

ITEM **Designated Protected Areas**

Report of the Housing and Environmental Health Portfolio Holder

Recommended:

- 1. To delegate authority to:**
 - a. the Head of Housing and Environmental Health; and**
 - b. the Head of Housing and Environmental Health in consultation with the Portfolio Holder for Housing and Environmental Health to approve requests for Designated Protection Area ('DPA') waivers in the circumstances set out at Annex 2 to this report.**
- 2. That support for the applications to Homes England for 'DPA' waivers in as set out in paragraphs 1.4 and 1.5 of this report is approved.**

Recommendation to Council:

- 3. That the Constitution be amended to reflect the delegations of authority described in paragraph 1 above.**

SUMMARY:

- This report provides background to the Designated Protected Area (DPA) waiver process and the Council's role within it.
- The report sets out proposed procedures, and requests the granting of delegated authority to apply to Homes England for waivers in specified circumstances (see Annex 2) when Housing Association(s) and/or Developer(s) ask the Council to submit requests for waivers to Homes England to exempt shared ownership homes from the DPA grant conditions.
- Finally, the report further requests Cabinet approves a DPA waiver request on behalf of Sage Housing (housing association) for the shared ownership homes at Picket Twenty Extension (16/03130/FULLN) and on behalf of Sovereign Housing Association for the shared ownership homes at Land West of Cupernham Lane, Romsey Extra, (17/02183/OUTS) to be exempted from DPA grant conditions.

1. Introduction

- 1.1** It is evident for some areas in the borough, which are covered by the Designated Protected Area (DPA) status, the policy aim of retaining stock is less of an issue than in others. For example, planned urban extensions such as Picket Twenty demonstrate levels of existing or proposed development that indicate shared ownership would not be hard to deliver.

- 1.2 It is also recognised that whilst there are lenders who will lend for restricted shared ownership, these are quite limited and will only lend on a proportion of the shared ownership homes on any given site. This can make it challenging for people seeking finance to purchase a share in these homes.
- 1.3 It is proposed that where shared ownership retention is a less significant issue due to the nature of the development site, the Council can support the application for a waiver to Homes England where it is considered appropriate, as detailed in the Options section of this Report.
- 1.4 Sage Housing (housing association) has requested the formal support of the Council for a DPA Waiver for the shared ownership homes at Picket Twenty Extension (16/03130/FULLN). The recommended mix is 73 shared ownership and 135 affordable rent. Lenders are unlikely to be willing to lend funds on this number of restricted shared ownership homes.
- 1.5 Sovereign Housing Association has requested the formal support of the Council for a DPA Waiver for the shared ownership homes at Land West of Cupernham Lane, Romsey Extra (17/02183/OUTS). The recommended mix is 9 shared ownership and 20 affordable rent.
- 1.6 Both of the above sites are within urban extension areas and Lenders are unlikely to be willing to lend funds on this number of shared ownership homes.

2 Background

- 2.1 Designated Protected Areas (DPAs) came into force 7 September 2009 with two principle policy objectives;
 - (a) to remove the risk of enfranchisement for shared ownership houses where staircasing is restricted and
 - (b) to ensure retention of shared ownership homes in areas where it would be hard to replace if lost to the affordable housing sector through 100% staircasing.
- 2.2 The regulations require housing associations to include in shared ownership leases the DPA conditions that either:-
 - (a) Restrict the leaseholders equity share to a maximum of 80% or
 - (b) Ensures once the leaseholder has acquired 100% share of the house, that when it becomes available for resale it is sold back to the Housing Association (or a designated alternative landlord).
- 2.3 The Protected Areas and Leasehold Enfranchisement: Explanatory Notes December 2016, states the Regulations and Order apply to England only and are applicable regardless of whether the homes have received grant funding from the HCA or otherwise.

The Lenders Perspective

- 2.4 Difficulties and barriers associated with DPA restrictions have been recognised by the Council of Mortgage Lenders (CML). In October 2016, the CML referred to risks and valuation consequences when rural staircasing restrictions applied:-

‘However, in spite of recent moves to simplify eligibility rules, a number of factors can make the resale process more complex and therefore riskier. These may arise as a consequence of a condition of planning permission (Section 106 Agreements) and can include limits on buyers’ incomes, previous tenure, local connection or housing need. Clauses added in rural areas to prevent staircasing to 100% (in order to preserve the property in perpetuity for those unable to afford market housing) often include restricting resales to people with a local connection in the first instance. If a property cannot be sold on the open market, then its value as security for a loan is less certain.’

Waivers

- 2.5 Housing associations developing grant funded shared ownership housing where staircasing is restricted can sometimes be affected by the limited availability of mortgages for purchasers; also many providers have raised concern over their financial stability to guarantee they will buy back properties, as required by the shared ownership lease, if the leaseholder wishes to sell.
- 2.6 In response, the government regulator, Homes England (formerly known as the Homes & Communities Agency) is able to waive the grant conditions relating to DPA status under certain conditions. This 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 wishes to sell.
- 2.7 To consider the request for the waiver, Homes England requires the support of the local authority (LA). If the LA 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 another reason(s) 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 the grant pertaining to DPA status be removed.
- 2.8 The 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 S106 Agreements. If the Council has imposed conditions within a S106 Agreement, these cannot be waived by Homes England.
- 2.9 At present, the Head of Housing & Environmental Health and the Portfolio Holder for Housing & Environmental Health do not have delegated authority to support such a waiver and any request would be required to go to Cabinet for consideration. In some instances, the decisions are relatively straightforward and could be expedited through delegated authority within an agreed framework. This approach has been adopted by a number of neighbouring Hampshire districts. Annex 1 sets out the procedures from other Hampshire authorities regarding how they consider any request for a waiver.
- 2.10 Four out of five of the local authorities have approved recent requests to support DPA waivers. The decision making arrangements vary between the councils from delegated powers to the Head of Service and Portfolio Holder to Cabinet reports being required for each request.

- 2.11 Two of the five councils confirmed that DPA restrictions are endorsed in S106 Agreements. One LA incorporates flexible wording to enable shared ownership homes to be exempt from DPA restrictions if a waiver is granted by Homes England, thereby removing the need for a Deed of Variation should a waiver be granted.

3 Corporate Objectives and Priorities

- 3.1 Live: where the supply homes reflect local needs.
- 3.2 The Council needs to be in a position to respond to the changes in the housing market, lender requirements and the availability of public subsidy and national housing policy.
- 3.3 It has become apparent that there are unintended consequences of the 2009 legislation and Homes England are now willing to grant waivers on a case by case basis subject to the support of the Local Authority.

4 Consultations/Communications

- 4.1 To review best practice, five Hampshire local authorities have been consulted (Basingstoke & Deane, East Hants, Eastleigh, Winchester and Hart) on how they process DPA waiver requests in their respective areas. Their responses are contained at Annex 1.
- 4.2 Heads of Service have been consulted on the contents of this report.
- 4.3 Sage Housing and Sovereign Housing Association have submitted formal requests for support for a DPA waiver for the shared ownership homes on Picket Twenty Extension and Land West of Cupernham Lane.

5 Options

- 5.1 It is proposed that where shared ownership retention is a less significant issue due to the nature of the development site, the removal of the conditions helps applicants obtain a mortgage, when the housing association brings forward a waiver request, the Council can support the waiver to Homes England, where it is considered appropriate. Annex 2 sets out the proposed framework in which decisions may be taken to provide formal approval to waiver requests.
- 5.2 The framework sets out clearly the type of request which the Council will or will not support. Where a request is to be considered on a site by site basis, consultation will take place with the Parish Council to help inform the Head of Housing and Environmental Health and Portfolio Holder for Housing and Environmental Health's decision.
- 5.3 The proposed delegation will enable a timely response to the housing association so they can submit a bid to a developer to purchase the affordable homes and have certainty of whether a waiver would be supported.

- 5.4 The framework also provides transparency for the housing association and Parish Council to understand when support for a waiver would be approved or refused and confirmation of the consultation process.
- 5.5 The requests for formal support from Sage Housing and Sovereign Housing Association for the shared ownership homes at Picket Twenty Extension an Land West of Cupernham Lane are recommended as approved within the process set out at Annex 2, as this site is within an urban expansion area and further shared ownership homes are likely to be forthcoming. These requests has been made recently and hence Cabinet are being asked to consider this specific request as part of this report.
- 5.6 The other option is to do nothing and each time a request for support is received from a housing association, a report is prepared for Cabinet to consider on a site by site basis. This would take time and there will be requests for which it is unlikely to be in the Council's strategic interests to refuse to support the request.
- 5.7 If the request for formal support submitted by Sage Housing and Sovereign Housing Association are refused, this will affect the financial offer for the affordable homes and could cause a viability issue for the delivery of affordable homes on these sites.

6 Option Appraisal

- 6.1 There are limited national statistics on the number of households who staircase to 100% ownership. The National Housing Group publish nationwide data on shared ownership and their data for 2015/16 has been included in the table below, alongside data for the past 5 years provided by housing associations with shared ownership stock in Test Valley:

	No of shared ownership homes	No of shared owners stair casing to 100%	Time Period	Percentage
National Housing Group – nationwide data	97,501	1,990	2015 - 2016	2%
Aster – Test Valley	110	13	Past 5 years	8%
Vivid – Test Valley	176	15	Past 5 years	9%
Sovereign – Test Valley	Unable to provide due to merger with Spectrum			

- 6.2 This would suggest a rate of 1.7% OR 2.8 units per year for Test Valley which reflects the national average. However, this stock includes both urban and rural areas and it was not possible to breakdown these figures further to reflect just the rural dimension.
- 6.3 There are risks, if a DPA waiver is granted, that an element of shared ownership homes in rural areas would be lost over time. However, housing associations are required to reinvest the capital receipt into the provision of affordable housing, albeit this could be anywhere in their areas of operation and cannot be ring-fenced to Test Valley. National and locally sourced data suggests that the number of homes actually staircased to 100% is minimal.
- 6.4 DPA restrictions have an impact on housing associations at an organisational level and some registered providers have made a business decision not to pursue any developments where shared ownership homes are subject to restricted staircasing.
- 6.5 DPA restrictions not only present difficulties for buyers in terms of finding mortgage lenders, they also have negative effects on RPs own collateral/security value.

7 Risk Management

- 7.1 A risk assessment has been completed in accordance with the Council's risk management process and has identified no significant (Red or Amber) residual risks that cannot be fully minimised by existing or planned controls or additional procedures.

8 Resource Implications

- 8.1 There are no direct resource implications arising from this decision, however, if a decision is taken to refuse support, the Section 106 Agreements could be challenged with associated costs.

9 Legal Implications

- 9.1 The Statutory Instrument 'Housing (Right to Enfranchisement (Designated Protected Areas) (England) Order 2009 No 2009/2098 sets out the areas covered in the legislation which includes the majority of the villages in Test Valley including Romsey Extra and Smannell. In the main, these were rural settlements with a population of less than 3,000.
- 9.2 Although the Regulation is secondary legislation, the decision-taking step to issue a waiver rests with Home England. The role of the Council is one of providing support to the Registered Provider/Developer within the application.

10 Equality Issues

- 10.1 There are no equalities implications arising from this decision.

11 Other Issues

11.1 The majority of wards and communities are affected by the recommendations.

11.2 Conclusion and reasons for recommendation

11.3 Some housing associations have adopted policy positions not to develop shared ownership in DPAs primarily as their Boards do not want to take on the risk of either unsold homes resulting from the scarcity of mortgage lending, or because they do not want to accept the open ended liability the repurchase clause would entail.

11.4 To mitigate against this risk, it is recommended that Cabinet support the request for delegated authority in accordance with the Delegation Framework (Annex 2) to enable certain sites to be granted a waiver to ensure funding will be available and residents will be able to access a mortgage.

11.5 It is recommended that Cabinet approves formally supporting the applications for DPA waivers requested by Sage Housing and Sovereign Housing Association for the shared ownership homes in Picket Twenty and Land West of Cupernham Lane as these are no longer within a rural designated area but an urban extension area covered by Planning Policy Com 7 where the shared ownership homes would not normally be restricted. The national DPA regulations were not drafted in such a way that they can take account of settlements exceeding, through growth, the threshold of 3,000 population.

11.6 The Delegation Framework (Annex 2) would provide the Council with the procedure to provide formal support for a DPA waiver in a timely, efficient, consistent and transparent way. It has been proposed in a way that seeks to balance the need to ensure affordable homes in perpetuity in areas where any lost units would be difficult to replace, whilst providing a responsive and clear process for housing association partners bringing forward DPA waiver requests. There has been a precedent set by other local authorities who have agreed delegated authority to key members and officers.

Background Papers (Local Government Act 1972 Section 100D)

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:

2

File Ref:

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Report to:

Date:

12 September 2018