	Executive **19 July 2012** **Report From the Director of Regeneration and Major Projects**

Right to Buy: reinvesting receipts in new affordable rented homes

1. Summary

1.1 This report sets out the proposed approach to be taken in response to changes to the Right to Buy (RTB) implemented with effect from 2nd April 2012 and in particular the new rules on reinvestment of the proceeds of RTB sales, which are intended to support one-for-one replacement of all homes sold.

2. Recommendations

2.1 The Director of Regeneration and Major projects to be granted delegated authority to enter into agreement with the Department of Communities and Local Government to retain Right to Buy receipts pursuant to section 11(6) of the Local Government Act 2003.

2. 2 The Director of Regeneration and Major projects to be granted delegated authority to make Right to Buy receipts available to Registered Providers of Social Housing under a competitive bidding process to deliver replacement low cost rented accommodation in accordance with the Council's Contract Standing Orders.

3. Background

3.1 Since its introduction in 1980, RTB has functioned on a system of discounts based on a percentage of the property value plus additional percentage points based on length of residence, limited by caps and available to those who have been public sector tenants for a qualifying period of five years (increased from 2 years by Housing Act 2004 – this will not change). Current discount rates are:

- For houses, 35% of value plus 1% for each year beyond the qualifying period up to a maximum of 60%
- For flats, 50% plus 2% for each year beyond the qualifying period up to a maximum of 70%.

The application of caps limits the level of discounts significantly. Until April 2012, discounts were capped as summarised below:

- £16,000 in most of London (Barking and Dagenham and Havering had a £38,000 cap)
- £38,000 in the South East
- Caps in other regions varied but were all higher than the London limit

3.2 The other key feature of the system, and the main reason why stock lost to RTB has not been replaced, is that 75% of RTB receipts were paid to the Treasury with 25% retained by local authorities.

3.3 *Laying the Foundations: A Housing Strategy for England* formally announced the government's intention to raise caps, together with a commitment to replace sales on a one-for-one basis. The announcement was given a cautious welcome since it appeared to address a key weakness and propose an approach that most housing organisations had argued for since 1980. A consultation paper followed in December 2011 and final arrangements are now in place, with effect from April 2012 (although they will apply to any tenant who had already made a RTB application prior to that date).

3.4 The discount cap will be £75,000 across England, an increase on the £50,000 proposed in consultation. This represents a 400%+ increase in the cap applicable in most of London. The capital receipt will be allocated as follows (and in this order):

- To meet transaction and admin costs. There will be a new flat rate to cover the cost of the sale - £2,850 in London – and this includes a new allowance to cover the cost of withdrawn applications.
- To compensate Local Authorities and Treasury for the capital receipts projected and included in the HRA Self Financing Settlement.
- For additional RTB sales that were not included in the HRA Self Financing settlement, local authorities will be able to deduct the necessary amount to cover HRA debt from the receipt but will not be required to use it to repay loans.
- For the remaining balance, Local authorities will retain receipts provided they sign up to an agreement with government that they will limit use of receipts to 30% of the cost of replacement homes, which will be let on Affordable Rents
- Buy Back provision is retained, allowing funding of up to 50% of the cost of re-purchasing a former council home.
- The cost floor is retained and extended from 10 to 15 years.

3.5 Further detail on the financial implications is set out in section 5, while some more general points are covered here. It is difficult to be precise, but the huge increase in the cap will encourage RTB applications, which have been at a low level in recent years. In the last three years, only 15 homes have been sold following over one hundred applications. In contrast, across London

(including Brent) as many applications were received in April 2012 as in the whole of the previous year. The government's recent announcement that it will consult on the imposition of a household income cap of £60,000 in social housing, beyond which tenants will be obliged to pay a market rent, can only add to demand.

3.6 However, high property values, low average incomes and a more cautious approach from lenders will still mean that purchase is beyond many Brent tenants and it is difficult to gauge how many of the new applications will proceed to sale. The application of a single cap for the whole country means that the impact will vary significantly dependent on local property values.

3.7 The other main plank of the reform is one-for-one replacement. The consultation paper set out three possible models:

- Local Delivery – where receipts for replacement are left with the council for reinvestment locally
- National Delivery – where receipts for replacement are brought together and then allocated through the Greater London Authority in London and by the Homes and Communities Agency in the rest of England
- Combined approaches – with some central direction on use but leaving substantial local control.

3.8 The third, "local model with agreement" option has been adopted and its key features are:

- After deduction of costs (council and government) based on what might reasonably have been expected from income from the existing RTB scheme, remaining receipts are available to fund replacement homes.
- Councils will be able to enter into an agreement with government that the authority retains these receipts provided it can show that it is able to fund replacement with a contribution restricted to 30% of the cost of the new homes.
- Councils not entering into an agreement will return the receipt for redistribution by the HCA (the GLA in London).

3.9 In summary, this option has been adopted because, first, there is no confidence that a local delivery model will meet the one-for-one replacement target, mainly due to lack of enthusiasm from some authorities, while a national model does not fit with the localism agenda. However, the key point to note is that one for one replacement is a *national* target: homes lost in an area will not necessarily be replaced in that area. Again, this is primarily the result of variations in value: a home sold in London will generate a reasonably large receipt, whereas one sold in Sunderland will not. On this point at least, London may do better than other regions.

3.10 There are two other questions about the replacement plan. First, replacement homes will be developed within the Affordable Rent regime. Although the ability to meet 30% of the cost means that funding for replacement is more

generous than the overall regime, which provides between 15% and 20% of cost, rents will still be much higher. Second, there is some doubt, in all regions, as to whether the approach will deliver genuine like-for-like replacement, especially in the case of larger homes. So, although the sale of a three bed property may generate a receipt large enough to fund replacement, it may mean replacement by a smaller property and, in many cases, a property in a different and usually cheaper area.

3.11 Both the consultation and the final proposals provided that receipts should be used within two years or be returned to the central pool. In response to lobbying by councils and other housing providers, the government has conceded that this period should be extended to three years. It is possible that boroughs committed to funding replacement may benefit from additional funding redistributed from those that do not engage or fail to meet the three year deadline. In London, this will be controlled by the Mayor although the mechanism for redistribution is not clear at this stage.

3.12 Given the high levels of demand in Brent, the council will want to both retain any receipts generated by sales in the borough and maximise opportunities to take advantage of unused receipts from other boroughs or regions to support local development of new homes. The following section looks in more detail at how such receipts could be employed.

4. Delivering One for One Replacement Locally

4.1 Registered Provider Route

4.1.1 After consideration of existing Right to Buy (RTB) commitments, attributable HRA debt and transaction costs, local authorities will be able to use the net receipts from RTB sales to deliver replacement low cost rented accommodation. Local authorities who want to take advantage of this opportunity must sign an agreement with CLG that receipts will be spent on low cost rented accommodation within 3 years and that receipts are limited to 30% of the total development costs of the replacement homes. Development costs include land on private sites but only construction costs (plus on costs) on local authority owned land; development costs can also include property acquisition on the open market.

4.1.2 Under the Affordable Homes Programme 2011-15 Registered Providers are delivering new build affordable rented homes in London with grant at levels of approximately 15-20% of development costs, with remaining costs met from borrowing against the rental income stream from the new homes and cross subsidy from Registered Provider resources. Therefore to deliver new homes on the basis of a higher level of subsidy at 30% of development costs is clearly a feasible proposition.

4.1.3 One straightforward method of using net receipts from RTB sales to deliver replacement low cost rented accommodation is to invite Registered Providers to bid for receipts against value for money and housing priority and quality

criteria. Such an approach would be analogous to the Local Authority Social Housing Grant programme the Council ran from the mid 1990s to mid 2000s. Criteria could include broad housing priorities such as delivering larger family accommodation across the borough, or more specifically restrict the use of receipts to unlocking strategic developments, including on Council-owned sites, or to priority projects such as securing social rented decant accommodation for regeneration schemes. Receipts could be used alone or potentially bundled together with other forms of public subsidy, such as GLA affordable housing grant, as part of a funding package. As a last resort, Registered Providers could be allowed to purchase street properties. In all cases the Council would be able to place a charge on the land to ensure the subsidy could be recycled should the housing involved be disposed at some later date.

4.1.4 Due to the punitive rate of interest at 4% over base rate payable on receipts not spent on low cost rented accommodation within 3 years, officers recommend delegated authority be granted to spend RTB receipts in what is a straightforward and tested manner so that a clear route to delivering replacement low cost rented accommodation is readily available to the Council.

4.2 Alternative Options

4.2.1 Changes that allow local authorities to retain RTB receipts for new housing are just one of a range of new financing options available to the Council to bring forward regeneration and development. New Homes Bonus, Community Infrastructure Levy, Housing Revenue Account (HRA) borrowing headroom, business rates retention and tax incremental financing are all examples of examples of finance that the Council can use to bring forward regeneration and development initiatives across the borough. Consideration of each of these financial elements in isolation probably limits the ability of the Council to leverage external public and private sector funding and investment and the potential socioeconomic benefits delivered through these resources.

4.2.2 The Council's Regeneration and Major Projects Department therefore propose to undertake an options appraisal of how emerging and traditional sources of funding and finance available to the Council can be best used to bring forward regeneration and development. As well as appraising the opportunities and impacts of combining different funding and financing streams, an assessment will be made of the pro and cons of different potential delivery routes, partners and vehicles. Alternative options for the use of net RTB receipts to deliver low cost rented accommodation will be appraised and if the benefits outweigh the Registered Provider route outlined above, then a report to progress the better option will be taken forward to that effect.

4.2.3 Options to be explored will include the Council retaining RTB receipts to develop new Housing itself – and this option will also be looked at as part of the options review of the HRA Business plan, which will be reported to the

Executive later this year. Under this option, any expenditure not covered by the 30% retained receipt would need to be funded by the HRA and would count against the HRA borrowing headroom that has been created as part of the new HRA Self Financing regime. This would need to be affordable within the HRA business plan and would compete against demands for addressing the repairs backlog, investment in existing stock and repayment of HRA debt. It should again be noted that whilst the retained RTB can be used for development costs including the purchase of land in order to provide a site for social housing, the provision of any land already owned by the authority will not count.

4.2.4 The RTB guidance also makes clear that RTB receipts cannot be passed to a body in which the Council holds a controlling interest (such as BHP, the Council's ALMO), and this is because debt incurred by such a body is likely to be classified as public sector debt (and the Government has put caps on public sector debt). This would not, however, preclude the use of a Special Purpose Vehicle in which the Council holds less than a controlling interest, presuming of course the Council is able to reconcile the control and risk of such arrangements. Of course, if the Council was to set up a Special Purpose Vehicle for housing purposes, the approval of the Executive will be required.

4.3 Timing

4.3.1 An initial spike in RTB receipts is anticipated with the observed increase in RTB applications since introduction of the more generous RTB cap, however several months monitoring will probably be required before an accurate medium to longer term forecast of RTB receipts can be made. As noted, there are also existing commitments and the RTB receipt pot must be allowed to build to a sufficiently large sum prior to implementing any delivery option.

5. Financial Implications

5.1 Tenants must have been public sector tenants for 5 years before they qualify for Right to Buy. The national scheme for Right to Buy discounts comprises two elements; the discount rate, and the cap. The discount rates have not changed. They continue to be:-

- For houses: 35% of the property's value plus 1% for each year beyond the qualifying period up to a maximum of 60%;
- For flats: 50% of the property's value plus 2% for each year beyond the qualifying period up to a maximum of 70%.

In practise, most Right to Buy discounts are limited by caps. Up to March 2012 the cap in Brent was £16,000. From April 2012, the cap was increase to £75,000. This increase is expected to lead to an increase in the number of Right to Buy sales.

5.2 Under the Local Government Capital Finance System to March 2012, the capital receipts from the sale of Right to Buy dwellings were subject to the

capital receipts pooling arrangements. These pooling arrangements set out, subject to certain permissible deductions, that 75% of the receipts are paid to HM Treasury and the remaining 25% are retained by the Local Authority.

5.3 The pooling arrangements ceased from April 2012. Under the new arrangements for RTB capital receipts, they are to be used as follows:-

- To meet admin costs (£2,850 per completion)

- Council and HM Treasury assumed costs - this is a priority allocation for RTB receipts and relates to sales that were assumed in the Housing Revenue Account Self Financing settlement for the years 2012-13 to 2014-15. This transitional arrangement seeks to protect councils and the Treasury for the RTB sales that would have been expected before the decision to increase the cap. The following table sets out the number of RTB dwellings for Brent that were in included in the HRA self financing settlement, and the maximum sum assumed that would be distributed under this category:-

	2012-13	**2013-14**	**2014-15**
Dwellings assumed	9	11	12
Retained by Brent	£383k	£448k	£503k
Pooled to Treasury	£919k	£1,041k	£1,143k
Total Receipts	£1,302k	£1,489	£1,646k

This means that, for example, in 2012-13, the first £1.302m of receipts (after admin costs) will be distributed to Brent and HM treasury as above. The £383k to be retained by Brent is in line with the sum included in the Capital programme.

- HRA attributable debt - For additional RTB sales that were not included in the HRA Self Financing settlement, local authorities will be able to deduct the necessary amount to cover HRA debt from the receipt but will not be required to use it to repay loans

- Balance for replacement affordable homes (either return the sum for use by the Greater London Authority, or incur the expenditure locally).

5.4 Under the new scheme for RTB receipts, it is intended that the balance for replacement affordable homes is used such that it funds no more than 30% of the cost of the new dwelling.

5.5 If it is decided not to retain the receipts to fund replacement affordable homes to the GLA, then these receipts will be submitted quarterly, and there will be no further cost to Brent.

5.6 If it is decided to retain the receipts to fund replacement affordable homes, then the receipts will be retained and spent by Brent. A timescale of 3 years has been set for spending these receipts. In the event that it is not spent within 3 years, then the receipts will need to be returned to the Secretary of State with interest (4% above base).

5.7 It is difficult to forecast the likely receipts that will be generated as a result of increasing the RTB cap, and it follows that it is difficult to forecast the receipts that will be available for replacement dwellings. The completed sales in the last three years were 6 in 2009-10, 5 in 2010-11, and 4 in 2011-12. As a result of increasing the cap, the number of RTB applications has increased significantly, with over 100 application s received before the end of May2012. This is expected to lead in an increase in completions. As set out above, the receipts from the first approx. 9 sales in 2012-13 will be used to meet Council and HM Treasury assumed sales, and will not therefore generate resources available for replacement dwellings. RTB sales in excess of around 9 in 2012-13 will be available for replacement homes after HRA attributable debt has been deducted.

It is difficult to estimate the annual sum available for replacement homes under the new arrangement for RTB capital receipts. For illustrative purposes, we have modelled the impact of the sale of a pre 1945 low rise flat, with a market value of £188k. This would result in £55k being available for replacement dwellings. If this illustration were typical, then 10 additional sales would generate £550k, and 100 additional sales would generate £5.500m.

6. Legal Implications

6.1 From April 2012, the cap on the discounts for purchases of Brent Council properties by Council tenants under the Right to Buy Scheme has been raised from £16,000 to £75,000.

6.2 The Department for Communities and Local Government (DCLG) also announced that the receipts from the additional Right to Buy sales which this would generate (after the deduction of certain permissible amounts) would be used to fund replacement stock on a one-for-one basis.

6.3 In order for local housing authorities to keep these additional receipts from the Right to Buy sales for the purposes of refunding housing stock, it will be necessary for them to enter into an agreement with the Secretary of State for Communities and Local Government pursuant to section 11(6) of the Local Government Act 2003 (as inserted by section 174 of the Localism Act 2011).

6.4 As part of the agreement, the Secretary of State for DCLG will agree to:

i. allow the local authority to retain additional net Right to Buy receipts to fund the provision of replacement stock, limited to 30% of the cost of replacement homes.
ii. allow the local authority three years (from the commencement of the agreement) to invest those receipts before asking for the money to be returned.

6.5 In return, the local authority has to agree with DCLG:

i. that Right to Buy receipts will not make up more than 30% of total spend on replacement stock, and
ii. to return any used receipts to the Secretary of State with interest.

6.6 It is worth emphasising that the agreement will not require a local authority to complete the building of any home within three years. All that is required is that the local authority should have incurred expenditure sufficient that Right to Buy receipts form no more than 30% of it.

6.7 In order for the Council to keep additional Right to Buy receipts received in the first quarter of 2012-13, DCLG has asked local authorities to return signed agreements by 27 June 2012. Officers do not expect Brent Council to receive any additional Right to Buy receipts between April and June 2012. Officers expect to receive additional Right to Buy receipts after June 2012 and approval of the Executive will be required for the Council to enter into an agreement with DCLG which would allow the Council to keep additional Right to Buy receipts to fund the replacement stock. Such approval is being sought from the Executive in this report.

6.8 If the Council does not enter into an agreement with DCLG to keep additional Right to Buy receipts, the net additional Right to Buy receipts (after deducting certain permissible amounts) will be forwarded to the Secretary of State who will pass them onto the Greater London Authority to invest in replacement stock.

6.9 Although the Director of Regeneration and Major Projects has delegated authority under paragraph 10 in the Table in paragraph 2.5 of Part 4 of the Council's Constitution to make grants and provide financial assistance subject to a number of restrictions and limitations, the recommendation to seek the delegated authority required under paragraph 2.2 above is necessary as it is likely that may of the proceeds will be in excess of £5000 per [property. In relation to paragraph 2.3, there is a limitation requiring grant criteria to be approved by the Executive or person with appropriate authority (as set out in paragraph 10(a)(iv) in the Table in paragraph 2.5 of Part 4 of the Council's Constitution) and this is why this report seeks the approval of the Executive to give delegated authority to the Director of Regeneration and Major Projects to draw up grant criteria for the allocation of the Council's Right to Buy receipts to Registered Providers of Social Housing.

7. Diversity Implications

7.1 Officers do not consider that there will be any adverse impact on those persons which have one or more of the nine protected characteristics as set out in section 149 of the Equality Act 2010 in relation to the recommendations set out in section 2 of this report. An impact assessment is attached at Appendix 1.

8. Staffing Implications

8.1 There are no immediate staffing implications arising from this report.

Background Papers

Laying the Foundations: A Housing Strategy for England; CLG, 2011

Reinvigorating the Right to Buy and one for one replacement Consultation, CLG 2011

Contact Details

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Appendix 1: Equalities Impact Assessment

Department: Regeneration and Major Projects	**Person Responsible: Eamonn McCarroll**
Service Area: Housing	Timescale for Equality Impact Assessment :
Date: 25th June 2012	Completion date: 25th June 2012
Name of service/policy/procedure/project etc: Right to Buy: Changes to discounts and investment of receipts	Is the service/policy/procedure/project etc: New x ☐ Old ☐
Predictive x ☐ Retrospective ☐	Adverse impact ☐ Not found x ☐ Found ☐ Service/policy/procedure/project etc, amended to stop or reduce adverse impact Yes ☐ No x ☐
Is there likely to be a differential impact on any group? Yes ☐ No x ☐	Please state below:
1. Grounds of race: Ethnicity, nationality or national origin e.g. people of different ethnic backgrounds including Gypsies and Travellers and Refugees/ Asylum Seekers	2. Grounds of gender: Sex, marital status, transgendered people and people with caring responsibilities

Yes ☐ No ☐	Yes ☐ No ☐
3. Grounds of disability: Physical or sensory impairment, mental disability or learning disability Yes ☐ No ☐	4. Grounds of faith or belief: Religion/faith including people who do not have a religion Yes ☐ No ☐
5. Grounds of sexual orientation: Lesbian, Gay and bisexual Yes ☐ No ☐	6. Grounds of age: Older people, children and young People Yes ☐ No ☐
Consultation conducted ☐ ☐ Yes No x	
Person responsible for arranging the review: Eamonn McCarroll	Person responsible for publishing results of Equality Impact Assessment: Eamonn McCarroll
Person responsible for monitoring: Brent Housing Partnership	Date results due to be published and where: To be agreed
Signed: Tony Hirsch	Date: 25th June 2012

Please note that you must complete this form if you are undertaking a formal Impact Needs/Requirement Assessment. You may also wish to use this form for guidance to undertake an initial assessment, please indicate.

1. What is the service/policy/procedure/project etc to be assessed?

Right to Buy: discounts and reinvestment of receipts.

2. Briefly describe the aim of the service/policy etc? What needs or duties is it designed to meet? How does it differ from any existing services/ policies etc in this area

The government has introduced changes to the operation of the Right to Buy for council tenants. These include an increase in the cap on discounts from £16,000 (in London) to £75,000 and new rules for the use of receipts that are intended to support one-for one replacement, at the national level, of properties sold.

The council is required to decide whether and how it intends to use receipts to develop replacement homes in Brent and a report to July 2012 Executive informs members about the changes and makes recommendations about the use of receipts intended to secure additional supply in the borough.

3. Are the aims consistent with the council's Comprehensive Equality Policy?

Yes

4. Is there any evidence to suggest that this could affect some groups of people? Is there an adverse impact around race/gender/disability/faith/sexual orientation/health etc? What are the reasons for this adverse impact?

No

5. Please describe the evidence you have used to make your judgement. What existing data for example (qualitative or quantitive) have you used to form your judgement? Please supply us with the evidence you used to make you judgement separately (by race, gender and disability etc).

The changes impact only on existing council tenants who have the right to buy. Ability to exercise the right depends on ability to fund a purchase and is therefore entirely dependent on the tenant's income or other resources, while the increased discount may bring purchase within the reach of a larger range of households. Although there are some groups who may be more likely to be on lower incomes, for example older people, these groups would have faced difficulty exercising the right to buy within the previous system. The changes therefore provide more opportunities, albeit ultimately restricted by resources.

6. Are there any unmet needs/requirements that can be identified that affect specific groups? (Please refer to provisions of the Disability Discrimination Act and the regulations on sexual orientation and faith, Age regulations/legislation if applicable)

No

7. Have you consulted externally as part of your assessment? Who have you consulted with? What methods did you use? What have you done with the results i.e. how do you intend to use the information gathered as part of the consultation?

No

8. Have you published the results of the consultation, if so where?

No

9. Is there a public concern (in the media etc) that this function or policy is being operated in a discriminatory manner?

No

10. If in your judgement, the proposed service/policy etc does have an adverse impact, can that impact be justified? You need to think about whether the proposed service/policy etc will have a positive or negative effect on the promotion of equality of opportunity, if it will help eliminate discrimination in any way, or encourage or hinder community relations.

N/A

11. If the impact cannot be justified, how do you intend to deal with it?

N/A

12. What can be done to improve access to/take up of services?

Take up is expected to increase owing to the raised discount and surrounding publicity

13. What is the justification for taking these measures?

Legislative requirement

14. Please provide us with separate evidence of how you intend to monitor in the future. Please give the name of the person who will be responsible for this on the front page.

Take up will continue to be monitored by Brent Housing Partnership and sales form part of statutory returns to the DCLG.

15. What are your recommendations based on the conclusions and comments of this assessment?

No need for any further action

Should you:

1. Take any immediate action?

2. Develop equality objectives and targets based on the conclusions?

3. Carry out further research?

16. If equality objectives and targets need to be developed, please list them here.

N/A

17. What will your resource allocation for action comprise of?

N/A

If you need more space for any of your answers please continue on a separate sheet

Signed by the manager undertaking the assessment:

Full name (in capitals please): Tony Hirsch Date: 25th June 2012

Service Area and position in the council: Strategy, Partnerships and Improvement, Head of Policy and Performance

Details of others involved in the assessment - auditing team/peer review:

Once you have completed this form, please take a copy and send it to: **The Corporate Diversity Team, Room 5 Brent Town Hall, Forty Lane, Wembley, Middlesex HA9 9HD**