

Mayor and Cabinet			
Title	Retention of Right to Buy Receipts		
Key decision	Yes	Item no	
Wards	All wards		
Contributors	Executive Director for Housing, Regeneration and Environment		
Class	Part 1	20 November 2019	

1 Purpose of report

- 1.1 The Council is seeking to enter into a contract with the Greater London Authority to transfer Right to Buy Receipts to them. The funds would be ring-fenced and returned to the Council as and when required via a standard grant agreement.
- 1.2 This eliminates the risk of the Council losing unspent Right to Buy receipts which previously would have been returned to HM Treasury together with a penalty revenue fee.
- 1.3 This paper will provide the background to the issue and seeks recommendations to allow officers to enter into a formal contract to prevent the loss of these receipts.

2 Summary

- 2.1 The Council currently retains the income accrued as a direct impact of the Right to Buy initiative that enables tenants of Lewisham Council to purchase their council homes at sub-market value.
- 2.2 Once received by the Council, receipts from the sale of these properties must be spent within three years. HM Government provides a strict interpretation on how this money must be spent.
- 2.3 In 2018, the Mayor of London, Sadiq Khan, announced radical proposals to enable local authorities to deliver their own homes more easily. This programme took many forms including the investment of £500m to Councils for direct delivery.
- 2.4 Another proposal looked at how Councils could have more control over their Right to Buy receipts to enable a more considered and more effective use of the monies without the risk of breaching the Regulations.

- 2.5 This process requires the Council to enter into contract with Greater London Authority to transfer their receipts to them in exchange for the return of the funds under the terms of a standard grant agreement. Funds would be ring-fenced for the exclusive use of the London Borough of Lewisham for provision of social/affordable housing as agreed with the GLA.

3 Recommendations

It is recommended that Mayor and Cabinet:

- 3.1 Notes the content of the report;
- 3.2 Approves the proposal to enable the transfer of Right to Buy Receipts to the GLA as and when appropriate and necessary
- 3.3 Delegates authority to the Executive Director for Housing, Regeneration and Environment to agree the terms of and enter into contract with the GLA to enable the funds to be transferred
- 3.4 Delegates authority to the Executive Director for Housing, Regeneration and Environment to agree the terms of and enter into subsequent grant agreements with the GLA to draw down the receipts for agreed schemes

4. Policy context

- 4.1 Lewisham's Housing Strategy was approved at Full Council in May 2015. This strategy sets out the Council's ambition to address the challenges in the borough through the following objectives:
- Helping residents at times of severe and urgent housing need
 - Building the homes our residents need
 - Greater security and quality for private renters
 - Promoting greater quality in the social and private rented sectors
- 4.2 Lewisham's Core Strategy has the objective to make provision for the completion of an additional 18,165 net new dwellings from all sources between 2009/10 and 2025/26, to meet local housing need and accommodate the borough's share of London's housing needs. This aims to exceed the London Plan target for the borough. The Core Strategy also has the objective to make provision to meet the housing needs of Lewisham's new and existing population, which will include:
- the provision of affordable housing
 - a mix of dwelling sizes and types, including family housing
 - lifetime homes, and specific accommodation to meet the needs of an ageing population and those with special housing needs
 - bringing vacant dwellings back into use
- 4.3 This report also contributes to the specific objective in the Corporate Strategy 2018-2022:

- To deliver 1,000 new social homes.

5. Background

- 5.1 In May 2018, the Mayor of London published his grant funding prospectus 'Building Council Homes for Londoners' which secured funding for the provision of new Council homes in London. Lewisham officers were heavily involved with the GLA in setting up the bid programme and drafting the prospectus. Lewisham's Mayor joined the Mayor of London to launch the programme in May and in doing so confirmed Lewisham's intention to partner with the GLA to build new council homes in the borough.
- 5.2 Councils were encouraged to bid for Affordable Housing Grant funding to build new Council homes, with rents set at between target and London Affordable Rent levels. The programme intends to support delivery of 10,000 new council housing starts in London by March 2022 with an emphasis on early delivery.
- 5.3 The bid deadline for both the additional HRA borrowing and the grant funding programme was 30th September 2018. The detail of the HRA programme was launched in July 2018, which led to a short lead in time to prepare the bids and reports for full approval. The 20th September 2018 M&C Report "Building Council Homes for Londoners: Lewisham Funding bid, approved the recommendation for the council to bid for additional HRA borrowing in the region of £51.4m along with bidding for grant funding from the GLA in the region of £57.5m.
- 5.4 Delegated authority was approved for the then Executive Director for Customer Services, subject to the approval of the Executive Director for Resources and Regeneration, to agree the final bid submission and a provisional agreement letter was signed and agreed by the deadline of March 2019 and returned to the GLA which allowed access to the grants and funding, however this agreement now needs to be formalised by entering into a contract.
- 5.5 As per Government guidance, Right to Buy receipts can contribute towards 30% of the total cost of the affordable rent units (as the rest are grant funded by other means). The "receipts pooling return² is used by government to estimate the amount of receipts that can be retained, as well as the total expenditure that should be incurred within three years of retaining the said receipts, the receipt(s) becomes repayable to central government with interest charged at 4%. The opportunity to ringfence these funds on behalf of the Council would be extremely beneficial.
- 5.6 The GLA ring fencing offer removes some of the restrictions around the percentages that can be used to fund construction and also allows RTB receipts to be pooled with additional funding sources. This would not be possible if funded directly by the Council due to restrictions linked to the status of the local authority which do not apply to the GLA. On this basis it is thought that participating in the ring-fence is a sensible approach.

6. Financial Implications

- 6.1 The amount the Council receives per year in RTB receipts varies, based on the actual number of completed sales. Part of these receipts are retained by the authority for Replacement Homes (known as 1-4-1 receipts) for investment in new units. The “receipts pooling return” is used by government to estimate the amount of receipts that can be retained, as well as the total expenditure that should have been incurred in delivering new supply at the date of the return. If not enough total expenditure is incurred, within three years of retaining the said receipt, the receipt(s) becomes repayable to central government with interest charged at 4% above base rate.
- 6.2 Measuring total expenditure to date in this way does not provide any flexibility and does not take into account delays that may incur in delivering new build schemes. The Council has been close to repaying funds to government in the past. This will occur if total expenditure at the date of the return is not enough. Repayment of the receipts to government will then be required, even if the total estimated costs of delivery exceeds the total spend requirement overall. The opportunity for the GLA to ringfence these funds on behalf of the Council would ensure that they could be invested into the programme beyond the 3 year deadline imposed by MHCLG.
- 6.3 The process for returning receipts remains as outlined in the one-for-one agreement. This requires the authority to return the receipts, with interest, to MHCLG. MHCLG would then forward these receipts to the GLA. The GLA agreement guarantees that these receipts will be available to use by Lewisham on programmes agreed with the GLA.
- 6.4 The interest charge would be a revenue cost, and could fall on either the HRA or General Fund (or both) for repayment.

7. Legal Implications

- 7.1 Under the terms of the current agreements, made under Section 11(6) of the Local Government Act 2003, local authorities are required to spend retained Right to Buy receipts within three years, and for the receipts to fund no more than 30% of the cost of a replacement unit. Where a local authority is unable to spend receipts within three years they have to be returned to the Ministry of Housing, Communities and Local Government (MHCLG), together with interest of 4% above base rate, to be spent on affordable housing through Homes England or the Greater London Authority.
- 7.2 The GLA is empowered to receive funding from MHCLG and provide grant funding to councils in London for the purpose of the recipient providing social/affordable housing under sections 30(1) and 34 of the Greater London Authority Act 1999 (the GLA Act), provided the London Mayor considers that doing this will further one or more the GLA’s principal purposes of: (a) promoting economic development and wealth creation in Greater London; (b) promoting

social development in Greater London; and (c) promoting the improvement of the environment in Greater London.

- 7.3 The Council has a wide general power of competence under Section 1 of the Localism Act 2011 to do anything that individuals generally may do. The existence of the general power is not limited by the existence of any other power of the Council which (to any extent) overlaps the general power. The Council can therefore rely on this power to carry out housing development, to act in an “enabling” manner with other housing partners and to accept grant funding from the GLA for the provision of new affordable housing.
- 7.4 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.5 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.
- 7.6 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 9.3 above.
- 7.7 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 7.8 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled

“Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

8. Crime and disorder implications

8.1. There are no crime and disorder implications arising from this report.

9. Equalities implications

9.1. The provision of new social housing in the borough has a positive equalities impact. Households on the Council’s Housing Register are more likely to have a protected characteristic that the wider population as access to the register is limited to those most in housing need.

10. Environmental implications

10.1. There are no environmental implications arising from this report.

If you have any queries relating to this report please contact Freddie Murray on x43194.