

Joint audit and governance committee



Report of head of economy, leisure and property

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Application of restrictions imposed by Section 157 of the Housing Act 1985 in South Oxfordshire – consideration of the local government ombudsman’s report

Recommendation

That the joint audit and governance committee considers the local government ombudsman’s findings and recommendations on the two similar complaints from South Oxfordshire residents concerning a restriction on the sale of properties under s157 of the Housing Act 1985, and recommends to the South cabinet how it should respond to the findings and recommendations.

Purpose of report

1. The purpose of this report is to
 - advise the committee of the local government ombudsman’s (LGO’s) report on an investigation into two complaints from South Oxfordshire residents concerning a restriction on the sale of properties under s157 of the Housing Act 1985
 - seek the committee’s recommendations to South cabinet on any action that the council should take in response to the findings of the report and its recommendations.

Background

2. Section 157 (s157) of the Housing Act 1985, and previously the terms contained in section 19 of the Housing Act 1980, allows councils to impose a restriction on the future sales of properties purchased under the right to buy scheme if the property is in a national park, area of outstanding beauty or an area designated as a rural area. This provides that the property cannot be sold without the consent of the local council. The council must agree to the sale of a property if the person purchasing the property has lived or worked in the area for three years immediately before applying to buy the property (a 'qualifying person'). However, the council has discretion to agree to the sale of a property to a person if they do not have a local connection, i.e. they are not a 'qualifying person' as defined by the act.
3. A s157 restriction also provides that the property must be used as the purchaser's main residence. However, it can be rented with the consent of the council, provided the tenant is also a 'qualifying person'.
4. The purpose of the restriction is to suppress the housing market in the AONBs to help local properties be available and affordable for local people. It also seeks to prevent them from being bought as second homes.
5. When the council sold its properties in the AONBs within South Oxfordshire district under the right to buy scheme, estimated at some 400 properties, it imposed a s157 restriction on future sales. This restriction was included in the transfer documents and noted on the registered title of each property by the Land Registry. In addition, the council transferred its remaining properties to Soha in 1997, and imposed the same restriction on some 600 of these properties.
6. Until 2013, it appears from correspondence that the council's policy was to exercise its discretion to grant consent to all prospective purchasers of properties subject to a s157 restriction and not enforce the full terms of the restriction, provided that it was to be their principal home and not rented out. On that basis, officers considered that it was not necessary for the council to provide full details of the s157 restriction to prospective purchasers or to check if purchasers had local connections. However, officers have been unable to find any record of a formal decision being taken in relation to this policy.
7. Responsibility for dealing with s157 applications for consent transferred from the housing team to the property team in 2013, although the legal team dealt with the applications on housing's behalf. At that point, there was a joint property and legal team review of our policy for dealing with consent for sales of properties with a s157 restriction. In June 2013, following the review, officers published the s157 terms and the application for consent process on our website, introduced an application form, and required buyers to have a local connection. This was to increase transparency and clarity, to provide information to owners and potential purchasers of properties with s157 restrictions, and to ensure that the full requirements of the restriction were being met in order to maximise the chances of achieving the intended purposes of the restriction. It also brought our practice into line with the policy agreed in the 1990s when the council was dealing with the initial right to buy requests and its stock transfer.
8. Cabinet members informally considered the issue of s157 restrictions in May 2014. They agreed to an interim policy to grant consent to applicants who intend to use the property as their principal home and meet either of the following criteria:

- residency and/or main place of work is anywhere within the South Oxfordshire district throughout the period of three years immediately preceding the application for consent, or
 - a current or former member of the armed forces with a local connection to South Oxfordshire.
9. The intention was to put this interim policy in place until the council had reviewed its housing strategy, which should have happened within a matter of months. Officers were content that this could be done without a formal cabinet decision. Unfortunately, the strategy review was delayed and matters have drifted. South cabinet is currently in the process of establishing its formal policy in relation to s157 restrictions in parallel with council consideration of the ombudsman's findings.

Local government ombudsman's decisions

10. A copy of the LGO's final report into two similar complaints from South Oxfordshire residents forms part of the committee's report pack. Both residents complained that the council failed to fully inform them of the conditions of a s157 restriction when they bought their properties, one in 2007 and one in 2010. The LGO investigated the complaints, taking into account information provided by the complainants and the council. She concluded that there was fault by the council, which caused injustice to the complainants.
11. The reasoning is complex but, in essence:
- the council imposed the s157 restriction at the time it sold properties under the right to buy scheme and did not exercise its discretion to agree any variations
 - at some point in the intervening years, and apparently without a formal council decision, officers did exercise discretion not to enforce the local connection requirement when a property was sold
 - officers did not inform the buyers solicitors that the council was exercising its discretion and could change its policy and revert to the original restriction or a different restriction at any time
12. The LGO considered the council should have given the relevant solicitors complete information about the s157 restriction. This should have happened when the solicitors made enquiries and requested the council's consent for the sale of the properties to the complainants. Whilst accepting that the solicitors had a responsibility in ensuring the complainants were aware of the details of the s157 restriction and its implications, the LGO did not consider that this absolved the council from the responsibility to provide full and accurate details.
13. In addition to requiring the council to place a public notice in more than one newspaper (which has been done) and make a copy of the report available at its offices (also done), the LGO recommended that, within three months of the publication of her report, the council should instruct the district valuer to carry out two valuations as follows:
- to assess the value of the properties at the point at which the complainants sold with the partial restriction advised by the council when they bought the properties

- to assess the value of the properties at the point at which the complainants sold with the full s157 restriction

and should then compare the two valuations to see if the value of the properties was diminished by the full s157 restriction. If the value was affected, then the council should pay 50 per cent of the difference to the complainants. This is instead of paying 100 per cent of the difference, as the LGO accepts that the council was not fully responsible for the advice given to the complainants.

In addition, the LGO recommended that the council should pay £250 to each complainant to acknowledge the significant stress caused to them.

14. The LGO placed a copy of the report on its website and issued a press release about the report and its findings.

Actions already taken

15. In view of the LGO's findings in this report, officers are now providing all applicants under the s157 consent procedure with full information about the s157 restriction, both on our website and in letters to the applicants. We are also advising applicants by letter that when it comes to them wanting to sell the property at any stage in the future, prospective purchasers will need to comply with the council's policy in relation to the requirements of s157 restrictions at that time and this policy may change, so they should pass the letter to their legal representatives for further advice.

16. Officers have asked the district valuer to undertake the valuations recommended by the LGO and that work is in hand.

Matters for Consideration

17. This committee is the body charged with considering any findings arising from an LGO investigation. It cannot, however, take decisions that affect policy or have significant financial implications – these are matters for the cabinet – although it can recommend a course of action to the cabinet.

18. The key issues for the committee to consider are:

- does it agree with the LGO that the council should pay the complainants 50 per cent of the difference between the two valuations that the district valuer is undertaking?
- does it support paying the complainants £250 each in acknowledgement of the stress caused to them (these are small sums and the committee's decision will not require onward referral to cabinet)
- does it wish to make any recommendations regarding wider policy relating to s157 restrictions for cabinet to consider?

Financial implications

19. At this stage we do not know whether the values of the two properties concerned were diminished by the full s157 restriction and, if so, by how much, so we are unable to forecast the likely costs, including valuation fees. We do know, however, that in relation to one of the properties the complainant accepted £6,000 less than

the original offer that they received because the buyers were concerned about the future saleability of the property.

Legal implications

20. The LGO's report contains recommendations to the council. The committee must consider these but the council is not obliged to follow them. The cabinet will consider the legal implications arising from a new policy when it considers the recommendations from this committee.

Risks

21. There is a risk that the council will receive similar complaints from other applicants prior to mid-2013 who were not checked for their local connections, or informed of the full implications of the s157 restriction, or advised that the council's approach to s157 restrictions may change in the future. Officers suggest that we should deal with any such complaints in the same way as we decide to deal with the two complaints considered by the LGO.

Conclusions

22. The complaints to the LGO have raised complex issues relating to a decision taken many years ago and subsequently modified but with no audit trail of when and why.

23. The committee must consider the LGO's findings and decide what recommendations it wishes to make to cabinet regarding both its direct response to her recommendations and any wider policy matters.

Background papers

- LGO report