



SCRUTINY REVIEW OF COUNCIL HOUSING

To - Council Housing Scrutiny Task Group

Date of meeting – 13th February 2019

Notes of - Housing Health & Economic Development Manager

BUILDING COUNCIL HOUSING IN PENDLE **ISSUES PAPER**

ISSUE

1. At Annual Council on 5th December 2018 it was resolved to consider the desirability and practicalities of building new Council housing in the Borough to complement existing and new provision by housing associations. It was therefore resolved to set up an all-party Scrutiny Task Group to investigate this question, to report back to the Policy and Resources Committee and to the Council:
 - (a) with an interim report within four months with recommendations on whether to pursue the matter further; and
 - (b) (subject to a decision to go ahead) within nine months on a proposed scheme or options.

BACKGROUND

2. In 2004 the Council carried out an extensive 'Stock Options' programme, involving Customer Panels and Borough Forum. Out of this came a clear recommendation to transfer the stock of dwellings to create a social housing landlord body. In January 2005, the Council applied to be added to the Government's list of authorities applying for Stock Transfer, which was subsequently accepted.
3. Subsequently, in 2006 the Council's 3,444 dwellings were transferred to a new housing association called Housing Pendle, which entered into a partnership with Twin Valley Homes. Over time, this partnership grew to encompass a number of other housing associations and has recently changed its governance by collapsing its group structure and all the individual housing associations now come under one organisation, Together Housing Group.

GOVERNMENT POLICY

4. The Government's policy is that where a local authority is developing or acquiring and retaining new social or affordable homes for rent, they should be brought forward using the powers available to them under Part II of the Housing Act 1985. That housing should be accounted for through the Housing Revenue Account. Where the numbers of units are very small – up to 200 units - the Secretary of State will consider, on application, issuing an exemption from the requirement to hold a Housing Revenue Account. If an authority is retaining more than 200 units for rent it should open a Housing Revenue Account to account for the income and expenditure associated with that stock of Units as a separate fund.
5. The Government is aware that some authorities may be using their general power of competence under the Localism Act 2011 to develop new social or affordable housing and accounting for that stock in its General Fund. Accounting for stock in this way is not in line with Government policy and if councils continue to develop social or affordable stock which they fail to account for within the Housing Revenue Account the Secretary of State may consider issuing a direction under section 74 of the Local Government and Housing Act 1989 to bring that stock into the Housing Revenue Account.
6. However, the requirement to account for stock in the Housing Revenue Account does not include accommodation being used to prevent homelessness or end a homelessness duty in the private rented sector, or for use as temporary accommodation. Temporary accommodation, including for homelessness purposes, would not normally be held within the Housing Revenue Account.
7. A key element of the Government's drive to support people to achieve their aspiration for home ownership is through the reinvigorated Right to Buy. More than 33,000 new homeowners have been created since 2012 through the reinvigoration of the scheme. The Government are giving more tenants the opportunity to buy their home, by increasing discounts in line with inflation and taking forward a change in the minimum eligibility criteria, from five years to three years public sector tenancy. For the first time local authorities can keep the receipts from additional Right to Buy sales to invest in the provision of new affordable homes for rent.
8. It is important that new council tenants should have access to the Right to Buy, and that new homes should not be built by councils which are excluded from the Right to Buy. In order to be eligible, local authority tenants need to have a secure tenancy. All forms of secure council tenancies are subject to the Right to Buy, including new flexible tenancies, regardless of whether they are accounted for in the local authority's Housing Revenue Account or the General Fund.
9. A number of local authorities have established local housing companies to help deliver local housing solutions. The Government recognises the benefits that public private partnerships can bring in supporting new forms of housing, and notes that the Elphicke-House review into the role of local authorities in housing supply identified that different housing delivery organisations offer different strengths and opportunities. The Government welcomes approaches where local housing companies are developing new homes for market sale or purchasing private rented homes for the accommodation of homeless households, through an appropriate legal entity structure and/or the borrowing does not count as public sector borrowing. However, it is not acceptable for local authorities to establish new wholly owned or controlled housing companies deliberately to avoid the Government's reinvigorated Right to Buy policy. Specifically, the Government will not support the establishment of such companies where they are developing or acquiring and retaining new social or affordable

units for rental purposes. The Government believes that local authorities should support people to achieve their aspiration for home ownership through the Right to Buy.

FINANCIAL AND MANAGEMENT CONSIDERATIONS

Demand

10. As of 4th February 2019, there were 1682 applicants on the B-with-us waiting list from the Pendle area. The table below shows figures for the last 3 years and also shows the types of property required:

Table 1 – LAHS returns as of 1st April each year

	1 st April 2016	1 st April 2017	1 st April 2018
Total households on waiting list	1708	1355	1478
Households requiring 1 bedroom	833	688	752
Households requiring 2 bedrooms	565	420	430
Households requiring 3 bedrooms	247	195	234
Households requiring 4 bedrooms	63	52	61
Total number of households in a statutory reasonable preference category (e.g. homeless, living in overcrowded conditions, needing to move on medical grounds)	599	536	540

**Source – LAHS returns*

11. Demand for affordable housing can vary from street to street and depend on the type/size of property being provided and its condition.

Development Viability

12. It has been reported to Members on a number of occasions that it can be difficult to make housing development schemes viable, particularly in the lower value areas of Nelson and Brierfield and on brownfield sites. This includes affordable housing due to the restrictions on rent levels. The brownfield sites fund was established to try and overcome viability problems on marginal sites.
13. If Pendle Council wished to develop its own housing there are a number of options to try and make developments viable, including:
- Putting its own land in at zero value so there are no land costs (it should be noted that this may still not be sufficient to make the scheme viable and, in any event, the Council has limited suitable land assets to facilitate this)
 - Putting brownfield sites funding into schemes (again, this is a finite resource)
 - Prudential borrowing which will be at a lower cost than commercial rates (there is no longer a borrowing cap for building council housing)
 - Grants from Homes England
14. To access Homes England grants the Council would need to become an 'Investment Partner'. An informal discussion with Homes England has indicated that this process would take about 3 months and they don't anticipate that there would be any problems achieving this status. One of the key criteria is experience of delivering housing developments and our experience through the PEARL Joint Ventures would, in our view, be considered positively in the assessment.

Rental Income / Housing Benefit

15. The Council would seek rental income from any properties built for the purpose of providing affordable housing, which includes social rented and affordable rented accommodation provided to eligible households whose needs are not met by the market. Broadly:-

Social rented housing – has guideline target rents which are determined through the national rent regime.

Affordable rented housing - is subject to rent controls that require a rent of no more than 80 per cent of the local market rent (including service charges, where applicable).

16. As such, the Council must abide by rules set in relation to the levels of rent which can be charged. In the Summer Budget 2015 the Chancellor announced that rents in social housing would be reduced by 1% a year for four years resulting in a 12% reduction in average rents by 2020-21. Further, on 4th October 2017, DCLG announced that “increases to social housing rents will be limited to the Consumer Price Index (CPI) plus 1% for 5 years from 2020.”
17. It would be anticipated that many prospective tenants would claim Housing Benefit (HB) or Universal Credit (UC) to pay their rent. The level of award made by housing benefit is subject to the rent being an ‘eligible rent’ and as such, the Council would be restricted in the rents it is able to realistically charge without placing many tenants in arrears. Additionally, any award would ordinarily be paid direct to the tenant rather than the landlord, thus there could be additional risk of non-payment of rent.
18. The issues of changeable national policy in relation to rents, restrictions on what rents can realistically be charged and risks in relation to direct payments / rent arrears could result in considerable risk to the Council in securing sufficient rental yield to pay for and manage its properties.

Housing Management

19. The broad functions required to manage properties include allocations / lettings, tenancy management inc anti-social behaviour, rent arrears and disrepair, asset management of the properties and legal support. Following stock transfer, all Council staff associated with the management of the stock transferred to Housing Pendle. Whilst the Council still retains housing staff, its function does not relate specifically to day to day management of housing and thus there would be a lack of expertise in successfully managing any new Council housing.
20. All properties that have been built using Homes England grant need to be managed by a Registered Provider. The Council could apply to become a Registered Provider, which is a process which takes at least 12 months, or could procure an existing Registered Provider to manage properties on our behalf.
21. A long-standing trend within social housing management has been for housing associations to grow / partner so they are able to achieve sufficient economy of scale to deliver these functions at an affordable level in relation to rental income. It would therefore be expected that the Council would also need to build / procure a sufficiently large number of properties quickly, in order to achieve such sustainability if we wished to manage our own stock.

Lettings Policy

The Council, although not a stock holder, under Housing Act 1996 Part VI must have and publish an allocations policy and ensure that properties let according to that policy. At present, this is delivered via the B-with-us choice-based lettings partnership which encompasses five local authorities across Pennine Lancashire and sixteen registered providers. Whilst the Council could decide to leave the partnership and set its own allocations policy in relation to any new properties, there are considerable financial efficiencies and advantages in remaining part of this partnership.

Providers are able to offer fixed term tenancies if they wish, although they retain the right to offer lifetime tenancies.

Right to Buy

22. Should the Council decide to build new properties, a number of different tenancies could be used including introductory tenancies, secure tenancies and flexible tenancies. Broadly:-

Introductory tenancies

New Council tenants may be offered an introductory tenancy. These usually last 12 months and are like a 'trial' period. They automatically become a secure or flexible tenant after 12 months, unless the Council has either started eviction action or extended the introductory tenancy for a further 6 months. Introductory tenants aren't able to make major improvements to the property, swap the property with another council tenant or apply to buy the property.

Secure tenancies

A secure tenant can normally live in the property for the rest of their lives, as long as they don't break the conditions of the tenancy. They can rent out rooms, but can't sub-let the whole property, buy the property through Right To Buy, swap their home with another council or housing association tenant, transfer their tenancy in some circumstances and make improvements to the home subject to permission depending on the type of work.

Flexible tenancies

Flexible tenants have a tenancy for a fixed period, usually for at least 5 years, though in some cases it may be between 2 and 5 years. At the end of the fixed period the Council may decide to offer another fixed-term tenancy, offer a secure tenancy or not renew the tenancy. A flexible tenant can rent out rooms, but not sub-let the whole property, buy the property through Right To Buy, swap their home with another council or housing association tenant, transfer their tenancy in some circumstances.

23. As a secure or flexible tenant the tenant would, subject to some eligibility requirements, have the Right to Buy the property at considerable discount. The maximum discount is presently £80,900 and will increase each year in April in line with CPI. Different rules apply for houses and flats:

Houses - A 35% discount on market value if the applicant has been a public sector tenant for between 3 and 5 years. After 5 years, the discount goes up by 1% for every extra year the applicant has been a public sector tenant, up to a maximum of 70% – or £80,900 (whichever is lower).

Flats - A 50% discount on market value if the applicant has been a public sector tenant for between 3 and 5 years. After 5 years, the discount goes up by 2% for every extra year the

applicant has been a public sector tenant, up to a maximum of 70% – or £80,900 (whichever is lower).

24. Most housing association tenants do not have the Right to Buy. However, a tenant who had a secure council tenancy and were living in their home when it was transferred from Pendle Council to Housing Pendle may have a 'Preserved' Right to Buy. If they subsequently moved into a newly built Pendle Council property this Right would transfer with them.
25. This policy could therefore result in a considerable cost to the Council and loss of newly built properties. For example, if someone with the maximum Right to Buy discount bought a newly build house worth £120,000 they would get a reduction of £80,900 (as this is the lowest of 70% or £80,900) off this figure and would buy it for just £39,100. This could leave Pendle paying off a loan for upto £120,000 without an asset bringing in rental income and only £39,100 to reinvest in a replacement dwelling.
26. The risks associated with Right to Buy are often cited as reasons why stock holding local authorities are not developing more properties.

Establishing an HRA

27. A Housing Revenue Account (HRA) would be required once the Council owned 200 or more homes. Establishing the HRA is a technical accounting matter and is the means of accounting for the expenditure and income associated with Council Housing.
28. It should be noted that since the Council last operated a HRA, the housing finance system has been radically changed. In 2012, a self-financing HRA system was introduced whereby a Council is reliant on its own rent income to provide and manage Council housing. Fundamentally, under self-financing, Councils and not the Government are responsible for the long term funding of their HRAs and this is normally translated into a 30-45 year Business Plan.
29. In this context, it is worth noting that the Government continues to set policy on housing rents, the last policy guidance being issued in May 2014 which applied from April 2015 for 10 years. Illustrating the volatility of this policy position, whilst the Policy introduced a CPI-linked calculation on which local authorities were expected to set their rents from April 2015 onwards, the policy was suspended for 4 years from 2016/17 with local authorities required to reduce rents by 1% annually.

OTHER DELIVERY OPTIONS

30. There are existing Registered Providers who are currently developing properties in Pendle including Together Housing, Peter Birtwistle Trust and Calico. Discussions have also been held with other Providers who are looking at potential sites. In the last 7 years (upto end of March 2018) 252 new affordable properties have been developed through a mixture of new build and refurbishment. A further 41 properties are on site.
31. Some of these developments have been on Pendle owned land/buildings that we have sold to the provider and some have been on private sites.
32. We have recently established our new Joint Venture (PEARL Together Ltd), with Barnfield and Together Housing with the aim of developing 500 houses over 5 years and it is planned that many of these will be affordable housing. Together Housing have recently secured

Strategic Partner status with Homes England, which gives them grant of £56m which can be used flexibly to deliver 1,152 units of affordable housing by March 2022.

KEY CONSIDERATIONS

- Viability is a problem in many parts of the Borough due to low house prices and even in the higher demand areas there are often abnormal costs related to topography, infrastructure and previous uses. It would be more costly to acquire private sites than use Pendle's own land and that would reduce viability. To develop a reasonable quantum of properties on Pendle land further sites would need to be declared surplus and there are limited suitable sites.
- If Pendle Council decided to start building Council housing again it would not have the economies of scale that remaining stock owning authorities have in relation to management of the properties, nor the expertise to do housing management. This could be dealt with by a Registered Provider managing the stock on the Council's behalf but the cost of this would need exploring further.
- The Council will not have full control over rent levels and would have to rely on Government policy, which makes long-term financial planning more difficult.
- More detailed financial appraisal work would be needed to properly understand whether development and subsequent management would be financially viable. However, the biggest risk appears to be Right to Buy and the large discounts that could be available to some of the tenants. This could be extremely costly to the Council.
- Affordable housing is already being built by Registered Providers and our new Joint Venture PEARL Together has a pipeline of sites which will include affordable housing. We support this delivery by working with Registered Providers and Homes England to bring forward developments, both on Pendle land and private land.
- We do not have as much control over the management of the properties after construction as we would have if we built and managed our own stock. However, we work closely with Registered Providers over issues such as Lettings Policy, including giving priority to local people when new developments are first let.

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