

Committee Name: CABINET

DATE OF MEETING: THURSDAY, 6 OCTOBER 2022

TITLE OF REPORT: UPDATE TO COUNCIL'S APPROACH IN DEALING WITH SHARED OWNERSHIP STAIRCASING WITHIN DESIGNATED PROTECTED AREAS AND WAIVER REQUESTS

Report of: Executive Director - Communities

Cabinet Portfolio: COMMUNITIES

Key Decision: N

Reasons for Urgency

Revised guidance produced by Homes England and updated advice from legal services requires Hart's processes to be updated.

Confidentiality: Open

Non-Exempt

PURPOSE OF REPORT

1. Designated Protected Areas for shared ownership were created through a Statutory Order and came into effect on 7th September 2009. The Order restricts owners of shared ownership homes to purchase up to 80% of the home only, in order to protect the availability of affordable home ownership in specified areas which are generally, but not always, rural locations.
2. Homes England have recently revised their guidance on granting waivers for Designated Protected Areas (i.e. where permission to staircase is increased above 80%) and this paper seeks to bring the Hart Policy in line with this guidance.

RECOMMENDATION

3. That Cabinet agrees to extend the existing delegated authority to the Portfolio Holder, to consider and decide the outcome of any application seeking a waiver for shared ownership properties in a designated protected area, however the shared ownership homes are funded, in consultation with the local Ward Members.

BACKGROUND

4. The Right To Enfranchise Designated Protected Area (England) Order 2009 restricts the right to purchase shared ownership properties in "Protected Areas". This is to ensure that shared ownership properties can be retained in smaller, rural locations where it would be difficult to replace them, if any stock was lost through sales.
5. Householders of shared ownership homes within Designated Protected Areas can only purchase up to a maximum of 80% of the property, ensuring that it remains as affordable housing, in perpetuity.

6. The Order lists all areas in England that are designated as “protected areas”. Hart has several areas listed as well as parts of Hartley Wintney and Hook which have specific maps showing the restricted areas.
7. Designated Protected Area restrictions are not always appropriate to an area and to manage this, Homes England agreed a form of waiver which could be used. A waiver to the restriction can be granted if it is evidenced that the homes could be replaced – for example if there are a number of developments planned for the area or more development than expected in the recent past.
8. Based on the original guidance from Homes England, waivers for staircasing were required for grant funded shared ownership homes only. To gain such a waiver, an application had to be made to the Local Authority, who if supportive, would then pass the application to Homes England for adoption.
9. In July 2013 following requests for waivers coming forward and being taken to committee on an individual basis, Cabinet agreed to grant “delegated authority to apply for waivers to the Designated Protected Areas Order 2009 to the Cabinet Member for Housing and Health after consultation with relevant ward members”, noting that If granted, a waiver would only apply to that specific site and to the shared ownership homes, not the rented units.

MAIN ISSUES

10. Homes England have now updated its Designated Protected Area Explanatory Note and following Legal Advice it is now clear the intention is for all Shared Ownership homes, whether provided through grant funding or otherwise, if within a designated protected area (for the purposes of this legislation) to request a waiver where there is a desire to staircase ownership beyond 80%.
11. In essence, the processes the Council operates will continue as currently under the new Homes England guidance, subject to a minor amendment. Waiver requests for grant funded shared ownership homes within the designated protected area, would require Council support and then be submitted to Homes England for approval, as before.
12. For shared ownership homes within the designated protected area which were not grant funded, an application for waiver would be required, and the Council would undertake the same process to consider its suitability before approval at a Council level (with no need for Homes England approval).
13. Currently Hart includes reference to the Designated Protected Area restrictions in its S106 agreements, where appropriate, with the acknowledgement that the restrictions will cease to apply, if a waiver is granted. It is proposed that this approach continues.
14. If agreed by Cabinet, the council will then update its processes to support the Portfolio Holder for Communities, under delegated powers, to assess and approve waiver requests in consultation with relevant ward councillors, ensuring waivers can be processed in a fair, timely and efficient manner. The revised process would allow for waiver requests for non-grant funded sites to

be approved by the Council and for waiver requests for grant funded sites to be agreed by the Cabinet Holder for Communities and then to be sent to Homes England for final approval.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

15. The current arrangement of delegated authority has worked well to date and enabled informed decisions to be made swiftly and therefore enabled waivers to be processed quickly. Homes England guidance and Legal advice denotes alternatives would not meet the legislative requirements.

CORPORATE GOVERNANCE CONSIDERATIONS

16. The recommendation in this paper relates to the “Healthy Communities and People” strategic priority in Hart’s Corporate Plan 2017-2022 under “Ensure access to housing”. This aim includes supporting the supply of affordable housing, delivering against the aims of the Homelessness Strategy, and working with partners to support residents to access affordable housing.

17. It also relates to The Hart Vision 2040 aim to “Become the place to live” by contributing to the affordability of homes and affordable housing and helping communities flourish.

Service Plan

- Is the proposal identified in the Service Plan? NO
- Is the proposal being funded from current budgets? Yes
- Have staffing resources already been identified and set aside for this proposal? Yes

Legal and Constitutional Issues

18. This Paper is seeking renewed agreement that the Portfolio Holder for Communities has delegated authority to apply for waivers to the Designated Protected Area restrictions for shared ownership however funded.

Financial and Resource Implications

19. NONE

Risk Management

20. There is a risk that if Cabinet does not agree the delegated authority arrangements Registered Providers may miss out on purchasing affordable housing on a site because they are unable to delay making an offer or entering into a contract if the timescale for a waiver is protracted.

EQUALITIES

21. NONE

CLIMATE CHANGE IMPLICATIONS

22. NONE

ACTION

23. Cabinet agrees to delegate authority to the Portfolio Holder for Communities to agree to apply waivers to the Designated Protected Area restrictions, whether the shared ownership is delivered by grant funding or other means, after consultation with the Ward members.

24. To enable this, the council will update its processes to support the Portfolio Holder to assess the waiver application in consultation with the Ward members, to ensure they are processed in a fair, timely and effective manner.

Contact Details: Nicola Harpham, nicola.harpham@hart.gov.uk

Appendices

NONE

Background Papers

NONE