

Executive – 4 October 2007

EX COUNCIL HOUSE SALE – REQUEST BY PROSPECTIVE BUYERS FOR CONSENT TO PURCHASE EX COUNCIL HOUSE WITHOUT COMPLIANCE WITH THE THREE YEAR RESIDENCY/WORK IN DEVON REQUIREMENT

Report of Head of Corporate Services

Statutory Powers: Local Government Act 1972, Housing Act 1985

Financial Implications: None

Purpose

A request has been received by prospective purchasers of an ex Council house in the District who do not meet the usual residency and/or work status criteria of having lived or worked in Devon for three years but who nevertheless have sought the consent of this Council to proceed with such purchase based on exceptional grounds. There is no provision in the Scheme of Delegation for Officers to decide such request.

Recommendations

- (a) That the Executive **RESOLVES** that the Head of Corporate Services (in consultation with the Executive Member with responsibility for Housing and the Heads of Community Regeneration and Property Services and the Affordable Housing Manager) be given power to approve an application by the named individuals to purchase an ex Council house in the District based on the circumstances set out in the exempt Appendix 1;
- (b) The Executive **RECOMMENDS** to Full Council that the Scheme of Delegation be amended by making provision for the Head of Community Regeneration (or such senior advisor with responsibility for the housing function) in consultation with the Leader of the Council and the responsible Executive Member to have authority to approve an application for the sale to purchasers who do not meet the usual residence and/or work status criteria where there are exceptional circumstances.

Background/Issues

1. Transfers by South Hams District Council of ex Council houses contain a restriction that any future disposal of ex Council houses, whether by transfer or long lease, should only be (a) to a person or persons who have lived and/or worked in Devon for a period of three years immediately preceding the date of the proposed purchase of the property or (b) where the intending buyer has lived in the South Hams District for a cumulative period of seven years in the past twenty (“the Standard Criteria”). This power is contained in Sections 157 to 162 of the Housing Act 1985 and is compatible with the Council’s Priority

CP1 of “local houses for local people”. However, notwithstanding Priority CP1, by law the Council cannot fetter its right to exercise discretion to consider applications contrary to policy where the circumstances require it. Failure to properly consider exceptional circumstances maybe subject to legal challenge.

2. An application has been received from prospective purchasers requesting special dispensation to purchase an ex Council house based on exceptional grounds even though they do not meet the Standard Criteria. The details of the applicants, the location of the ex Council house and other circumstances are set out in the exempt Appendix 1. The exceptional grounds are that these purchasers are required to live near to their place of employment by virtue of the terms of a licence the Council has itself issued.

Risk Assessment

Risk	Mitigation
The Council refuses the request from the prospective purchasers which prejudice their duties applicable to their employment and their employer.	Approval to the request be given
The Council is subject to judicial review for “fettering its discretion” by over-rigid application of policy and irrationality by failing to facilitate compliance with a licence it has itself imposed, and the consequent loss of reputation.	Approval to the recommendation be given.
The Employer is prevented from complying with the terms of the licence that the Council has imposed because it loses these key workers.	Approval to the recommendation be given.

Conclusion

3. By the granting of consent to the applicant’s request the Council can be seen to be receptive of and responsive to genuine cases of exceptional circumstances and is reactive to the exercise of its discretion rather than rigid adherence to its policy, whilst preserving the policy for other cases
4. Any consent granted by the Council to this application will only apply to the current applicants as named in exempt Appendix 1 and the sale to them will include terms preserving the restriction on the property for the future.

Lester R. Francis
Solicitor

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4 October 2007

Kevin Williams
Head of Corporate Services

Background Documents:

Correspondence on the file held by the Head of Legal Services is exempt from listing and inspection under the provision of Schedule 12A to the Local Government Act 1972.