

PROPOSED IMPLEMENTATION OF RESTRICTIONS CONTAINED IN S157 HOUSING ACT 1985 TO RESTRICT ONWARD DISPOSALS OF COUNCIL PROPERTIES SOLD UNDER THE RIGHT TO BUY (RTB) IN DESIGNATED RURAL AREAS, NATIONAL PARK AND AREAS OF OUTSTANDING NATURAL BEAUTY WITHIN THE NEW FOREST DISTRICT COUNCIL ADMINISTRATIVE AREA

1. INTRODUCTION

- 1.1 Section 157 of the Housing Act 1985 allows Housing Authorities to restrict onward disposals of former RTB properties in designated rural areas, the National Park and Areas of Outstanding Natural Beauty (which shall be referred to, for ease of reference for the purposes of this report, as the 'protected areas') so that they can only be sold to people who have lived or worked in the 'protected areas' for at least 3 years.
- 1.2 Currently, the only restrictions that apply to such Council dwellings is the mandatory statutory regime contained in section 156A Housing Act 1985 (introduced by Housing Act 2004), which gives the Council the right of first refusal on a subsequent disposal of a former Council dwelling within the 'protected areas' for a period of 10 years following the exercise of the original RTB. This potentially enables the Council to buy back the former Council dwelling at full market value should it come up for sale within the 10 year period. To date, no former Council properties have been bought back in this way.
- 1.3 The ability to restrict onward disposals of former Council dwellings within 'protected areas' under section 157 is a discretionary power and, if adopted, will only apply to Council dwellings sold under the RTB from the date the Council decides to adopt the power.

2. BACKGROUND

- 2.1 Rural areas face special difficulties when it comes to affordable housing. Not only is there less affordable housing and greater problems with affordability, opportunities to build a new supply of such housing for future generations is extremely limited.
- 2.2 When allocating Council housing within the rural areas, the Council's overriding aim has always been to ensure that local people, connected to the specific community within which the housing exists, were allocated the housing. This has been the cornerstone of the Council's Housing Allocation policy for many decades.
- 2.3 Affordable housing for people who already live and/or work in rural areas is crucial to the availability of local services, a thriving local economy and being able to draw upon the support of family.
- 2.4 The RTB legislation has always allowed Council tenants, even within rural areas, to exercise their right to buy. That has had the effect of reducing the numbers of Council housing in these important areas. This is in contrast to social housing owned by Housing Associations and other Registered Providers, whose tenants are not permitted to buy their property, if it is located within rural areas.

- 2.5 The Council's Housing Strategy (adopted in December 2018) includes a number of key objectives, including the aim to secure greater numbers of affordable housing in rural areas. To help achieve this important objective, consideration should be given as to whether the Council adopts a more restrictive approach to the future disposal of Council houses sold under the RTB in rural areas, by requiring that they can only be sold or let to those living or working within those rural areas. Such a policy would capture both existing council-owned stock and newly-built homes for rent within the designated rural areas.

3. A LOCAL CONNECTION RESTRICTION

- 3.1 As an alternative to the 10-year pre-emption referred to in paragraph 1.2, local authorities can choose to impose a restriction on the sale of former Council houses in rural areas so that they can only be sold to those with a "local connection". Section 157 Housing Act 1985 is a discretionary power available to Housing Authorities which, if adopted, has the effect of restricting future disposals (i.e. freehold or leasehold sales) of Council dwellings following the exercise by a tenant of their RTB to those with a local connection. Section 157 can only apply to dwelling houses in areas designated by the Secretary of State as a rural area (SI 1981 No 397 designated the perambulation of the New Forest as a rural area), a National Park or an Area of Outstanding Natural Beauty. So for the purposes of a local connection restriction, any Council dwelling falling within the former perambulation, the National Park or an Area of Outstanding Natural Beauty within the District could have a local connection restriction applied to it.
- 3.2 Covenants would be imposed when the Council dwelling is sold under the RTB, which requires the consent of the Council to any future disposal. The legislation stipulates that such consent shall not be withheld if the disposal is to a person who has lived or worked in the 'protected areas' for at least 3 years. If imposed, the same covenant would also apply to the letting of a property within a 'protected area', whereby the new tenant would also have lived or worked in the 'protected areas' for 3 years, or the property is let on the basis that it was the new occupants' only or principal home. The local connection covenant would apply "in perpetuity", not just to the first sale or letting.
- 3.3 Some other Councils have mitigated the effects of a "local connection restriction" by having a policy to exercise discretion within their own schemes to waive a restriction in exceptional circumstances. Such waivers would allow a sale to go through, but the covenant would remain in place for the future. Examples of exceptional circumstances could include:
- **Personal circumstances** - if prospective purchasers have not lived or worked in the 'protected areas' for the requisite 3 year period but they can show strong connections through former residence or employment, or can demonstrate some exceptional benefit to others that would come about by living in the area.
 - **Owners unable to sell or let their home** - at a price that takes into account of the s157 restriction. Evidence is required that the owner has marketed the property for sale or rent for at least 12 months.

4. EFFECT OF INTRODUCING A LOCAL CONNECTION RESTRICTION

- 4.1 The introduction of a local connection restriction under s157 ensures that any future Council dwellings sold under the RTB, when subsequently disposed of, can only be sold to a local person who has lived or worked in the 'protected areas' for 3 years or more. The 3 years requirement would also apply to the letting of such properties unless the letting is to a person who will use the property as their only and principal home.
- 4.2 S157 creates the benefit of retaining housing for local New Forest people, as the opportunity to deliver new housing within rural areas is extremely limited. With s157 restrictions imposed, such housing is likely to remain more affordable than open market housing without any restriction.
- 4.3 The Council's Estates and Valuation Section consider that properties with a s157 covenant imposed could resell for prices between 5% and 25% lower than would be the case if the restriction were not imposed, depending on the market and local circumstances at the time, on a case by case basis. The benefit of this means that such dwellings are likely to be more affordable than other market houses in the locality.
- 4.4 The potential for a reduced sale value sometime in the future would not affect the tenant when they exercise their RTB, although it might affect the value of the capital receipt received by the Council at this time by between 5% and 25%, depending on the market and local circumstances at the time, again on a case by case basis. It becomes relevant should the owner wish to sell their former Council property in the future.
- 4.5 If the Council implemented a local connection restriction under s157, it would not apply retrospectively but would apply to future RTBs within the 'protected areas'. Anyone wishing to exercise their RTB would do so in the knowledge that there would be restrictions on future disposals. This is considered a proportionate proposal to counter the obvious negative effects that come about through the loss (and increasing diminishing numbers) of affordable homes in the rural areas of the New Forest. If the Council were to implement a local connection restriction it could, of course, include waivers where, in exceptional circumstances, the restriction could be relaxed.
- 4.6 In carrying out research on the stance taken by other Councils, it is clear that other rural Councils similar to New Forest District Council, operate a local connection restriction including Norfolk, Cotswold District Council, South Oxfordshire, Devon, Cornwall and Chichester Council. Many operate a strict s157 regime and some have built in a waiver procedure if potential purchasers (who cannot comply with the 3 year occupancy or work condition) can demonstrate that they will bring 'significant' other benefit to the area.

5. INFORMATION ABOUT COUNCIL DWELLINGS WITHIN THE DISTRICT

- 5.1 In the 1980s, New Forest District Council owned a total of 9,257 Council dwellings across the whole of its administrative area. Approximately 1,400 of these dwellings were in rural areas. Today 558 council-owned homes remain within the New Forest National Park and the Cranborne Chase Area of Outstanding Natural Beauty. The numbers of Council dwellings across the whole District currently stands at 5,134. Rural Council dwellings within the designated protected areas therefore make-up 11% of the Council's current stock.

- 5.2 So far, only 2 Council houses have been offered back to the Council (under the first refusal provisions) referred to in paragraph 1.2 above. They were deemed too expensive to buy back at full market value. One of these properties was sold under the RTB in 2014 and had a market value of £265K at that time. RTB discount at the time was £77K. When it was offered back to the Council in 2020, it was marketed for £500k and was deemed not to be good value for money for the Council to buy back.
- 5.3 Had these former Council dwellings had the local connection restriction imposed, it would have restricted future disposals to local New Forest people.

6. CONCLUSION

- 6.1 The Council has the ability, through s157 Housing Act 1985, to take action to restrict the future disposal of the remaining 558 Council dwellings that exist within the designated rural areas, and newly-built rented homes therein, so they remain available for local New Forest people to buy. Any scheme that is implemented could contain provisions where there are genuine and good reasons to waive the restriction.

7. PROPOSED WAY FORWARD

- 7.1 A proposed local connection scheme under s 157 Housing Act 1985 and how it would operate is set out at Appendix 1.
- 7.2 Prior to making a final decision on adopting a local connection policy, it is proposed that the Council undertakes a consultation process on the proposal. In this respect, those current tenants within the 'protected areas' would be directly consulted, as well as Parish Councils within these areas. There would also be the opportunity for others to also give their view through a wider consultation which would appear on the Council's website.
- 7.3 Following consideration of this proposal by the Housing Overview and Scrutiny Panel, the matter will be considered by the Cabinet at its meeting in December. If approved, the consultation would commence and the results reported back to Cabinet in February, with Council making any final decision to implement a Local Connection Restriction Policy.

8. FINANCIAL IMPLICATIONS

- 8.1 There may be a reduction in the capital receipt accruing to the Council when the Council dwelling is first sold by between 5- 25%, depending on local market conditions at the time, on a case by case basis.

9. ENVIRONMENTAL AND CRIME AND DISORDER IMPLICATIONS

- 9.1 There are none.

10. EQUALITIES IMPLICATIONS

- 10.1 The Council is subject to the public sector equality duty, as set out in section 149 of the Equality Act 2010. The duty covers defined protected characteristics comprising

age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex; and sexual orientation. The Council must have due regard to the requirements of the public sector equality duty in the exercise of its functions, particularly in the introduction of new policies.

- 10.2 This report sets out the aims and objectives of the proposed Local Connection Restriction Policy. As described in paragraph 7 of this report, before any decision is made, the proposed Policy will be subject to a targeted consultation of those current tenants within the 'protected areas' as well as Parish Councils within these areas. There will also be an opportunity for others to feedback their views through a wider consultation on the Council's website.
- 10.3 It is considered that the proposed Policy will have a positive impact on those with protected characteristics as it will increase the options for affordable home ownership in the 'protected areas'; particularly for those who have limited income due to age, gender or disability. However, it is recognised that it may have an impact on those who do not readily meet the Council's proposed local connection restrictions. The Council considers its proposed local connection restrictions strike a fair balance of promoting local priorities whilst limiting the adverse impact on such groups, particularly taking into account the discretionary ability to waive the restrictions in the exceptional circumstances outlined in paragraph 3.3 of this report.
- 10.4 Whilst it is not currently considered that the proposed Policy will have an adverse equality impact, the consultation exercise will assist in assessing the likely equality impact on different groups of people. Further consideration can be given to this matter after the consultation exercise has taken place to enable the Council to ensure compliance with its duties under the Equality Act 2010 going forward.

11. RECOMMENDATION

- 11.1 That the Housing Overview and Scrutiny Panel consider this report and the proposed Local Connection Restriction Policy and make recommendations to Cabinet.

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