

Key Decision Required:	NO	In the Forward Plan:	NO
-------------------------------	-----------	-----------------------------	-----------

**ASSISTANT DIRECTOR (HOUSING AND ENVIRONMENT)
OPERATIONS AND DELIVERY**

9 FEBRUARY 2024

A) AGREEMENT TO APPLICATION TO HOMES ENGLAND FOR A WAIVER OF THE DESIGNATED PROTECTED AREA – HALSTEAD ROAD, KIRBY CROSS
(Report prepared by Emma Norton)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To request that the Assistant Director (Housing & Environment), in consultation with the Portfolio Holder for Housing, makes an application to Homes England for the waiver of Designated Protected Areas made under the Leasehold Reform Act 1967 and the Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009 in relation to a request received from Sage Homes regarding a development in Halstead Road, Kirby Cross.

EXECUTIVE SUMMARY

In 2008, legislation was introduced to ensure that rural affordable housing – specifically Shared Ownership homes grant funded by Homes England – remained in the ownership of local people.

Shared ownership schemes are seen as an important element in the delivery of more affordable homes and a means of increasing home ownership. These schemes normally operate by purchasers buying an initial minimum share of 25% of the equity of a home owned usually by a Registered Provider (RP) and pay rent on the remainder. The provider retains the freehold and grants a long lease to the purchaser. The leaseholder may then buy further equity shares (known as ‘staircasing’) until the property is owned outright.

However, if a leaseholder of a shared ownership property comes to own it outright, they will then be able to sell it and it will cease to meet an affordable housing need.

To prevent this, the Housing and Regeneration Act 2008 introduced Designated Protected Areas which require the Registered Provider granting the shared ownership lease to include one of the following clauses:

- to restrict the maximum share able to be purchased to 80%; or
- if the lease allows purchase of a share exceeding 80%, an obligation for the leaseholder to sell their share back to their RP landlord (or a nominee, which must also be an RP) at market value when they wish to sell the property (to enable the RP to resell the property on shared ownership terms to another local person in housing need).

The aim of these clauses is to avoid such homes being lost to the affordable housing sector and to remove the risk of financial loss to housing providers resulting from early acquisition of full ownership by the leaseholder.

Several areas and parishes within Tendring are “Designated Protected Areas”.

However, Homes England has agreed that under certain conditions it will waive particular conditions of grant relating to Designated Protected Area (DPA) status following an application

submitted by the relevant local authority.

The Council has recently required a request from Sage Homes for a DPA waiver application to be made to Homes England in respect of a site in Halstead Road, Kirby Cross where they are hoping to acquire twelve properties with Homes England funding.

RECOMMENDATIONS

That, in accordance with the decision of the Council's Cabinet on 17 June 2022 (minute 24 (d) refers), the Assistant Director (Housing & Environment), in consultation with the Portfolio Holder for Housing, is authorised to make an application to Homes England for the waiver of Designated Protected Areas made under the Leasehold Reform Act 1967 and the Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009 in relation to the request received from Sage Homes.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The application for this waiver has the potential to contribute to the following priorities in the Council's emerging Corporate Plan for 2024 – 28:

- Pride in our area and services to residents
- Working with partners to improve quality of life

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The only resource implication for the Council is in the completion of the application to Homes England and this can be managed within existing resources.

Risk

Only two options can be considered when a waiver request is received and they are that the Council either supports the request for a waiver application or it does not. Generally, the default position is to support the request although the final decision will be based on an assurance that there is a justified need presented by the registered housing provider for the restrictions on stair casing being lifted. Ultimately, Homes England makes the final decision in any event.

LEGAL

Designated Protected Areas were introduced in the Housing and Regeneration Act 2008 which, in Section 302, introduced a new paragraph 4 to Schedule 4A of the Leasehold Reform Act 1967.

Schedule 4A required that, to be excluded from enfranchisement, the shared ownership lease must 'meet any other prescribed conditions'. These prescribed conditions were then set out in the Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 and the Housing (Right to Enfranchise) (Designated Protected Areas England Order 2009. The latter specifies a requirement for landlords in a Designated Protected Area to include in the shared ownership lease conditions that either:

- 1) Restrict the leaseholder's equity share to 80%, or

- 2) Ensures that if 100% stair-casing is allowed, then the property is bought back by the landlord if it comes up for sale.

As the availability of shared ownership stock is no longer such an issue in some of the areas designated as DPAs, Homes England is able to waive the particular conditions of grant relating to the DPA status of a site. Where a waiver is granted, the RP can grant shared ownership leases without the requirement to include one of the two DPA Clauses.

However, although the housing stock is not within the Council's ownership or control, applications for a waiver of DPA conditions need to be made through the local authority on to waive these conditions must be submitted to Homes England by the relevant local authority using the Designated Protected Area Waiver Form.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of Crime and Disorder, Equality and Diversity, Health Inequalities, Consultation/Public Engagement, Climate Change and any significant issues are set out below.

None

Ward

Kirby Cross

PART 3 – SUPPORTING INFORMATION

BACKGROUND

In 2008, regulations were introduced to ensure that rural affordable housing – specifically Shared Ownership homes grant funded by Homes England – remained in the ownership of local people.

Shared ownership schemes have been seen as an important element in the delivery of more affordable homes and a means of increasing home ownership. These schemes normally operate by purchasers buying an initial minimum share of 25% of the equity of a home owned usually by a Registered Provider (RP) and pay rent on the remainder. The provider retains the freehold and grants a long lease to the purchaser. The leaseholder may then buy further equity shares (known as 'staircasing') until the property is owned outright.

However, if a leaseholder of a shared ownership property comes to own it outright, they will then be able to sell it and it will cease to meet an affordable housing need.

To prevent this loss to the affordable housing sector, the Housing and Regeneration Act 2008 introduced Designated Protected Areas which require the Registered Provider granting the shared ownership lease to include one of the following clauses:

- to restrict the maximum share able to be purchased to 80%; or
- if the lease allows purchase of a share exceeding 80%, an obligation for the leaseholder to sell their share back to their RP landlord (or a nominee, which must also be an RP) at market value when they wish to sell the property (to enable the RP to resell the property on shared ownership terms to another local person in housing need).

The aim of these clauses is to avoid such homes being lost to the affordable housing sector and to remove the risk of financial loss to housing providers resulting from early acquisition of full ownership by the leaseholder.

However, Homes England has since agreed that, under certain conditions, it will waive particular conditions of grant relating to Designated Protected Area (DPA) status following an application submitted by the relevant local authority.

Homes England has acknowledged that Registered Providers developing grant funded shared ownership housing, where staircasing is restricted, can sometimes be affected by the limited availability of mortgages for purchasers. The request submitted to the Council by Sage Homes for DPA waiver has indicated that, of 24 lenders who are willing to lend on shared ownership products, only 3 will lend on properties within a DPA, making mortgage availability very limited.

Also many RPs have raised concerns over their financial ability to guarantee to buy back properties as required by the shared ownership lease if the leaseholder wishes to sell.

The waiving of these particular conditions of grant would enable providers to develop grant funded shared ownership stock on these sites allowing buyers to staircase to 100% without an obligation on the provider to buy back the property if the leaseholder wished to sell.

To consider waiving the DPA lease requirements, Homes England requires an application to be submitted by the relevant Local Authority (i.e. TDC). If the Authority considers that a particular site to be developed does not meet the criteria set out in the original classification of why an area should be protected or has other reasons why they think that grant funded shared ownership stock does not need to be protected in perpetuity, they can approach Homes England to request that the conditions of grant pertaining to Designated Protected Area status be removed.

This relaxation specifically relates to Homes England's conditions of grant for shared ownership homes developed in DPAs. It is not related to rural exception sites or other section 106 agreements. If the Local Authority wishes to impose conditions through a section 106 agreement then those cannot be waived by Homes England. However Homes England would suggest that the Authority carefully consider the merits of such a restriction if it imposes the same barriers to development that Homes England is seeking to overcome in these particular areas.

FURTHER HEADINGS RELEVANT TO THE REPORT

None

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

None