

## **Q&A IMPLICATIONS OF THE HOUSING AND PLANNING BILL FOR RURAL AFFORDABLE HOUSING**

### **INTRODUCTION**

This Q&A has been prepared for the stakeholder group of Rural England. It focuses on two measures in the Housing and Planning Bill that will affect the current and future supply of rural affordable housing, the Right to Buy and Starter Homes. Their implications need to be considered in the context of a lack of affordable housing in rural areas, illustrated by the following data:

- 8% of the housing stock in settlements of less than 3,000 population is owned by housing associations and local authorities, compared with 19% in urban areas.
- The lower quartile income to lower quartile house price in rural districts is 8:1
- The lower quartile income to 80% of lower quartile house prices in rural districts is 6.8:1

### **RIGHT TO BUY**

#### **1.1 Will there be a statutory Right to Buy for Housing Association tenants?**

No. This is not part of the Bill. However, a Voluntary Deal has been struck between the Government and the National Housing Federation (NHF) that provides housing association tenants with the Right to Buy on a voluntary basis. This protects the status of housing associations as private bodies and meets the Government's objective of increasing home ownership.

#### **1.2 Will there be any statutory exemptions that prevent Right to Buy for housing association tenants in rural areas?**

No.

The existing statutory Right to Buy rural safeguards only affect sales of council properties and only cover 19% of parishes of less than 5,000 population. They do not prevent council house sales, but in the designated rural areas on resale the local authorities have the opportunity to buy back the property or require that it is sold to someone with a local connection (which may be drawn from a relatively wide area eg from across all a National Park).

The only existing statutory rural exemption from sale of housing association properties is an exemption from the Right to Acquire. Right to Acquire is not the same as Right to Buy primarily because it only applies to housing association homes built after 1997 and lower discounts are offered to the tenants. Therefore it does not provide a statutory protection from the proposed extension of Right to Buy to housing association tenants.

### **1.3 Does the voluntary deal offer any protections from the Right to Buy for rural housing association properties?**

The Voluntary Deal includes a proposal for a discretionary exemption for housing association properties in settlements of less than 3,000 population, but this is not yet agreed. It is proposed that a housing association's Board may use this discretion to refuse a Right to Buy application from a tenant, but it must offer the tenant an opportunity to use the Right to Buy discount to purchase another property in the housing association's ownership. If they do not have a property to sell the housing association will try and find a property owned by another housing association in the area. The arrangements will be set out in Regulation the detail of which is currently being discussed with input from the Rural Housing Alliance.

### **1.4 What happens if there are no alternative properties where the portable discount could be used?**

It is likely that the opportunities to use the portable discount will be limited because of the low supply housing association homes in rural communities and the limited number of housing associations who build in rural areas. The resident wishing to buy will then be faced with the prospect of only being able to exercise the Right to Buy if they move out of the community. It is proposed that if the tenant is unhappy with the alternative offered they will be able to appeal to the Regulator. Where the Regulator considers the housing association has acted fairly, it would suggest the tenant accept the offer, or subject to available funding, offer the tenant a portable discount to purchase a property on the open market. Where the Regulator considers the association has not offered a reasonable alternative, the association will agree to offer another alternative.

### **1.5 Will the Regulations be strong enough to prevent rural Right to Buy sales?**

It is a discretionary provision and so the housing association may choose to sell the property now or in the future. There are also concerns that this is not a long-term protection because the rural discretion is only in Regulation and not written into the Bill. Regulations can be changed and the discretion could be removed.

### **1.6 Will Section 106 Agreements prevent Right to Buy sales in rural areas?**

It is suggested that S106 Agreements that require homes to be retained as affordable housing in perpetuity will ensure housing association Boards operate the rural discretion.

However, opinion is divided on whether this is sufficient safeguard to prevent sales. The NHF consider it does, but the Royal Institute of Chartered Surveyors (RICS) and Country Landowners Association (CLA), amongst others, do not for the following reasons.

- A S106 can be rescinded after 5 years if it is no longer considered relevant and with the agreement of the signatories, usually the housing association and the local authority. Given the amount of pressure to provide affordable housing the local authority may be willing to lift the S106 if they believe that the home will be replaced or ideally be replaced with two properties. However, it is unlikely that the replacement will be in the village where the sale has occurred and may be a shared ownership rather than rented home.
- Not all S106s are worded in the same way and the level of perpetuity protection they offer is variable. This will be even more the case if the Government changes the definition of affordable housing to include Starter Homes, which can be sold into the open market after 5 years (see Question 2.1)
- Not all rural schemes are covered by a S106. In some instances a planning condition was used which does not offers much weaker protections for the homes to retained as affordable rented homes.

### **1.7 Could other mechanisms be used to prevent Right to Buy sales?**

It has been proposed that other forms of legal covenant may be used to ensure the homes are retained in perpetuity. In addition, in future, it is likely that landowners will require inclusion of overage agreements in contracts, something which is already beginning to happen. These may result in further problems. Firstly, it will exacerbate the difficulties that housing associations already face raising the private loans they need to build affordable homes where there are perpetuity arrangements. Secondly, an overage agreement will mean that there will be less of a receipt for the housing association to spend on replacing the sold property.

Another proposed mechanism is for the landowner to retain the freehold ownership and for the housing association to hold the homes on a long term (125 year) lease with the tenant exercising the Right to Buy by purchase of a lease on their existing home. However, this would not retain the homes in the affordable housing sector because leasehold enfranchisement legislation means the resident could buy the freehold. There are statutory exemptions from leasehold enfranchisement, but these are only applicable in settlements of less than 3,000 population where a Homes and Communities Agency Shared Ownership lease is used.

### **1.8 How will the Right to Buy discount and replacement be paid for?**

The government will fund the 70% discount and the additional amount that will compensate the housing association for the loss of one of their properties. This is needed because the housing associations fund their developments by raising loan against their stock.

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Initially it was proposed that the discount would be funded by receipts arising from local authorities selling their high value stock when it becomes vacant, with the funding pooled into a national 'pot'. The Bill does not state that this will be the funding source for Right to Buy discounts, but it does include clauses requiring local authorities to sell their high value stock. This is likely to result in sales of their rural properties where values are higher. There is a danger that this will result in the loss of two affordable rented homes in a village. One as a result of the local authority sale, which funds the second loss through a Right to Buy sale of a housing association home in the same village, which for reasons given below is unlikely to be replaced on a 1:1 basis.

#### **1.9 Will the homes that are sold be replaced within the village where the sale has occurred?**

It is very unlikely that the homes will be replaced within the village where the sale has occurred for the following reasons.

- Finding a site for replacement will be difficult because there are few development opportunities in villages. Landowners will be unwilling to release land at a price that makes it possible to provide affordable rented homes if there is the prospect that the homes will be sold at full market value in the future.
- It will be difficult to gain community support for new development if they think the homes may not be affordable and meet a local need in the long term.
- Housing associations are not required to do 1:1 replacement in the community where the sale has occurred. All that is necessary is for 1:1 replacement at a national level. Given the costs and difficulties of developing in rural areas it is likely that the housing association will use the receipt to build in a nearby urban centre.
- Housing associations are not required to replace one rented home with another. To achieve 1:1 replacement they may choose to replace a rented home with a shared ownership property, which will not be affordable to many who are employed in local businesses.

## **2. STARTER HOMES**

### **2.1 What is a Starter Home?**

A Starter Home is a new property that is sold at 80% of open market value with price caps of £250,000 outside London and £450,000 in London. To buy a Starter Home the purchaser must be a first time buyer under 40 years old. After five years the home can be sold into the open market.

## **2.2 Is this affordable in rural areas?**

No. In rural districts someone earning a lower quartile wage would need 6.8 times their salary to purchase a Starter Home priced at 80% of lower quartile house prices. Even on a median income they would need 5.9 times their salary to purchase.

## **2.3 Is this affordable housing?**

Under the current affordable housing definitions provided in the National Planning Policy Framework this form of tenure is explicitly excluded. However, the Government is proposing to change the definition through Regulation to include Starter Homes.

## **2.4 Can Starter Homes be provided on rural exception sites?**

Yes. The Housing and Planning Bill extends this form of development to all sites. In the Rural Productivity Plan, published in August 2015, it stated that the Starter Homes Initiative will be extended to rural exception sites.

## **2.4 Will this affect the provision of affordable homes to rent and for shared ownership?**

Yes. The higher sales value of Starter Homes will mean that landowners will expect a higher price for their land making it financially unviable to build affordable rented housing. This will particularly affect rural exception sites where land values currently reflect the constraint that they can only be used to provide affordable housing to meet local housing needs.

It is likely that sites with Starter Homes will be sold with covenants including overage agreements that ensure the landowner has some benefit if/when the homes are sold into the open market.

## **2.5 Can a site with Starter Homes also provide affordable rented and shared ownership housing?**

Yes, but the Government has explicitly stated that Starter Homes will be exempted from affordable housing or other S106 contributions. It is likely that developers and landowners will favour either a 100% Starter Home development, or one where these are built alongside open market sale housing.

## **2.6 Will local planning authorities be able to resist Starter Home developments**

The Housing and Planning Bill requires that local planning authorities use their planning functions to promote the supply of Starter Homes. However, the detail of how the policy

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will operate is still to be determined and will be dependent on the Regulations that will set the parameters for this initiative. This is likely to include stipulations on the levels of Starter Homes that will be needed to trigger planning permission.

**Housing and Planning Bill Timetable**

The Housing and Planning Bill received its Second Reading on the 2<sup>nd</sup> November and now moves to Committee Stage in the House of Commons with the expectation that this will be completed by 10<sup>th</sup> December. It will then move to debate in the House of Lords.

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6<sup>th</sup> November 2015

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