



CABINET

3RD APRIL 2014

AGENDA ITEM (8)

REVIEW OF IMPLEMENTATION OF SECTION 157 COVENANTS

Accountable Member	Councillor Mrs. SL Jepson Cabinet Member for Planning and Housing
Accountable Officer	Anne Powell Strategic Housing Manager 01285 623000 a.powell@cotswold.gov.uk

Purpose of Report	To review the Council's policy criteria for the Area of Outstanding Natural Beauty covenants which apply to former Council-owned properties sold under the Right to Buy provisions and which are subject to restrictions on sale under Section 157 of the Housing Act 1985 following public consultation
Recommendation(s)	<p>That, having considered the responses to the public consultation regarding the policy relating to Section 157 Covenants, the following be determined:-</p> <p>(i) the extent of the marketing period required before applications for consent to sale from the Council will usually be considered;</p> <p>(ii) the Head of Legal and Property Services, in consultation with the Cabinet Member for Housing and Planning, be authorised to approve applications for consent to sale from the Council where one of the following criteria is satisfied:-</p> <ul style="list-style-type: none">• a sale by a mortgagee in possession;• sales or purchases by members and former members of the Armed Forces and/or Reserved Forces who are relevant persons, as defined in the Housing (Qualification Criteria for Armed Forces)(England) Regulations 2012;• a purchase by a Registered Provider who proposes to purchase under the Government's Mortgage Rescue Scheme; <p>(iii) Officers explore the possibility that information about the sale of these properties could appear on the Council's Web Site;</p> <p>(iv) The Head of Legal and Property Services be authorised to amend the process for determining applications for consent</p>

Reason(s) for Recommendation(s)	To ensure that all properties sold under the Right to Buy provisions remain affordable for purchase by local people and members of the Armed Forces and/or Reserved Forces, so far as is possible.
Ward(s) Affected	Wards wholly or partially within the Cotswold Area of Outstanding Natural Beauty
Key Decision	Yes
Recommendation to Council	Yes

Financial Implications	None arising directly from this report
Legal and Human Rights Implications	None arising directly from this report
Environmental and Sustainability Implications	None arising directly from this report
Human Resource Implications	None arising directly from this report
Key Risks	Potential damage to the Council's reputation in the event that a legal challenge succeeded
Equalities Analysis	Completed; there are no apparent implications for minority/protected groups

Related Decisions	Housing Committee - 22 nd January 1998 and 7 th March 2000 Cabinet - 17 th November 2005 and 5 th September 2013
Background Documents	None
Appendices	Appendix 'A' - Process for applications for consent to disposal pursuant to Section 157 of the Housing Act 1985 Appendix 'B' - Summary of responses to the Section 157 consultation

Performance Management Follow Up	To implement the Cabinet's decisions
Options for Joint Working	There are no options for joint working

Background Information

1. Background

1.1 Section 157 of the Housing Act 1985 allows local authorities to impose restrictions on the resale of properties in the Area of Outstanding Natural Beauty (AONB) which were bought under the provisions of the Right to Buy Act. This provides that the properties cannot be sold without the consent of the Council, and that such consent cannot be unreasonably withheld to prospective purchasers who have been resident and/or employed in the Cotswold AONB or any of the designated regions associated with it for the preceding three years. Persons seeking to purchase such properties, who do not automatically qualify for consent, must apply for a specific consent for that sale, the granting of which is discretionary.

1.2 The purpose of the condition is to ensure that, although the properties are owner occupied, they remain available for purchase by persons local to the area (i.e. from within the AONB or any of the designated regions associated with it so far as that is possible) and are not acquired as second or holiday homes, the demand for which pushes up prices and limits the opportunities for local people to acquire affordable housing. The legislation provides that consent cannot be withheld if disposal is to a person or persons who have, throughout the preceding three years:-

- (i) had a place of work within the designated region comprising the AONB or any of the designated regions associated with it;
- (ii) had his/her only or principle home in such a region.

1.3 The three-year period may be made up by part residence and part employment.

1.4 Under the provisions of Section 157 of the Housing Act 1985, the prohibition on disposal also prevents disposal without the Council's consent on a tenancy or licence. This means that a purchaser cannot let a property or use it for holiday lets unless he/she either lets it again to someone who fulfils the criteria or has obtained consent from the Council to the letting in the event that a prospective tenant does not satisfy the relevant criteria.

1.5 The Council's process for dealing with applications for consent was determined by the former Housing Committee in 1997. A copy is attached at **Appendix 'A'**. In view of concerns that the current practice is not enforcing the condition strongly enough, it was suggested that the Council's policy should be reviewed, with consideration being given to extending the marketing period for those properties which are subject to the provisions of Section 157. The suggestion was that the marketing period be extended from the current twenty-eight days, in order to help more local people purchase the properties.

1.6 It was also suggested that changes to the residency and employment criteria be considered in relation to:-

- (i) sales to certain, specified members or former members of the Armed Forces and/or the Reserved Forces;
- (ii) sales by mortgage providers who had repossessed properties which were subject to the provisions of Section 157 to encourage more lenders to offer mortgages at more favourable rates to prospective buyers of those properties;
- (iii) sales to registered providers (previously known as Housing Associations) purchasing properties under the Government's Mortgage Rescue Scheme to prevent householders (to whom the Council would have a statutory responsibility) from becoming homeless because their properties had been repossessed by their Mortgage Lenders.

1.7 At its Meeting on 5th September 2013, the Cabinet agreed to consult the public on the proposed changes to the Section 157 Covenant.

2. Public Consultation

2.1 A public consultation exercise ran from 15th October 2013 until 3rd January 2014. Approximately 1,100 stakeholders were contacted in writing or by e-mail, including:-

- (i) occupiers of properties that were subject to the restriction;
- (ii) Town/Parish Councils;
- (iii) local Banks, Building Societies and Mortgage Lenders;
- (iv) local Estate Agents.

2.2 In addition, notices were placed in the local Press prior to the start of the consultation process. The consultation documents were made available on the Council's Web Site and 'hard' copies were also available at the Moreton Area Centre and the Council Offices in Cirencester. 'Hard' copies of the documents were also publicly available, on request and, during the consultation period, articles about the consultation exercise appeared in local newspapers.

2.3 A copy of the consultation questions, and a summary of the 121 responses received, are attached at **Appendix 'B'**.

2.4 Respondents were clearly in favour of the marketing period remaining at twenty-eight days. 115 respondents replied to that question; six did not comment. 85% of those who responded to that question felt that there should not be any change to the marketing period. A majority of those responses (58 responses) were from householders affected by the proposal or were anonymous (48 responses). There were four responses from Town/Parish Councils and five responses from professionals. Those were very mixed, but six, including one Solicitor, supported a marketing period of twenty-eight days or a maximum of three months.

2.5 Many of the respondents commented that properties had been purchased on the understanding that the marketing period was twenty-eight days. Consequently, they did not think it would be acceptable to make retrospective changes to the marketing period. The legality of the proposal to extend the marketing period was queried by twelve respondents. Several people advised that they would consider a legal challenge if it goes ahead. One respondent consulted Solicitors and two Barristers, all of who advised that, because he had signed a contract in good faith, they believed it would be illegal to extend the marketing period.

2.6 Eighty-four responses were received in respect of consent being given to sales by mortgage providers who had repossessed properties. Forty-four respondents were not in favour of that change, whilst twenty-nine were, and eleven were undecided. Whilst the consultation responses have been noted, it is considered that there are benefits to local people if the policy is amended as proposed. The Council has been advised that mortgage providers are reluctant to lend to purchasers of Section 157 Covenant properties, or they will offer loans but on less favourable terms. This problem was highlighted by some of the respondents. It is hoped that, by amending the policy, mortgages will be more readily available to local people.

2.7 The question relating to granting consent to purchasers who are members or former members of the Armed Forces or Reserve Forces, and is a relevant person, as defined in the 'Allocation of Housing (Qualification Criteria for Armed Forces)(England) Regulations 2012' received eighty-nine responses. Forty-seven respondents were in favour of the proposed change.

2.8 The sixty-six respondents to the question relating to the mortgage rescue scheme were fairly evenly divided, with thirty-one in favour of the proposed change and thirty-five against.

2.9 In light of the results of the public consultation exercise and consideration by Cabinet, some changes will be required to the policy criteria for the consideration of Section 157 Covenants.

3. Legal Considerations

3.1 Purpose of the Section 157 Restriction

The (well-known) purpose of the Section 157 restriction is to prevent the transmission of what was formerly social housing into the ownership of people who wish to buy second or holiday homes, the demand for which pushes up prices and limits the opportunities for local people to acquire affordable housing.

3.2 Automatic Consent

Under Section 157(3) of the Housing Act 1985, the Council will grant consent (i.e. it has no discretion in the matter) where the prospective purchaser has lived or worked in the Cotswold AONB and/or a designated regions associated with it (e.g. Gloucestershire).

3.3 The Council's Discretion

3.3.1 In cases where prospective purchasers do not automatically qualify for consent, the Council has the discretion to decide whether or not to grant such consent. It is a long-established principle of administrative law that, in exercising such discretion, the Council must reach its own decision on each individual case. Whilst it is permissible for the Council to have a policy to assist with its decision-making, it cannot fetter its discretion by approaching decisions with a pre-determined policy on how cases falling within a particular class will be treated. If it is to exercise its discretion properly, the Council should at all times be free to depart from its policy when, having had due regard to the case in front of it, the Council feels there are strong reasons for doing so. In practice, this means that the Council's policy should go no further than expressing its usual expectations. In this case, for example:-

- (i) that applications for consent will not usually be considered until the property has been on the market for a given period of time; or
- (ii) that consent will usually be granted where the property is being offered for sale by a mortgagee in possession.

3.3.2 If the policy is expressed in this way, the Council's discretion is not fettered so that, for example, it will be free to consider an application for consent notwithstanding that the property has not been marketed for twenty-eight days, or to refuse consent where the sale is by a mortgagee in possession, if it is appropriate to do so.

3.4 Extensions of the Marketing Period

3.4.1 The Council may extend the marketing period but, if it does so, its decision has to be justified.

3.4.2 The Council's policy must be rational and, in arriving at its decision, the following points should be considered:-

- (i) as the Council has operated a twenty-eight day marketing period for many years, current owners may well have a legitimate expectation that the Council will consider applications for consent once that period has elapsed;
- (ii) the effect of imposing longer marketing periods on vendors and purchasers, including the difficulties a longer period would engender. It has to be said that longer marketing periods may make it more difficult for vendors to sell and, correspondingly, more difficult for purchasers to obtain mortgages to buy - i.e. lenders might well be reluctant to provide mortgages if the borrowers might subsequently face difficulty in selling. Additionally, mortgage offers are often only open for limited periods of time;

(iii) bearing in mind that the marketing period is the period that must usually elapse before the Council will consider an application for consent, the discretion which the Council retains means that it can still prevent any abuse (whatever marketing period is specified). To put it another way, the requirement for a marketing period implies no promise or expectation that consent will be granted at the end of the marketing period. To protect a decision to extend the marketing period beyond twenty-eight days, the Council should spell out, in clear terms, the difficulties imposed by the present period and the benefits of an extension to the community, in terms of maximising the availability of affordable housing for local people. The longer the period of the extension, the stronger the reasons must be for changing the policy. In that context, Counsel's advice is that there would not be any particular difficulty in extending the period to up to three months, but any extension beyond that would be more susceptible to challenge, with the risk of challenge becoming greater the longer the marketing period is extended and the Council is unlikely to be able to justify a one-year marketing period.

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