rents could be set at social rent levels, but consideration should be given to the financial viability of any proposals and the input of a minimum of 70% of the costs by Lewisham.
  - 6.7 Where a local authority chooses to work with an RP rents will be set in line with the new affordable rent model. While this does not necessarily mean that all rents should be set at 80% of market rent, the DCLG will expect that rents are maximised to optimise the investment potential.
  - 6.8 The models provided so far by DCLG are simplistic in that they do not include all of the relevant costs. The models do not include the loss to the HRA of future rental income streams nor do they detail the penalties for failing to use the receipt within two years.
  - 6.9 Local authorities can only retain receipts after the Government assumed income from projected RTB sales has been achieved. This is agreed through the self financing settlement. For the financial year 2012/13, 15 RTB sales have been estimated.
  - 6.10 The Agreement sets parameters for the spend of receipts which include the requirement that for every £300k retained, £1m has to be spent on affordable housing – a 30:70 ratio of receipts to other finance. The receipt should form *no more* than 30% of the total cost of the new provision.
  - 6.11 Receipts which have not been used in accordance with the Retention Agreement are required to be returned to DCLG with interest. Interest will be charged at 4% above the base rate on a day to day basis compounded. The interest rate has been set at a deliberately high rate in order to encourage local authorities to invest more in replacement stock. The rate is specifically designed to discourage local authorities from retaining receipts until such time that they are required to surrender them.
  - 6.12 If the decision is to sign the Retention Agreement the Council maintains the option of not retaining receipts in any particular quarter and no interest is payable if payment is made to the Secretary of State by the due date for each relevant quarter.

6.13 A process will need to be established to monitor and assess the levels of receipts that are received and what they can be spent on. If there are no suitable development proposals which will enable a sufficient amount to be spent on provision of social housing within the relevant period, the decision can be made to hand back the receipt in order to avoid having to surrender it subsequently with interest.

6.14 The timetable for signing the Retention Agreement is as follows:

- The final agreement and guidance was issued on the 15<sup>th</sup> May 2012 for return by noon on the 27<sup>th</sup> June 2012.
- The final agreement will be signed by the Secretary of State and returned to boroughs at a later date.

## **7 Calculation of Discount**

7.1 As outlined earlier in this report, the proposed calculation for the level of discount available is:

- For houses: 35% of property value plus 1% for each year beyond the qualifying period up to a maximum of 60%.
- For flats: 50% plus 2% for each year beyond the qualifying period up to maximum of 70%

7.2 An overall cap of £75,000 will be applied across England.

## **8 Impact in Lewisham**

8.1 The table at Appendix A shows the breakdown of RTB sales since 1979. From 1979 to 2007/08 there were 13,299 RTB sales in Lewisham. The following year (2008/09) there were only 13 and in 2009/10 only 4. In 2010-11 there were 11 sales and in 2011/12 around 17. 21 new applications were received in the first couple of weeks in April and there are 34 live cases outstanding from 2011/12 (which will be subject to the new discount levels).

8.2 The loss of additional units through RTB together with the reduction in grant available for new build development may impact on the levels of affordable housing available in Lewisham. However Lewisham will continue to seek to maximise new build opportunities within the borough through partnership working and RTB receipt reinvestment.



## **9 Consultation and Promotion of scheme**

- 9.1 The Government has produced a set of materials to support Councils in communicating the changes to the scheme. This will include a template letter and a new 'summary guide' for prospective purchasers.
- 9.2 Lewisham's recent experience with cases taken to the Leaseholders Valuation Tribunal (LVT) identifies a need to ensure that purchasers of flats especially, are fully informed of any potential costs for works such as new windows and their requirement to contribute to these works.
- 9.3 Information on the RTB scheme is publicised via Lewisham Homes' website. Regenter B3 do not currently have a specific Lewisham website.
- 9.4 All LA's were written to in March 2012 highlighting the new scheme. The letter included an invitation to volunteer to be a 'spotlight area' working with the DCLG to ensure that tenants are fully informed before deciding to purchase their home.
- 9.5 As Housing Associations are independent organisations, the Government does not propose to mandate what they do with any receipts from Preserved Right to Buy sales – but the Government's assumption is that receipts will be recycled into new affordable homes or other programmes with public benefits.

## **10 Processing of Applications**

- 10.1 Lewisham Homes process applications on behalf of the Council for the eligible stock that they and Regenter B3 manage.
- 10.2 In anticipation of a high number of applications, a dedicated team is being recruited. The expectation is that a large number of applications will be received which may not result in a completion. The administrative cost of £2,850 has been increased to cover the cost of abortive claims but will only be paid on completed sales.
- 10.3 There are set processing times for claims – 12 weeks for flats and 8 weeks for houses – and penalties are applied for any delays.
- 10.4 It is intended that all applicants will be interviewed, although this will depend on demand and resources, to explain the costs that a leaseholder is required to pay such as service charges and leaseholder contribution to major works.

## **11 Right to Acquire - Registered Providers**

- 11.1 Registered Providers do not operate the Right to Buy system (except where a stock transfer from a LA has taken place and includes a PRTB).
- 11.2 The Right to Acquire (RTA) is the scheme giving eligible tenants of RPs the legal right to buy the home they current rent. To qualify for the scheme a property must have been built or purchased by a registered social landlord, funded on or after 1 April 1997 through social housing grant. The discount available is £16,000 in London.
- 11.3 No changes to these arrangements are proposed at this time.

## **12 Financial implications**

- 12.1 There are no direct financial implications of the recommended decision. Entering into the Retention Agreement merely gives the council the future option to retain additional RTB receipts under the conditions set out in this report. However, it is important to note the general financial implications that will follow from the changes to the RTB scheme, as well as the financial implications of future delegated decisions.
- 12.2 The DCLG, under its self-financing proposals, originally assumed 16 RTB sales for 2012/13. The self financing settlement includes receipts from the assumed 16 RTB sales being split 75:25 in favour of the Treasury. This would have provided them with £1.505m in Capital Receipts, using £16k as a maximum discount.
- 12.3 There were 18 RTB sales in 2011/12 (16 Flats, 2 Houses) with an average market valuation of £144k. This was based on a maximum discount of £16k.
- 12.4 Under the new scheme the government will continue to receive its modelled share of the receipts from RTB sales, i.e. the £1.5m referred to above. The future level of RTB sales cannot be forecast with any certainty, but it is reasonable to assume that the substantial increase in the discount available will lead to an increase in sales. Assuming that the average gross sale price in 2012/13 was the same as in 2011/12, and that all sales were at the maximum £75k discount then approximately 36 sales would be required to generate the £1.5m required to be paid over to the government. The council would be able to retain its 25% share of around 30.5m as well as make allowable deductions from the gross receipt for administrative and other costs.
- 12.5 The council's option to retain the entirety of RTB receipts over and above the amounts quoted above for new build would therefore only arise if sales were above the 36 units quoted above (and/or if the average gross prices

were higher than those assumed or discounts lower). These would be available for investment in new build provided, given the conditions of the scheme, that no more than 30% of the new build cost was financed this way. The council would have to finance the remaining 70% of the cost from its own resources, either by diverting costs from other areas of the capital programme or by borrowing additional sums to finance the new build.

- 12.6 There is also the requirement to spend the receipts within three years from the quarter in which the receipt was generated. If it is not, then the receipts must be returned to government together with an interest charge (back-dated to the quarter in which the receipt was generated). The council can choose to return the receipt anytime within the three year period, without any interest penalties.
- 12.7 Decisions to retain any additional RTB receipts will therefore have substantial financial consequences. Detailed financial modelling is being prepared in order that properly informed decisions can be taken at the appropriate time. This will need to include reasonable assumptions about the cost of new build and the income streams associated with it. It will also be important to take a view on the likely level of RTB sales of any new build properties in the medium term. There are restrictions on tenants' rights to buy based on length of tenancy, but in time any new build properties will potentially become subject to RTB applications in their own right. In entering into borrowing arrangements in particular to finance new build the council will need to assess the possible impact of this on the HRA business plan.

### **13 Legal implications**

- 13.1 The national statutory Right to Buy scheme was first introduced pursuant to the Housing Act 1980. It provides qualifying social tenants the right to purchase their home at a discount. The scheme is open to secure tenants of local authorities and non-charitable housing associations, and to those assured tenants of housing associations who have transferred with their homes from a local authority as part of a housing stock transfer.
- 13.2 In November 2011, the Government announced its intention to increase the caps on RTB discounts and provided the express commitment to ensure that the receipts from every home sold under the RTB scheme are used to fund its replacement, on a one for one basis with a new home for Affordable Rent. (Government publication, titled 'Laying the Foundations: A Housing Strategy for England', published on 21<sup>st</sup> November 2011).
- 13.3 The Retention Agreement will be made under powers provided by section 11(6) of the Local Government Act 2003 (as inserted by section 174 of the Localism Act 2011). This enables the Secretary of State to enter into an

- agreement with a local authority disapplying the requirement to repay to the Secretary of State capital receipts of the local authority that are specified or described in the agreement, in this case Right to Buy receipts.
- 13.4 The European Convention on Human Rights states in Article 8 that “Everyone has the right to respect for his private and family life, his home and correspondence”. The Human Rights Act 1998 incorporates the Convention. It does not, however mean that everyone has an immediate *right* to a home, (because Article 8 is a “qualified” right and therefore is capable in certain circumstances, of being lawfully and legitimately interfered with).
- 13.5 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. The new duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 13.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 13.7 As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 13.8 The Equality and Human Rights Commission (EHRC) issued guidance in January 2011 providing an overview of the new public sector equality duty, including the general equality duty, the specific duties and who they apply to. The guidance covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The guidance was based on the then draft specific duties so is no longer fully up-to-date, although regard may still be had to it until the revised guide is produced by the EHRC. The guidance can be found at

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/>.

- 13.9 The EHRC guidance does not have legal standing, unlike the statutory Code of Practice on the public sector equality duty which was due to be produced by the EHRC under the Act. However, the Government has now stated that no further statutory codes under the Act will be approved. The EHRC has indicated that it will issue the draft code on the PSED as a non statutory code following further review and consultation but, like the guidance, the non statutory code will not have legal standing.

#### **14 Crime and disorder implications**

- 14.1 There are no specific crime and disorder implications for this report.

#### **15 Equalities implications**

- 15.1 The Department of Communities and Local Government (DCLG) undertook an Impact Assessment when drafting the proposals for this scheme. The assessment can be found at:

<http://www.communities.gov.uk/publications/housing/rightobuyia>

- 15.2 The increased discount cap of £75,000 for RTB is compulsory and Lewisham cannot choose whether or not a tenant buys their Council home.
- 15.3 An Equalities Analysis Assessment (EAA) will be completed to try to anticipate who may utilise their right and how the Council can best mitigate the potential loss of affordable homes. If the decision is taken to sign the Agreement some analysis of who is making applications, who is successful and where they move to can be undertaken however the applications for the last few years are at too low a level to anticipate the make up of applicants at this time. Which types of properties are being lost could be a factor in the discussions around what should be developed as replacement homes.
- 15.4 Those most directly affected will be the applicants on the housing register. An EAA is currently being drafted in relation to the changes to the Allocations Scheme and will be relevant for this project also. Any new development proposals utilising the receipts will be delivered to meet the housing needs of the residents of the borough and achieve the strategic housing aims.

#### **16 Environmental Implications**

- 16.1 There are no specific environmental implications for this report.

## **17 Conclusion**

- 17.1 The Right to Buy will result in a loss of some affordable housing in Lewisham, the impact of which will be reported to Mayor and Cabinet later in the year. However, in signing the agreement the Council will benefit from being able to retain a proportion of the receipts to invest in new housing supply. If the Council were not to sign the agreement then it would not receive any proportion of the receipts from future right to buy sales.

## **18 Background documents and originator**

- 18.1 There are no background documents to this report.
- 18.2 If you have any queries on this report please contact Genevieve Macklin – Head of Strategic Housing on ext 46057.

Appendix A - Table 1

Social housing sales: Local authority stock sold through Right to Buy – CLG Live Tables																
LEWISHAM	1979/80 to 1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10			
Right to buy sales																
Sales	9,503	371	83	.	.	1,000	1,027	682	343	181	109	13	4			