

Birmingham City Council

Report to Cabinet

21 July 2020



Subject: The Voluntary Right to Buy Programme for Housing Associations and Securing Council Investment in Affordable Housing

Report of: Acting Director - Inclusive Growth

Relevant Cabinet Member: Councillor Ian Ward, Leader.
Councillor Sharon Thompson, Homes and Neighbourhoods

Relevant O & S Chair: Councillor Penny Holbrook, Housing and Neighbourhoods

Report author: Andrew Hood, Development Manager, (0121) 303 7879.
Andrew.hood@birmingham.gov.uk

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 006970/2019		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	No <input checked="" type="checkbox"/>
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 The report sets out the Council's response to the Voluntary Right to Buy Pilot and any future voluntary right to buy programme for housing associations in Birmingham. It proposes a policy regarding this initiative in relation to historic disposals of land from the Council to Housing Associations, whereby any Right to Buy sales on former Council land will be resisted, or else will require replacement affordable housing to be built in the city, to protect affordable housing numbers in Birmingham.

- 1.2 The report further seeks approval of proposals for the Council to acquire its former Right to Buy properties and other properties on the market from time to time using Right to Buy receipt funds, to assist in maintaining affordable Council housing numbers and securing specific property types. These acquisitions are to be supported by appropriate valuation advice to ensure value for money.

2 Recommendations

- 2.1 Approves the criteria for supporting the Voluntary Right to Buy Programme for affordable housing outlined within paragraph 3.4 of this report.
- 2.2 Approves the acquisition of housing accommodation sold by the Council to its former tenants under the statutory Right to Buy and other properties that the Council requires for the purposes set out in 3.8 of this report from time to time using Right to Buy receipts, subject to approval of funds in the HRA Business Plan 2020+ by Cabinet in February 2020. These acquisitions will be supported by appropriate valuation advice to ensure value for money and approval for the acquisition of such properties will be delegated to the Acting Director Inclusive Growth, in consultation with the Cabinet Member for Homes and Neighbourhoods. Please see appendix 1, Acquisition Criteria.
- 2.3 Approves the acquisition of Empty Homes acquired through Compulsory Purchase Order (CPO) by the Empty Homes Teams dependent upon the location, type and availability of Right to Buy receipts and other financial resources. These acquisitions will be subject to criteria and delegations outlined in 2.2 above.
- 2.4 Approves the establishment of a recycled capital grant fund to allow the Council to recycle any grant funding that may become repayable as set out in 3.9 of this report.
- 2.5 Authorises the Acting Director, Inclusive Growth to seek consent from the Secretary of State under Section 174 of the Localism Act 2011 to exclude the acquired properties from Right to Buy Pooling requirements, to ensure that any capital receipts generated from any future sale of homes acquired under these proposals under the Right to Buy are retained by the Council for reinvestment in future housing delivery.
- 2.6 Authorises the Interim City Solicitor (or their delegate) to negotiate, execute and complete all necessary documentation to give effect to the above recommendations.

3 Background

- 3.1 The reduction of affordable homes for rent in the city through the Right to Buy requires the Council to consider a range of mechanisms to sustain provision. Two approaches to achieve this are proposed in this report.
 - Firstly, the Voluntary Right to Buy Pilot applies to Housing Association properties in Birmingham and sees tenants of Housing Association homes, which were built on land disposed of by Birmingham City Council for provision of affordable

homes in perpetuity, being able to purchase their homes at a discount. To protect affordable housing numbers in the city, a policy is proposed to resist Right to Buy sales of homes on former Council land unless alternative replacement affordable housing is provided in the city by the Housing Association.

- Secondly, funds available from the Council's own Right to Buy receipts are proposed to be used to acquire property for use as Council housing, to add to the affordable stock in the city.

- 3.2 The statutory Right to Buy for Local Authority Housing has been in existence for nearly four decades and well over 1 million Council homes have been purchased during this time (the statutory Right to Buy). In August 2018 the two-year Voluntary Right to Buy Programme for Housing Associations in the Midlands was launched to enable Housing Association tenants to benefit from the Right to Buy also. Whilst the current voluntary Right to Buy is a pilot an extension to this has recently been announced.
- 3.3 In Birmingham many Housing Association properties were constructed post 1980 on free or discounted land, and sometimes grant funded as well, provided by the Council. During this time the ability of Councils to build their own stock was substantially constrained by Government, which expected Councils to enable Housing Associations to provide affordable housing to deal with housing needs. In return for the provision of free or discounted land nomination rights would be secured to enable the Council to nominate households from its waiting list to the new housing constructed by the Housing Association.
- 3.4 To protect the Council's investment of free or discounted land together with nomination rights, the Council secured its nomination rights by a Title Restriction preventing any disposal of such land without the Housing Association successor in title providing to the Council a deed of covenant to observe, perform and comply with the nomination rights (the Title Restriction). The proposals within this report are not intended to stop Housing Association tenants exercising the right to buy under the voluntary scheme but are to protect the Council's investment in affordable housing and ensure that receipts captured through this process are reinvested into affordable housing within the City.
- 3.5 Given that the Voluntary Right to Buy Programme is not a statutory scheme this places the Council in a difficult position with regards to Housing Associations and their tenants who have expressed an interest in acquiring their home under this process. While not every Housing Association home within Birmingham was constructed using free or discounted land from the Council, those that are subject to the Title Restriction cannot be disposed of without compliance with the Title Restriction.
- 3.6 It is possible under the terms of the provisions of the Voluntary Right to Buy provisions for a Housing Association to exempt a property where such conditions apply and invite the prospective buyer to an alternative property instead. Where

the Council's consent is sought for the release or waiver of the Title Restriction the proposed criteria for such release/waiver is:

- Agree to the release/waiver of homes under the Voluntary Right to Buy Programme on the basis that the Housing Association agrees to re-provide a social rented property within Birmingham and has identified how this will be achieved.
- Agree to the release / waiver of the Title Restriction on the disposal of homes under the Voluntary Right to Buy Programme subject to the Title Restriction on the basis that the Housing Association agrees to use the proceeds of sale to help the Council respond to a strategic housing need such as building an extension to an existing property to enable a larger household to move in.
- Agree to the release/waiver of the Title Restriction disposal of homes under the Voluntary Right to Buy Programme subject to the Title Restriction on the basis that the Housing Association repays whatever land value or grant was provided to them by the Council out of the proceeds of sale. This land value to be index linked to current values. Any proceeds received by the Council from this process will then be used in funding new Council homes through the Birmingham Municipal Housing Trust (BMHT) programme.

3.7 Cabinet recently approved the BMHT 10-year plan on 14 May 2019 which agreed the next 10 years' development proposals for BMHT, funded in part from [the statutory] Right to Buy receipts which must be committed within three years of receipt. The priority for these funds remains the delivery of newbuild affordable homes. However, it is suggested that where there may be slippage within the BMHT programme that the statutory Right to Buy receipt funds are used from time to time to purchase properties previously sold under the statutory Right to Buy or other properties which maybe suitable for acquisition for social housing use by the Council, or to bring forward further affordable housing development opportunities. In addition, where appropriate it may be possible to appropriate empty homes acquired through a Compulsory Purchase Order by the Council's Empty Homes Team where this is deemed appropriate.

3.8 The intention in acquiring property in this way is to augment the existing BMHT programme and boost the number of affordable homes available for letting by acquiring properties which are suitable for social housing use at good value for money for the Council. External valuation and surveying advice will be sought which will support any potential acquisition and determine value for money. The criteria for the acquisition of property will be agreed with the Cabinet Member for Homes and Neighbourhoods in discussion with the Director, Neighbourhoods and the Assistant Director, Housing Development.

3.9 The Council is an investment partner with Homes England and as such can bid for grant funding to assist in developing new affordable housing. Where such bids are successful and the grant is awarded, there are certain conditions that apply to the grant. In particular where an event occurs such as the property being

sold under the Right To Buy, Homes England can recover the grant. In these circumstances the Council can either choose to repay the grant back to Homes England or allow the Council to recycle the grant into future affordable housing development. The recommendation in this report will provide the approval for the establishment of the recycled capital grant fund.

4 Options considered and Recommended Proposal

- 4.1 Where the Council have disposed of land to Housing Associations to enable the construction of affordable housing which are subject to a Title Restriction where sought the release / waiver of the Title Restriction would be refused. This approach has been discounted because it is considered that it may impact negatively on the Council's relationship with Housing Associations.
- 4.2 The Council could seek to engage with Housing Associations who participate with the Voluntary Right to Buy process by agreeing a set of conditions which enables them to engage with the Voluntary Right to Buy pilot for those properties subject to Title Restrictions. This is the preferred option.

5 Consultation

- 5.1 Appendix 2 outlines the consultation undertaken with Housing Associations who form part of the Birmingham Social Housing Partnership.

6 Risk Management

- 6.1 There are no risks to the Council associated with the Voluntary Right to Buy element of this report, as this proposal relates to the assets of Housing Associations rather than the Council. The intention of placing the proposed requirement upon Housing Associations is to mitigate the risk to the Council of loss of affordable housing in the city.
- 6.2 The risks associated with the acquisition of properties by the Council using Right to Buy receipts will be mitigated by the use of external valuers and surveyors like any other purchaser of residential property.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The acquisition of additional affordable housing within the City is in accordance with the objectives of the Housing Revenue Account (HRA) Business Plan 2020+.
- 7.1.2 Any receipts obtained through the disposal of Housing Association homes [under the Voluntary Right to Buy Programme pursuant to recommendation 2.1] will be used to fund BMHT development which will support the delivery of the core objectives of the Birmingham Development Plan (BDP), adopted by the Council on 10 January 2017 to increase housing growth.

7.1.3 The proposals within this report will make a direct contribution to Birmingham City Council Plan 2018-2022 outcome 4: Birmingham is a great place to live, and priority 2 which the proposals within this report will contribute towards, including the following:

- Birmingham is a great city to live in: the acquisition of additional affordable homes will help ease the pressure on the housing waiting list that currently has around 13,000 people registered as in housing need.

7.2 Legal Implications

7.2.1 The Council's power to acquire land or property for housing purposes is contained within Sections 17 -19 Housing Act 1985 (as amended) and the power to acquire land or property by agreement for any purpose for which it is authorised is contained in Section 120 Local Government Act 1972.

7.2.2 As the Local Housing Authority, the relevant legal powers relating to the discharge of the Council's statutory function to provide for its housing need are contained in Section 9 of the Housing Act 1985.

7.2.3 Under Section 156A of the Housing Act 1985 the Council has the right of first refusal in relation to the disposal of Right to Buys within 10 years of the completion date.

7.3 Financial Implications

7.3.1 The funding for any properties to be acquired as part of these proposals will be met from within the Housing Development element of the approved HRA Business Plan 2020+, subject to approval by Cabinet in February 2020. The ongoing budget for these property acquisitions is £1.0m per annum, between 2020/21 and 2029/30.

7.3.2 The purchase of properties will add to the sustainability of the HRA Business Plan, but any purchases will be required to undergo a value for money assessment. This assessment will include a robust estimate of works required to bring the property up to a lettable standard for the HRA. Please see Appendix 2 Assessment Criteria.

7.3.3 Any properties acquired by the Council as a result of using 1-4-1 Right to Buy receipts will be subject to approval through the Council's Gateway and related Financial Approval Framework, which will include the identification of financial implications (both capital and revenue) and associated resources.

7.4 Procurement Implications

7.4.1 There is a requirement for the provision of valuation and surveying services that cannot be carried out in-house due to resourcing and capacity issues to support the acquisition of property. The estimated value of these services is

below the EU threshold and a quotation process will be undertaken with the contract award approved under Chief Officer delegation.

7.5 Human Resources Implications

7.5.1 None.

7.6 Public Sector Equality Duty

7.6.1 There is no Equality Impact Analysis required for this Cabinet Report. The Voluntary Right to Buy pilot for the Midlands is a Government initiative and the recommended response for the Council is set out below. In addition, within this report is a recommendation to set up recycled capital grant fund to recycle Homes England grant in the event of Right to Buy disposal. Finally, the report also provides the ability to acquire properties on the open market and as a result, there is no need for a specific Equality Impact Assessment.

8 Appendices

- Appendix 1 – Acquisition Criteria
- Appendix 2 – Consultation with Housing Associations summary

9 Background Documents

9.1 None

Appendix 1 – Acquisition Criteria

- The property sits within or close to existing HRA stock.
- The property contributes to the council's housing need, for example, larger properties or be capable of being adapted to become a larger property.
- The property acquisition helps to stabilise an area from anti-social behaviour because of the quantum of Private Rented Sector properties within the area.
- The acquisition of the property compliments a nearby BMHT development and helps with a general uplift in the area.
- The property acquisition benefits regeneration and investment needs as part of an overall estate / neighbourhood regeneration proposal.
- All properties must represent value for money, be structurally sound and the acquisition of the property approved by Landlord Services.
- All properties will need to have a reasonable life expectancy (50 years) and the cost of bringing them up to standard for the HRA should be no more than 5% of the acquisition cost.
- A financial and economic case will be undertaken for each acquisition to establish and demonstrate value for money. It will also determine affordability and availability of funding.
- The financial case will include whole life costings including costs of acquisitions and any tax implications.
- The economic case will consider the wider economic, social, environmental impacts of the acquisition.
- The acquisition criteria will be subject to on-going review.

Appendix 2 – Consultation with Housing Associations summary

Birmingham Social Housing Partnership (BSHP)

The formal consultation process consisted of emailing members of the Birmingham Social Housing Partnership (BSHP) the Cabinet report and requesting their comments on the contents of the report. BSHP represents the bulk of Housing Associations plus other groups who work with the Council in Birmingham in providing social housing.

The email with the Cabinet report attached was sent out for consultation on 17 January 2020 with a request to return any comments by 31 January 2020.

The Council received just one response, from Midland Heart Housing Association on 30 January 2020.

Their conclusion on this was that should there be a property with conditions attached to it from the provision of discounted land from the City Council, they would look to exempt the property from the Voluntary Right to Buy and invite the prospective buyer to port to an alternative property instead. There is this provision within the Voluntary Right to Buy agreement.

No other responses were received from any other Housing Association.

The National Housing Federation (NHF)

The NHF is the organisation which represents the interests of Housing Associations and lobbies on their behalf to Government and Local Authorities.

The informal feedback to the Council was in the form of a telephone conversation with the Assistant Director, Housing Development and the NHF advised that they were accepting of the rationale behind the report and no formal objection was received.