

Cabinet Report



Listening Learning Leading

Report of Head of HR, IT & Technical Services

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Wards affected: those in Areas of Outstanding Natural Beauty

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To: CABINET

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Removal of s157 restriction

Recommendation

That Cabinet decides whether to remove the restrictions arising from the application of section 157(3) of the Housing Act 1985.

Purpose of Report

1. Cabinet members have proposed the removal of historic covenants restricting the sale of former council houses in the district's Areas of Outstanding Natural Beauty (AONB). This report sets out the arguments in order for the Cabinet to make a decision on its policy.

Corporate Objectives

2. There is a corporate objective of "homes and jobs for everyone". The availability and market value of former council houses in the AONBs is affected by the council's policy on the existing s157 restriction.

Background

3. Since the advent of the Housing Act 1985 Right to Buy (RTB) provisions (including s19 of the Housing Act 1980 which pre dates the 1985 Act), the council has imposed covenants pursuant to s157(3) of that Act with the intention that it would operate to ensure that ex council houses situated in the council's AONBs would remain to be occupied or owned by people who could demonstrate that they live or work in the area and that they would not become second or holiday homes.

4. These covenants work so that the buyer of the house gives a covenant to the council that it will not dispose of the house by way of a sale, a tenancy or a licence except to a qualifying person. Each time the house is disposed of, consent will be needed from the council before a transaction can complete.
5. A qualifying person is a person who (if the disposal is to more than one person then at least one of those), has throughout the period of three years immediately preceding the application for consent
 - had his place of work in the designated region; or
 - had his home in such a region; or
 - has had one or the other concurrently.
6. The designated region is found in the Housing (Right to Buy) (Designated Regions) Order 1980. The designated region is
 - the area of outstanding natural beauty; and
 - so much of the county in which the house is situated but which is not in the area of outstanding natural beauty.
7. The current policy of the council is to enforce the restriction described in the previous paragraphs.
8. The council's application of this restriction has been inconsistent over the long term. In recent years, a more rigorous approach has revealed that the existence and enforcement of the restriction has had, among others, the following effects on the ability of vendors to sell their properties:
 - most lenders are unwilling to offer a mortgage on properties subject to the restriction
 - the pool of prospective purchasers is limited by the qualifying conditions described in paragraph 5
 - the market value of properties subject to the restriction is reduced.

Mortgage lenders

9. Officers contacted a local mortgage broker to obtain advice on the willingness of lenders to offer loans on properties subject to the s157 restriction. The broker contacted 34 lenders, of which:
 - 27 stated that they would not consider funding any lending where a s157 restriction applies
 - four would consider s157 cases favourably but would require an easing of the restriction such that properties could be sold on the open market in the event of a sale proving impossible within a prescribed period

- two would consider s157 cases but only with a severe restriction on the loan to value ratio, requiring that purchaser provide a very substantial portion of the equity
 - one national lender is willing to offer mortgages but applies tight criteria regarding the borrower's age, credit history and employment status.
10. Officers also have anecdotal evidence from recent cases, supporting the view that obtaining a mortgage to purchase a property subject to the s157 restriction is for many prospective purchasers an insuperable barrier. Of eight properties which have been considered in 2016, mortgage difficulties have been cited in three instances to our knowledge.

Qualifying persons

11. Since 2013 the council has been applying the qualifying criteria more stringently than had previously been the case. The effect of the criteria is to limit the sale of former council houses to people with a strong local connection. This reduces to an extent the pool of potential purchasers and this acts as a barrier to sale.
12. Officers have dealt with eight cases in the past three years in which prospective purchasers have been refused consent on grounds of non-qualification, from a total of 25 properties on which consent has been sought.

Market value

13. Officers have limited evidence of the reduction in market value of properties subject to the s157 restriction. Based on two specific cases, the District Valuer assessed a lowering of value at 3.8 per cent. Estimates from estate agents suggest a greater lowering of value.
14. Whatever the amount, it seems that there is a genuine reduction in value of the property arising from the existence of the restriction, although there is no evidence that the reduction is sufficient to permit someone to buy who would not otherwise be able to.

Consultation

15. Cabinet has considered whether to leave the restriction in place or to remove it. In order to inform its decision, officers undertook a public consultation for six weeks commencing in May 2016, asking members of the public for their views on a proposal to remove the restriction.
16. 186 people responded to the public consultation, of whom 23 lived in ex council houses. The findings from the consultation can be summarised as follows:
- Nearly three out of every four respondents disagreed with the proposal to remove the rule. One in five respondents said they agreed.
 - Respondents who said they live in ex council houses were more likely to agree with the proposal to remove the rule.

- The majority of comments expressed concern with the proposal. Many people said s157 covenants should be retained to prevent local housing stock being used as second homes and ensure availability to local people. These comments appear to be driven by a concern that there is not enough affordable housing in the local area.
- Nine comments referred to experience of difficulties selling houses where there is a s157 covenant.
- Those in favour of the proposal felt that removing the rule would help owners of affected properties sell their homes. Their views were driven by a sense that the policy was either outdated or represented unwanted intervention in the property market.

Process for removing the restriction

17. It will not be possible to remove the restriction from all the affected houses at once. The restriction can only be removed in writing. The council does not have records of all the houses affected by it as these records were destroyed by the fire at Crowmarsh in January 2015.
18. Instead, the restriction would have to be removed gradually over a long period. This would be done each time a house is sold and application to the council is made for consent. The council would then provide the necessary Land Registry documents to allow the restriction to be removed. If home owners wish to regularise the position in any event, the council will also provide the necessary documents on request.
19. In the meantime, the council would make reasonable efforts to inform affected home owners and the market by altering its website and publicising the decision amongst local estate agents and the external professionals who helped with officers' evidence gathering. In that way, in the event of a policy change, affected home owners who wish to sell will be able to market their homes unfettered.

Options

Do nothing

20. The council could choose to leave the restriction and the current policy in place. It is likely that purchasers will continue to have difficulties in a tight mortgage market, and vendors will argue that the restriction is making their homes more difficult to sell.

Relax the application of the policy

21. The council could leave the existing policy in place but relax its application. This might be administratively easier but would be confusing to residents and would further exacerbate the historic inconsistency in enforcement. Policy and practice should be aligned, and this option is therefore not recommended.

Change the policy

22. The council could change its policy so that the restriction is removed and residents are no longer affected by the difficulties outlined in paragraphs 8 to 14.

Financial Implications

23. There are no immediate financial implications arising from a change of policy.

Legal Implications

24. Officers have obtained external legal advice on this matter. As with all policy decisions, Cabinet in exercising its discretion to change policy must take into account all material considerations, omit immaterial ones and have a sound basis for making the decision to ensure the decision is lawful. This matter is no different. This report sets out the considerations in favour of a policy change. Cabinet will have to evaluate all evidence available to them.
25. There are two forms of restrictive covenant in the council's transfers. Those covenants entered into when s157 was in its original unamended form will only restrict a disposal of the freehold interest or a grant of a lease of more than 21 years for a nominal rent. Those entered into after s157 was amended also restrict disposals by way of a tenancy or a licence. The proposed change of policy would need to release all forms of the restriction.

Risks

26. There is some risk that a change of policy will result in complaints or claims from residents who have previously sold properties which were subject to the restriction and consider that they have incurred financial loss. In the event of such claims, each case would have to be considered on its own merits. However, any vendor who has suffered from a possible loss of value at sale time is likely to have benefited in the same way from a reduced price at the time of purchase. The volume of transactions is small at around eight to ten per year.
27. Complaints might also come from people who have been prevented from buying or selling by virtue of the policy that has been in place until now. This risk is mitigated by the fact that the council has discretion to change its policy on this matter, within the framework of the law.
28. There is a risk that a change of policy will be seen as contradictory to the outcome of the consultation, described in paragraph 16. Cabinet will need to weigh up the size of the response in considering how much weight to attach to this point.

Other implications

29. Officers will also contact Soha to discuss whether it wishes to amend its approach to houses sold since the 1997 large scale voluntary transfer.
30. The communications team has prepared a statement which can be used in response to any media enquiries.

Conclusion

31. Cabinet members have previously expressed a desire to remove the s157 restriction on the basis that it is no longer meeting its original purpose and is placing obstacles in the way of the sale of former council houses.
32. This report has set out arguments supporting the removal of the restriction, and has described the risks of so doing. Cabinet is now invited to make its final decision.

Background Papers

- None