



## Housing Select Committee

### Report title: Shared Ownership Update

**Date:** 20<sup>th</sup> January 2021

**Key decision:** No

**Class:** Part 1

**Ward(s) affected:** All

**Contributors:** Director of Inclusive Regeneration

### Outline and recommendations

The purpose of this report is to provide responses in relation to points raised by Housing Select Committee members in relation to the Shared Ownership Policy that was approved by Mayor and Cabinet on the 3<sup>rd</sup> November 2021. These points were also discussed at Overview and Scrutiny Business Panel on 16<sup>th</sup> November 2021.

It is recommended that Housing Select Committee review and note the report.

### Timeline of engagement and decision-making

1<sup>st</sup> November 2021 – Discussion with Housing Select Committee members regarding the Shared Ownership Mayor and Cabinet report including the shared ownership policy

3<sup>rd</sup> November – Mayor and Cabinet approval of the approach to shared ownership including the shared ownership policy

16<sup>th</sup> November – Overview Scrutiny and Business Panel review of the Mayor and Cabinet report approved on the 3<sup>rd</sup> November 2021

## 1. Summary

- 1.1. The purpose of this report is to provide responses in relation to points raised by Housing Select Committee (HSC) members in relation to the Shared Ownership Policy that was approved by Mayor and Cabinet on the 3<sup>rd</sup> November 2021. These points were also discussed at Overview and Scrutiny Business Panel on 16<sup>th</sup> November 2021.

## 2. Recommendations

- 2.1. It is recommended that Housing Select Committee review and note the report.

### 3. Policy Context

- 3.1. The Council's Corporate Strategy (2018-2022) outlines the Council's vision to deliver for residents over the next four years. Building on Lewisham's historic values of fairness, equality and putting our community at the heart of everything we do, the Council will create deliverable policies underpinned by a desire to promote vibrant communities, champion local diversity and promote social, economic and environmental sustainability. Delivering this strategy includes the following priority outcomes that relate to the provision of new affordable homes:
  - 3.1.1. Tackling the Housing Crisis – Providing a decent and secure home for everyone;
  - 3.1.2. Building an Inclusive local economy – Ensuring every resident can access high-quality job opportunities, with decent pay and security in our thriving and inclusive local economy; and
  - 3.1.3. Building Safer Communities – Ensuring every resident feels safe and secure living here as we work together towards a borough free from fear of crime.
- 3.2. Lewisham's Housing Strategy (2020-2026), includes the following themes that relate to the provision of new affordable homes:
  - 3.2.1. Delivering the homes that Lewisham needs;
  - 3.2.2. Preventing homelessness and meeting housing need;
  - 3.2.3. Improving the quality, standard and safety of housing;
  - 3.2.4. Supporting our residents to live safe, independent and active lives; and
  - 3.2.5. Strengthening communities and embracing diversity.

### 4. Background

- 4.1. A Mayor and Cabinet report was drafted for consideration at the 3rd November 2021 Mayor and Cabinet meeting. This sought permission for:
  - 4.1.1. The Council to become a provider of shared ownership homes in the borough;
  - 4.1.2. The proposed Shared Ownership Policy;
  - 4.1.3. Lewisham Homes to market, sell and manage shared ownership homes on behalf of the Council; and
  - 4.1.4. Delegations to officers to accept and apply GLA grant and RTB receipts, to agree sales and to agree a variation to the LH/LBL Management Agreement.
- 4.2. Ahead of the Mayor and Cabinet meeting officers met with Housing Select Committee members on the 1<sup>st</sup> November 2021. In advance of this meeting some questions were shared with officers and these were discussed with Housing Select Committee members on the 1<sup>st</sup> November 2021. Officers provided feedback on these points and confirmed that additional legal advice was being sought on a number of the matters raised.
- 4.3. Mayor and Cabinet approved the report recommendations on the 3<sup>rd</sup> November 2021.
- 4.4. Following Mayor and Cabinet's approval Overview and Scrutiny Business Panel requested to review this report. At the overview and Scrutiny Business Panel meeting the points discussed with Housing Select Committee members at the meeting on the 1<sup>st</sup> November were further discussed. Officers confirmed that legal advice was awaited and that a further response would follow.
- 4.5. Legal advice has been received in relation to the points raised. This paper sets out the responses to the points raised by Housing Select Committee members.

#### Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

## 5. Discussion points

### 5.1. Cross subsidy

- 5.1.1. HSC members have enquired whether shared ownership properties will be cross subsidising social rent properties.
- 5.1.1. It is confirmed that the shared ownership homes perform positively in viability terms and therefore will provide effective cross subsidy for the delivery of social homes. This varies by the value of the shared ownership units sold especially their location

### 5.2. Tenancy / lease arrangements

- 5.2.1. HSC members have enquired what type of tenancy the Shared Owners will have with particular concern about the ability for the Council to use Ground 8 to take possession proceedings.
- 5.2.2. It is confirmed that the leases will be long leases (999 years). They will not be assured (or secure) tenancies as defined by the Housing Act 1988 (or 1985).
- 5.2.3. The leases cannot be assured tenancies (as they might in the case of a housing association landlord) because of the status of the landlord as a local authority (Housing Act 1988, Schedule 1 para 12(1)(a)). Nor can they be secure tenancies, because long leases (defined by section 115 of the Housing Act 1985 to include leases of a term exceeding 21 years) are specifically excluded from the secure tenancy regime (Housing Act 1985, Schedule 1 para 1). This is a distinction between the 1985 and 1988 Housing Acts.
- 5.2.4. Accordingly, neither Ground 8, nor any other possession grounds as set out in the Housing Acts have any application to these leases and there is no "quick route" to possession.
- 5.2.5. The Shared Owners will have the statutory protection of sections 166 to 171 of the Commonhold and Leasehold Reform Act 2002 (CLRA), which means the Council must follow a formal process to forfeit the lease in the event of default. The leases must also contain a forfeiture (or "re-entry") clause.
- 5.2.6. Rent must be demanded in accordance with section 166 CLRA and arrears must have reached a certain level (£350) or have been outstanding for at least 3 years before any action is taken to forfeit. In the case of non-rent arrears, there must also be a determination of breach, in the absence of an admission, before forfeiture proceedings can begin.

### 5.3. Repayment of equity

- 5.3.1. HSC members have asked what Lewisham's policy on the repayment of equity in the event of possession proceedings will be, with specific concern raised about the potential for Shared Owners to lose their built up equity in these cases.
- 5.3.2. It is noted that Lewisham Homes are developing policies to ensure that in the first instance any Shared Owner is helped and supported if they are experiencing financial difficulty which affects their ability to pay rent or service charge.
- 5.3.3. Lewisham Homes will refer Shared Owners to relevant specialist advice and support with the permission of the Shared Owner.
- 5.3.4. Lewisham Homes will contact Shared Owners who fail to pay rent or service charge payments to discuss the circumstances and make a repayment agreement.
- 5.3.5. Downward stair-casing which involves the Council repurchasing some of the equity from the existing Shared Owner, who will remain living in the property owning a smaller share, is also an option for Lewisham Homes and the Council to consider in these circumstances.

## Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

5.3.6. It is noted that there is no statutory requirement for a landlord to repay any equity in the case of forfeiture. Following discussions with Members, legal advice has been sought on this matter to consider options to protect the equity of Shared Owners whilst also protecting the Council's position. Final advice is awaited on this point and will be shared with HSC members upon receipt.

#### **5.4. Lease length and extensions**

5.4.1. HSC members have enquired as to the lease length and whether leases can be extended at a later stage.

5.4.2. Leases granted by the Council for shared ownership homes will be for 999 years.

5.4.3. There will be a process for lease extensions. This will be managed by Lewisham Homes on the Council's behalf.

#### **5.5. Resources and Expertise**

5.5.1. HSC members have enquired as to what resources and expertise Lewisham Homes have to take on this role for the Council especially given there is no Right to Manage option for Share Owners.

5.5.2. The Lewisham Homes development team members have extensive experience of delivering shared ownership homes. A specialist consultant was initially employed by Lewisham Homes to work on developing the policies and procedures that are required to take on this function and a permanent member of staff has now been recruited to continue this work. Lewisham Homes are making good progress on establishing the required infrastructure for a sales programme. A Sales Agent will be employed for the first development at Creekside and then a permanent team will be appointed once there is a larger sales programme in place.

5.5.3. Following Mayor and Cabinet's approval in November 2021 the Management Agreement between the Council and Lewisham Homes is being varied to include responsibility for the marketing, sales and management of shared ownership homes. This variation includes expectations of the experience and skills the Lewisham Homes team will need to have in carrying out this work. In addition there are a series of KPIs within the agreement. The Council will monitor performance in relation to these KPIs. These KPIs have been further strengthened following discussions at Housing Select Committee and Overview and Scrutiny Business Panel.

5.5.4. In relation to the Right to Manage (RTM) it is correct that Shared Owners with a local authority as their landlord are excluded from this right. The Council have received legal advice confirming this point. The legal advice clarified that leaseholders do however retain the right to form a Recognised Tenants' Association. This does not give them the right to manage the scheme, but it would give them the right to be consulted on issues such as the appointment of managing agents, the power to appoint a surveyor to advise on service charge matters and the ability to act collectively in relation to service charges.

## **6. Financial implications**

6.1. Financial implications are as set out in the Mayor and Cabinet report of the 3<sup>rd</sup> November 2021.

## **7. Legal implications**

7.1. Trowers and Hamlin have provided the additional legal advice required to respond to a number of the point raised by HSC members. They are also finalising advice in relation to the equity matter which will be shared with HSC members once finalised.

### **Is this report easy to understand?**

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

## **8. Equalities implications**

8.1. Equalities implications are as set out in the Mayor and Cabinet report of the 3<sup>rd</sup> November 2021.

## **9. Climate change and environmental implications**

9.1. Climate change and environmental implications are as set out in the Mayor and Cabinet report of the 3<sup>rd</sup> November 2021.

## **10. Crime and disorder implications**

10.1. Crime and disorder implications are as set out in the Mayor and Cabinet report of the 3<sup>rd</sup> November 2021.

## **11. Health and wellbeing implications**

11.1. Health and wellbeing implications are as set out in the Mayor and Cabinet report of the 3<sup>rd</sup> November 2021.

## **12. Background papers**

12.1. More information on the previous Mayor and Cabinet report is available on the Council's website at <https://councilmeetings.lewisham.gov.uk/>

## **13. Report author(s) and contact**

13.1. Karen Barke, 020 8314 9588 (ext. 49588), [karen.barke@lewisham.gov.uk](mailto:karen.barke@lewisham.gov.uk)

### **Is this report easy to understand?**

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>