ARTICLE NO: 2C

CORPORATE AND ENVIRONMENTAL OVERVIEW AND SCRUTINY COMMITTEE

MEMBERS UPDATE 2012/13
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Article of: Assistant Director Housing & Regeneration

Relevant Managing Director: Managing Director (People and Places)

Relevant Portfolio Holder: Councillor A Owens and Councillor V Hopley

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SUBJECT: Right to Buy and One for One Replacement Agreement with the Department of Communities and Local Government (DCLG)

Wards affected: Borough wide

1.0 PURPOSE OF ARTICLE

1.1 To advise Members that the Council has entered into an Agreement with the Department of Communities and Local Government (DCLG) to retain additional receipts arising from Right to Buy in order to support the Council's replacement housing programme.

2.0 BACKGROUND

2.1 On 2 April 2012 the Government has introduced a number of measures to "reinvigorate" the RTB Scheme.

2.2 A brief comparison of the Scheme prior to and after 2 April 2012 is provided in the table below:

Detail	Pre April 2012	Post 2 April 2012
Eligibility	Tenants must have been secure social housing tenants for 5 years before they qualify for RTB	No change
Discount	The incentive discount for houses was 35% of the property's value plus 1% for each year.	No change

	The incentive discount for flats: 50% plus 2% for each year beyond the qualifying period up to a maximum of 70%. The maximum cash discount was determined at £26,000	No change Maximum cash discount increased to £75,000
Cost Floor / Administrative Costs	An allowance is made for administration costs based on actual costs associated with the cost to sell the property. No allowance for abortive costs associated with unsuccessful applications, rejected offers and withdrawals. The council could reclaim monies spent on improving properties up to 3 calendar years prior to the date of completion of the sale. The council can reclaim monies spent on building the property within the last 10 years. The RTB discount was limited to ensure that the purchase price of the property did not fall below what was spent on building, buying, repair and maintaining it over the past 10 years. This is called the cost Floor.	A flat rate allowance of £1,300 for each RTB completed. Costs for unsuccessful applications and rejected offers and withdrawals are factored into this allowance. Gone The Cost Floor time limit has been increased from 10 years to 15 years.
Capital Receipts	75% of the sale price goes to the Government and 25% stays with the Council. An allowance is made for administration costs and cost floor deductions as set our above.	A new scheme, consisting of an agreement between the local authority and the Government, has been introduced to allow local authorities to retain some of the capital receipts to build new homes. This is to expedite the Government pledge to replace every council house sold, on a nationwide basis and not in local areas, by a new "affordable" housing home. Replacement only applies to numbers of properties sold which exceed Government estimates contained in the Government's HRA Self-Financing Debt Model

3.0 THE AGREEMENT IN DETAIL

3.1 Under the terms of the Agreement, the Council is allowed to retain additional RTB receipts above the Government's assumed level and value of RTB's within the HRA Self Financing debt settlement model, from the Government's 75% share, to fund the provision of replacement stock.

3.2 The Council can use these receipts to invest in the following types of replacement affordable rented housing:

- Newly built council homes;
- Purchasing properties previously sold under RTB that are being offered back to the Council;
- Purchasing affordable housing as part of a private development;

- Newly acquired council homes (i.e. existing homes bought on the open market); or
- Social housing through local authority grants to Registered Providers (RP) such as housing associations.

3.3 The terms and conditions of the DCLG Agreement were not subject for negotiation or change.

3.4 The Government has allowed three years (from the completion of the relevant sales) for the use of those receipts before requiring the money to be returned. The Agreement does not require the Council to complete the building of any home within three years; rather, that the Council should have incurred expenditure sufficient that RTB receipts form no more than 30% of it (including fees). Where these retained receipts exceed 30%, the Council must return the additional receipts (i.e. the receipt above 30%) to the Secretary of State together with interest at 4% above base rate p.a.

3.5 The Government states the 30% cap was necessary to ensure maximum value for money from the RTB receipts and enable the building of as many new homes as possible. The Council will be expected to fund the remaining 70% from its own reserves or through borrowing serviced by anticipated rental income from the new homes built. When building new homes local authorities will be able to decide whether or not to charge an affordable rent (i.e. up to 80% of market rent), but will need to be mindful of the cost of borrowing when reaching a decision. However, it is not permissible for the Council to use capital receipts from non-RTB sales towards the Council's 70% contribution towards development costs.

3.6 The Agreement was not mandatory. Each authority had to decide whether or not to enter into an agreement and it was entirely its decision as to how much of the surplus receipt it retains in each quarter of a financial year. However, the consequence of not entering into an agreement would result in any surplus receipts being surrendered to the Secretary of State and passed to the Homes and Communities Agency (HCA) for them to invest in replacement stock which may be anywhere in the country.

3.7 Should the Council choose not to build itself, but instead to grant fund a Registered Provider (RP), it is essential that grant payment is not made until the schemes completion to enable a clear demonstration that the contribution did not constitute more than 30% of the total scheme costs. This shifts the risk of repayment due to exceeding the 30% cap to the RP.

3.8 A copy of the DCLG Agreement is attached at Appendix 1.

4.0 TERMINATION OF THE AGREEMENT

4.1 The Secretary of State can terminate the agreement at any time, but the DCLG says that this is only expected in extreme circumstances (for example, where there was absolutely no evidence that a local authority was commencing activity).

The effect of termination would mean that the Council no longer retain any of these additional receipts but would still have the three years from the start of the agreement to invest the receipts it had already retained (or have to return them together with accrued interest at 4% above base rate).

4.2 Equally, the Council can terminate an agreement either by voluntarily returning future additional receipts (and paying back what it had already retained) or by requesting the Secretary of State to terminate as set out above.

5.0 HOW DOES THIS WORK IN PRACTICE?

5.1 It must be remembered that the Government is allowing councils to retain receipts for reinvestments over and above that estimated within the debt settlement. The Government will continue to receive their share of pooled receipts up to those targets in the normal way based on the formula set out in their consultation on RTB receipts.

5.2 The DCLG states that its main aim has been to make the process as "light touch" as possible, with minimal inspection or interference in the Council's business activities. It states the "agreements are therefore concerned with the flow of money in from RTB receipts and out in investment in replacement stock".

5.3 DCLG issued guidance on the pooling arrangements on 22 June 2012. The calculation of pooled receipts is decided through Government formula comparing actual to the Government's Debt settlement model on a year by year basis.

5.4 Claims for RTB receipts to be retained for investment in replacement stock are to be completed quarterly in arrears. To over claim will lead to repayment at a punitive cost in interest; to under claim will reduce the resources available to the Council to replace lost RTB stock.

5.5 There is no requirement to return receipts in the first three years of the agreement, but from quarter 1 of 2015/16, the Council will have to compare:

- the total amount spent on replacement stock from the start of the agreement to the end of each quarter; with
- the total amount it has retained from Right to Buy receipts in the corresponding quarter, three years earlier.

5.6 Where the latter amount is 30% or less than the former amount, no further action is necessary. Where the latter amount is more than 30%, the surplus amount (i.e. the amount above 30%) must be surrendered to the Secretary of State. The retained amounts will be reduced subsequently by the amount surrendered and interest paid.

5.7 The Council is free to return any RTB receipts to the DCLG whenever it wishes within the three-year reference period if, for example, the Council recognises that it would otherwise be compelled to return receipts after three years and therefore wants to reduce the amount of interest it must pay by paying receipts back early.

6.0 CURRENT POSITION

6.1 The change in policy has only been in place for a short time.

6.2 The Government's self-financing settlement included a level of RTB sales prior to the increased maximum RTB discount being introduced. For WLBC the Government has assumed the following levels of RTBs and expected receipts for the next three years:

Year	RTB's	Pooling of Receipts			Avg. Sale Price
		WLBC	Government	Total	
		£'000	£'000	£'000	£'000
2012-13	24	378	810	1,188	49.5
2013-14	28	296	657	953	34.0
2014-15	32	332	722	1,054	32.9

6.3 Prior to the change in RTB discount, the Council's actual RTB sales over the past 3 years have been as follows:

2011/12 - 10
2010/11 - 18
2009/10 - 8

6.4 WLBC budgets for 2012/13 have been estimated on the basis of 16 RTB's in year at an average sale price of £40,000.

6.5 It is currently difficult to assess the likely additional RTB receipts that the Council will receive as a result of the recent RTB changes. However, there has certainly been a lot of interest from this Council's tenants as a result of the increase in RTB discount.

6.6 At the time the decision to enter the Agreement was considered in June, the Council had completed the sale of one property under RTB with 10 accepted RTB offers in Legal Services and 3 being prepared for submission to Legal services, details of which are shown below:

Status	**No**	**Valuation**	**Discount**	**Sale Price**	**Avg. Sale Price**
		£'000	**£'000**	**£'000**	**£'000**
Sold	1	56	31	25	25
Accepted Offers					
With Legal services	13	676	325	351	27
Pending submission Legal Services	3	200	118	82	27
Total Accepted	16	876	443	433	27

6.7 Additionally we had 29 applications being processed, 10 of which were on offer awaiting an applicant’s response. However, it is inevitable that this high rate of applications will reduce, once the initial surge of interest wanes and in particular as some applicants come to realise that they may not qualify for the maximum discount of £75,000. Nonetheless, it is likely that the increase in the maximum discount will result in an ongoing increase in the number of RTB applications and resultant sales for the foreseeable future when compared to both recent years and the Government’s pre-RTB change sales estimates.

6.8 The latest monitoring has shown the following activity:

Status	No	Valuation	Discount	Sale Price	Avg. Sale Price
		£’000	£’000	£’000	£’000
Sold	6	422	212	210	35
Accepted Offers					
With Legal services	17	1,257	618	639	38
Pending submission Legal Services	0 0	0	0	0	0
Total Accepted	23	1,679	830	849	37

Additionally 26 applications are being processed, 16 of which were on offer awaiting an applicant’s response.

6.9 However, it should be noted that historically a significant number of applications and accepted offers with legal withdraw from RTB.

7.0 AGREEMENT TIMTABLE

7.1 Local authorities were required to return a signed agreement to DCLG by 27 June 2012.

7.2 Due to the short timescale to enter into the Agreement it was not possible to process the above proposal through the normal Committee process of Cabinet, Executive Overview and Scrutiny Committee etc.

7.3 The Assistant Director of Housing & Regeneration in consultation with the Borough Treasurer and Housing Portfolio Holders Mrs Val Hopley and Adrian Owens agreed to submit an application on behalf of the Council on 28 March 2012.

7.4 On 29 June 2012 the Secretary of State signed and returned a copy of the agreement.

8.0 RISKS AND OPPORTUNITIES

8.1 A key point to remember is that the additional funding available under the new arrangements only becomes available to the Council once the Government’s assumed income associated with the number and value of sales has been exceeded. Additionally, the Government's assumed income levels produced by RTB's are based on the discount levels that applied before the change in legislation i.e. before the discounts were increased. The increased discount cap will result in a lower receipt for each property, which means that many more properties will need to be sold in order to achieve the Governments targets for RTB receipts.

8.2 It is possible that WLBC will not experience the necessary increase in the number of properties sold in order to exceed the assumed income level and unlock additional funding. There are a number of pressures that may reduce the number of properties sold, e.g., the current economic uncertainty, availability of mortgages, and the fact that many tenants will not qualify for the maximum discount to incentivise them to complete the purchase of the property.

8.3 A key risk is that the enhanced discounts would encourage an increase in the number of sales, but not enough to provide the Council with additional funding. Entering an agreement and withholding receipts will result in a punitive penalty when those receipts are surrendered to the DCLG with accrued interest at 4% above base rate p.a..

8.4 If however, the Council's RTB sales are sufficient to generate receipts above the Government assumed levels, then access to these funds represents an opportunity to the Council that did not exist under the old arrangements.

8.5 The number and pattern of the Council's RTB sales will need be closely monitored in order to derive a robust understanding of the likely impact of the new policy changes.

8.6 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers as a result of this report.

9.0 FINANACIAL AND RESOURCE IMPLICATIONS

9.1 The changes to the RTB policy may reduce WLBC's housing stock and the variety of homes it owns at a faster rate than would have otherwise occurred under the old policy.

9.2 The changes to the pooling arrangements offer the potential for WLBC to secure additional resources to replace stock through RTB, though bringing with it some risk if new stock is not delivered to cost and deadline constraints.

9.3 While the operation of the proposed RTB agreement poses some challenges for the Council, not to enter into the agreement would prevent WLBC from accessing these potential additional resources for stock replacement.

9.4 The risks attached to the resources that flow from the Agreement will not arise unless the Council makes a claim for the resources, and can be managed by prudent claims and monitoring of outcomes against targets and timetables.

9.5 Given the relatively low controllable risk to WLBC, it was considered appropriate that the Council begin the process by signing up to retain any additional receipts locally.

9.6 The Assistant Director of Housing & Regeneration in consultation with the Borough Treasurer and the Housing Portfolio Holders Mrs Val Hopley and Adrian Owens agreed to submit our application on 28 March 2012.

9.7 The Agreement will be subject to annual review as part of the normal midyear budgetary review

10.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

10.1 There are no significant sustainability impacts associated with this article and, in particular, no significant impact on crime and disorder. The article has no significant links with the Sustainable Community Strategy.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Appendix 1 Copy of the Right to Buy and One for One Replacement Agreement with the Department of Communities and Local Government (DCLG)