Hexagon Housing Association

Board of Management

27 September 2016

Agenda item 10

Hexagon’s approach to voluntary Right to Buy sales

Report by the Operations Director

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| *1.* | *Summary* |
|  | This report seeks approval for a policy direction in relation to the circumstances in which we should impose restrictions on the voluntary Right to Buy sales (vRTB). When the Government publish the rules relating to the vRTB, we will bring back a more detailed report.  |
| *2.* | *Recommendations*  |
| 2.1 | To approve the policy direction of minimising the restrictions on sales. |
| 2.2 | To note the anticipated difficulties in offering a replacement property to a tenant whose home is restricted from sale. |
| 2.3 | Subject to the rules not overriding the proposed approach, to agree that the dispersed Supported Housing units should not be restricted from sale but the expectation would be that other Supported Housing units would be restricted. |
| 2.4 | To agree that the units categorised in Table 1 as currently restricted by legal agreements should be treated as potentially restricted and that a quota system should operate for schemes where there is an unspecified partial restriction as set out in section 4.3.4  |
| 2.5 | To note that if wheelchair standard units are sold, the intention would be to try to replace them as part of the anticipated vRTB replacement programme.  |
| 2.6 | To note that a further report will come to the Board once the rules governing the vRTB are published.  |
| *3.*  | *Context*  |
| 3.1  | Although the Government has not yet published the rules which will determine how the voluntary Right to Buy (“vRTB”) policy for housing associations will operate, the National Housing Federation is encouraging member organisations to start work on “thinking through how they will implement the scheme and to begin developing local policies.” [[1]](#footnote-1) One of the first tasks is to develop a “local sales policy.” One of the core principles of the vRTB agreement is that housing associations will have the final decision about whether to sell an individual property. However, if we decide not to sell an individual property, the expectation is that we will need to offer the tenant of that property a portable discount to another housing association property.  |
| 3.2  | The expectation set out by the NHF (who is working with Department for Communities and Local Government “DCLG” on the scheme) is that associations will publish a clear and transparent policy that sets out how we intend to use our discretion in relation to any restrictions on sales. The Government, however, wants housing associations to offer a tenant living in a Property which is restricted from being sold under the vRTB an alternative property with a “portable discount”, presumably the discount they are eligible for in their current home.  |
| 3.3  | Developing these policies without knowing what the “rules” are seems premature. It had been expected that the national scheme after the pilots would be starting in the autumn of this year but that now looks unlikely as the rules are not yet published. Although no official announcement has been made, the assumption by many housing associations seems to be that April 2017 would be the start date. There is an NHF briefing on 29 September on the topic when we hope to hear more.  |
| *4.* | *Portable discounts and offers of an alternative property* |
| 4.1  | The government policy in relation to housing associations’ restricting sales is that we will need to develop a policy in due course about how we will operate a portable discount scheme to an alternative property if the tenant’s own home is restricted from being sold. We will need to decide what we would consider as a reasonable offer for an alternative property, what the expectations on the tenant would be (presumably on viewing and timescales) and when we would consider that we have discharged the requirement to offer a portable discount. The NHF lists as possible sources of alternative properties for tenants who are porting their discount: * The new build programme which is expected to be the primary source
* Voids (although it is not expected that we will hold these for tenants to port their discount into)
* Tenancy swaps (although it is not at all clear how this would work, especially in relation to fraud prevention)
* Partnerships with other housing associations

We expect that it would be very difficult in practice to be able to offer many tenants in properties restricted from a vRTB sale an alternative property.  |
| 4.2 | Our new build programme does not have a large volume of sales and in so far as it is partly grant-funded, the grant comes with conditions which may well prevent a sale to a tenant. The location, size mix or price of our new-build units may not match the expectations of the tenants with a portable discount.  |
| 4.3 | We have an extremely low normal turnover of properties – when published figures were available in the past, our turnover was amongst the lowest in the country – so the probability of being able to offer a tenant with a portable discount a property from our supply of voids which they would accept is not high.  |
| 4.4 | The idea of working in partnership with other housing associations may be worth pursuing (depending on the rules when they are published) and there are some associations who have sizeable market sale programmes where the homes may be available to tenants with a portable discount. It is premature to make any decisions on this.  |
| 4.5 | Given the anticipated difficulties of finding alternative properties for a tenant with a portable discount and the absence of any information about the consequences if we are unable to find an alternative, the safest approach at this stage may be to assume that we will minimise the restrictions we place on vRTB sales.  |
| *4.* | *Reasons for restrictions on sales*  |
| 4.1 | There are a number of possible reasons potentially relevant to Hexagon for restricting which properties are sold:* There is a legal restriction on sales. This is usually because of a planning requirement e.g. a section 106 agreement to keep rented social housing in that use, sometimes in perpetuity or sometimes for a fixed period
* There may be a legal restriction arising from a loan agreement. Most of our properties are charged as security for our loans but for the purposes of this report, it is assumed that none of our loan agreements will prevent the sale of individual properties.
* The property is part of a scheme of supported housing where the disruption to the management arrangements or the cost of replacement would make a sale uneconomic for the landlord
* The property is specially designed for a particular use and it would be difficult to replace it
* The property has high historic costs and a sale would breach the cost floor
* Our legal interest is insufficient to offer the vRTB – properties on a short lease for example.
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| *4.2*  | *Restrictions on sale of supported housing*  |
| 4.2.1 | We do not know if supported housing will be exempt altogether from the vRTB scheme as the rules are not yet published. Much of our supported housing is in shared houses and we are assuming that such properties will be exempt. Some supported housing units are held on short leases so could not be sold anyway. It is proposed that our policy should be not to sell any of our supported housing located in schemes such as a shared house, a block of flats which is all managed as supported housing, or a care home. (It is unlikely that residents in care homes would be eligible in any case but without seeing the rules, we cannot be sure.) This would cover most of our supported housing units including all our 121 agency managed units.  |
| 4.2.2 | Conversely, there are 58 dispersed supported housing units in blocks where there are also general needs tenants and also some supported housing tenants in flats in street properties. There would be no overriding management reason to restrict the vRTB in these units although, unless replaced by an equivalent supported housing unit, a sale would reduce the stock of supported housing. At this stage, it is not proposed to restrict the sale of these units.  |
| 4.2.3  | Overall then if the policy set out in section 4.2.1 and 4.2.2 is followed , the restriction from the vRTB would apply to a total of 291 supported housing units - 156 directly managed supported housing units in addition to the 121 agency managed units plus a 14 unit scheme nearing the end of its lease with Turning Point.  |
| *4.3* | *Restrictions due to section 106 agreements or lease agreements*  |
| 4.3.1  | The largest category of possible restrictions relates to restrictions on sale imposed by section 106 agreements and other legal agreements. Many of these agreements go back more than 20 years. We have basic not detailed records in our asset register about these restrictions. We will need to refer to the full section 106 agreements to understand the specifics of the restrictions.  |
| 4.3.2  | Some section 106 agreements relate to *all* the units in a scheme and others relate to a *proportion* of the units in a scheme, sometimes but not always with the bed-size mix specified. Where the section 106 relates to a proportion of the units, the affected units are not specified by address. An example is given below for an 11 unit rented scheme in East Dulwich: S.106 - 7 Affordable housing units must be permanently available for affordable housing1x4b6pH @134m21x1b2p F @ 53.6m21x2b4p F @ 90.6m24x2b4pF @ 77.62m2For the purposes of the report, all the units in this situation are treated as potentially restricted. This increases the number of potentially restricted properties considerably.  |
| 4.3.3  | The table below shows the numbers in each of several categories devised for policy development purposes only, based on an interpretation of the short description in the record in the asset register of the terms of the section 106. **Table 1: section 106 and other legal restrictions on sale**

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| **Category** | **Number** |
| 1. Clear restriction : rented housing in perpetuity
 | 271 |
| 1. Restricted by leases “special needs use only “etc. All units are supported housing
 |  82  |
| 1. Partial restriction e.g. part of the scheme cannot be sold or units can be sold but restrictions on replacement
 | 305 |
| 1. LA consent to sell would be required
 |  49  |
| 1. Section 106 appears to allow sale now as restriction time expired etc.
 |  80 |
| 1. Further clarification required from full section 106 as application of conditions to disposal is not clear
 |  63  |

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|  | This suggests that about 688 units (categories 1, 3, 4 and 6) in addition to the 291 Supported Housing units which have already been counted in section 4.2 should potentially have some restriction placed on sale.  |
| 4.3.4 | **Restrictions on some of the units in a scheme** More work needs to be done to identify where possible the addresses of the units restricted by the section 106 and where this is possible, the rest of the units in the scheme can be released from a restriction. This would reduce the overall number of restricted units. For most schemes though, the restricted units are not specified. In this case, all units would have to be restricted by quota; units could only be sold up to the limit allowed in the quota for that scheme. For example, the Elmley Street/Southport Road scheme in Plumstead has a restriction which stipulates that 13 units on the scheme have to be preserved for affordable housing. This would mean that sales of 40 of the 53 units could take place but then no more sales would be allowed. This level of sales is in practice not likely to happen.  |
| 4.3.5  | **Scope for renegotiating some of the restrictions**  |
|  | It may be possible to renegotiate some of the section 106 terms restricting sale although most if not all of our partner local authorities are unlikely to be keen to further facilitate the vRTB. Other housing associations may well also be looking to renegotiate and this may be to our advantage if there was a general agreement to relax some of the conditions. The work of renegotiating section 106s would be time consuming so it is suggested that our approach should be to only seek to negotiate if and when we receive an application from a tenant in a property with a restriction that might be lifted e.g. when local authority consent is required to dispose.  |
| *4.4*  | *Specialist accommodation*  |
| 4.4.1  | Hexagon has 109 units of accommodation which show on our records as wheelchair standard, not counting those units in Supported Housing. It is not proposed to restrict the tenants in these properties from the vRTB on these grounds (although some will be restricted for reasons of a section 106.) Assuming that we allow these specially designed homes to be sold under the vRTB, we should also commit to replacing them as part of the replacement programme for vRTB units.  |

1. NHF briefing Voluntary Right to Buy: scheme design [↑](#footnote-ref-1)