

	<p style="text-align: center;">Cabinet 14 October 2019</p>
	<p style="text-align: center;">Report from Strategic Director, Community Well Being</p>
<p style="text-align: center;">Continued Use of Retained Right to Buy Receipts</p>	

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	<p>John Magness, Head of Housing Supply and Partnerships 020 8937 1774 John.Magness@brent.gov.uk</p> <p>Paul Schafer, Commercial Manager 020 8937 3553 Paul.Schafer@brent.gov.uk</p> <p>Emily-Rae Maxwell, External Partnerships Manager 020 8937 1131 Emily-Rae.Maxwell@brent.gov.uk</p>

1.0 Purpose of the Report

- 1.1 The council has an ambitious strategic housing target to deliver 1,000 new affordable homes every year, over the next five years. This target was set to meet growing demand in the borough for affordable housing. Alongside growing demand, the number of council homes has reduced through tenants evoking the Right to Buy (RTB). The council is then required to use receipts from the sale of council homes under the RTB to provide replacement affordable home.
- 1.2 To ensure current and future housing demand is met, the council has committed to utilising all potential delivery routes including building 1,000 new council homes for Brent residents.

1.3 In 2015, Cabinet decided how RTB receipts were to be distributed in order to deliver affordable housing for Brent residents. This report recommends the Council continues to retain RTB receipts in line with the Brent Retention Agreement (2012) with the Secretary of State and the following strategy;

- To award local authority grant to external providers to provide new affordable housing, leveraging significant investment;
- To invest RTB receipts in the direct delivery of council-owned to provide new affordable housing, reducing overall council borrowing
- To continue the existing acquisition programme to provide new affordable housing, integrated with the Councils wider market acquisitions programme;
- To support investments in the Housing Zones to acquire development in order to facilitate and accelerate development and the provision of affordable housing; with a view to align use of retained RTB receipts with the council strategic housing target to deliver.

1.4 To date, this strategy has been successful in enabling the council to secure 173 additional affordable homes within the borough and 10 schemes for the new accommodation for independent living programme. To continue the success of utilising retained RTB receipts, this report seeks to update the delegated authorities permitted under this strategy.

2.0 Recommendations

2.1 That Cabinet agree the following recommendations;

2.1.1 The continuing retention of Right to Buy receipts (subject to government legislation), as part of the Brent Retention Agreement (2012) with the Secretary of State for Ministry of Housing Communities and Local Government until 31 March 2024.

2.1.2 To continue to acquire existing properties until 31 March 2024 subject to financial viability including the flexibility to part-fund the cost of advance purchases within the South Kilburn regeneration area through retained Right to Buy receipts.

2.1.3 To continue to grant retained Right to Buy receipts to external partners for the provision of affordable homes for rent in line with the agreed procedure and delegate authority to the Strategic Director for Community Wellbeing in consultation with the Director of Finance and Operational Director for Housing to approve the criteria for grant funding, to approve criteria for evaluation of bids and to approve the allocation of such grants on acceptable terms.

2.1.4 To continue to contribute retained RTB receipts to support residential development of council-owned sites and for a commensurate proportion of the

homes to be provided as affordable rented accommodation, subject to financial viability and to delegate authority to the Strategic Director for Community Wellbeing in consultation with the Director of Legal, HR, Audit and Investigations, the Director of Finance and the Operational Director, Housing to approve the contribution of such receipts.

3.0 Background

3.1 Overview of Right to Buy

3.1.1 The RTB scheme was introduced in 1980 giving tenants living in social housing the opportunity to buy their rented home at a discount. In 2011, Central Government announced a significant drop in the number of RTB applications received as a result of the 1998 and 2003 Discount Orders which reduced the discount caps. Currently the maximum RTB discount is £108,000 in London and £80,900 outside of London.

3.1.2 The 2011 'Laying the Foundations: A Housing strategy for England' included a commitment to reinvigorating RTB through a proposal to increase the discount caps and invest RTB receipts into replacing homes sold with a new home for Affordable Rent. The method for replacing these new homes was for Local Authorities to retain receipts to spend in their local area.

3.1.3 This initiative required councils to enter into an agreement with the Ministry for Housing Communities and Local Government (MHCLG) under powers provided by section 11(6) of the Local Government Act 2003 (as inserted by section 174 of the Localism Act 2011).

3.1.4 Brent Council sought approval from Cabinet in July 2012 to enter into an agreement with the Secretary of State. This agreement required the Secretary of State to;

- Allow the Council to retain additional RTB receipts to fund the provision of replacement homes and
- Allow the Council three years (from commencement of the agreement) to invest receipts before unspent receipts are required to be returned

3.1.5 In return, the Council agreed;

- That RTB receipts would not exceed more than 30% of the total costs for any replacement homes built
- To return any unspent receipts to the Secretary of State together with interest of 4% above base rate

3.2 Delivering the councils strategy

3.2.1 Under the established strategy, the council has successfully secured 173 affordable homes and 10 schemes for the new accommodation for independent

living programme. Of these new homes, 43 were acquisitions from the open market, 66 were a result of grant funding a Registered Provider and the remainder form part of the new council homes programme.

3.2.2 As of March 2019, the cumulative spend on RTB expenditure was £65.5 million.

4.0 Using retained Right to Buy receipts

4.1 Alongside the Homes for Londoners Programme, the Mayor of London introduced an offer for London Councils to freeze retained receipts, removing the risk of having to return them back to Central Government if unspent within the three-year deadline. The Council opted into the RTB ring-fence offer in January 2019. The receipts are frozen until such time as the Council has an opportunity to spend them. A condition of opting into the scheme is that the Council must provide a programme of how it intends to spend the receipts.

4.2 Although there is now an agreement with GLA to ring-fence RTB receipts, the target spend for receipts retained prior to the GLA agreement still remains and will need to be met through a combination of new build, acquisitions and grant funding RP's. The spend target by the end of Dec 2021 is £51.2m (Gross expenditure).

4.3 Table 4.3: The annual targets are detailed below with the options to either invest in additional properties or grant fund RP's:

Options	2019/20	2020/21	2021/22	Total
	£m	£m	(Q3) £m	£m
1. RTB Target Gross Spend	20,877,007	26,049,712	4,265,756	51,192,475
2. Available Grant (30% of Gross Spend)	6,263,102	7,814,914	1,279,727	15,357,742

4.4 The Council, has already committed to an ambitious programme to deliver 1,000 new Council homes. This programme includes grant funding from the Greater London Authority. It is worth noting that both GLA grant and RTB receipts cannot be applied to fund the same property. Therefore, the RTB receipts will be used as a parallel funding stream developing housing in addition to that receiving grant from the GLA.

4.5 There is an existing strategy in place to develop a framework for granting receipts to external partners, with the aim to maximise the number of affordable homes being built. The Council commissioned Trowers and Hamlins to undertake the development of this framework. This included a procedure for external partners to apply for retained RTB receipts and evaluation criteria.

4.6 Using this criteria, the council will assess the eligibility of any Provider and the proposed scheme to ensure any new affordable homes are reflective of known

housing demand. Finance, will assess the value for money and financial viability outlined in the application. Additionally, each Provider is required to set out how they will meet all health and safety requirements, building applications and ensure a successfully obtain planning permission in order to access agreed receipts. Providers are also required to ensure wider council commitments are met including implementation of London Living Wage for all employees directly linked to the scheme.

- 4.7 All Registered Providers (RP's) were consulted in the development of this criteria to ensure it created an accessible opportunity for both large and small providers.
- 4.8 Since being implemented, a number of RPs have responded positively and their proposals support the Council's programme to increase the supply of new affordable homes in the borough.
- 4.9 The renewal of the delegated authorities, as set out in section 2 above, will enable the Council to make the necessary award as a RTB receipt grant.

5.0 Financial Implications

- 5.1 Under the previous RTB scheme, stringent conditions meant that there was an added pressure to spend retained RTB receipts within 3 years on a one for one replacement or to pay over the receipts with interest over to MHCLG if targets are not met. This target was not achievable in the long term due to borrowing restrictions in the HRA which has recently been abolished.
- 5.2 Brent has RTB spend targets totalling £51.2m by end of December 2021 as outlined in table 4.3 above. RTB spend targets remain due to retaining RTB receipts prior to the GLA RTB ring-fence offer was introduced.
- 5.3 Risk of not achieving spend targets means repaying the retained receipts with compounded interest at 4% above base rate starting from the time the receipt was received. The potential penalty could be significant. For example, if £6.64m of RTB receipts received in 2016-17 was not to be used in 2019-20 to increase housing supply, the interest charge would be £0.85m.
- 5.3 The GLA introduced the RTB ring-fence offer in January 2019 which Brent has opted into. It will allow RTB receipts received starting from Q4 of 2018-19 to be transferred over to GLA to hold in perpetuity and drawn down when required by Brent for affordable housing schemes while also accumulating interest on the balance, therefore the risk of not spending within a three-year target set by MHCLG and incurring interest charges as a penalty will be mitigated for future RTB receipts.

6.0 Legal Implications

- 6.1 Section 17 of the Housing Act 1985 allows councils to acquire land for housing purposes and to dispose of land used for housing purposes to a person or

organisation which intends to provide housing accommodation on the land or provide facilities which serve a beneficial purpose in connection with the requirements of persons for whom housing accommodation is provided. The general power of competence under section 1 of the Localism Act 2011 gives local authorities a broad range of powers "to do anything that individuals generally may do" subject to limits within other legislation and there are no adverse limits on the proposed scheme under the current legislation.

6.2 The council has powers under section 24(1) of the Local Government Act 1988 to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation. Although this power is subject to consent from the Secretary of State for the purposes of section 25 of the Local Government Act 1988, in 2010 the Secretary issued a general consent under section 25 and that general consent allows, amongst other things, a local authority to provide any person with any financial assistance (other than the disposal of an interest in land or property) for the purposes of or in connection with the matters mentioned in section 24(1) of the 1988 Act.

6.3 RTB receipts must be applied in accordance with relevant legislation and guidance and particularly the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) and the terms of any agreement reached under section 11(6) of the Local Government Act 2003 modifying the applicability of the regulations. As part of the retention agreement, the GLA has agreed to:

- (i) allow the local authority to retain additional net RTB 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. In return, the council has agreed with the GLA:
- (iii) that RTB receipts will not make up more than 30% of total spend on replacement stock, and
- (iv) to return any used receipts to the Secretary of State with interest.

6.4 The retention agreement with the GLA does 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 RTB receipts form no more than 30% of it.

6.5 Award of Local Authority Grant to External Housing Providers

6.5.1 The general power of competence in Section 1 of the Localism Act 2011 may be utilised to give grants to external housing providers, provided there is a good reason to do so. DCLG guidance specifically comments on the option to grant fund housing providers.

- 6.5.2 The council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is a capital programme which proposes to make use of the council resources in order to fund external housing providers in the delivery of affordable homes rather than be required to pay interest to the government on unspent receipts. It places the responsibility for 70% of the costs of building replacement one for one homes on external housing providers, thereby protecting the borrowing margin of the council and making possible the delivery of larger programmes.
- 6.5.3 The council is obligated under the Treaty For the Functioning Of The European Union to deal with all bidders for funding in a fair open and transparent way. Therefore, the council must allow fair access to the funding by all potential recipients. This means that the council should advertise the availability of the funds and assess bidders and their bids on predetermined and pre-advertised criteria applicable to all in the same way.
- 6.5.4 It is intended for the Council to enter into a grant agreement with each successful external housing provider. This grant agreement will include provision for delivery of the project in line with the application and approval, including time scales having regard to the implications of failure to comply as set by central government. Robust monitoring requirements need to be in place, and contingency plans developed. Provision will be included for clawback of grant if the project is not delivered in accordance with the application and approval.
- 6.5.5 In order to ensure that the grant does not qualify as procurement activity the council must ensure that the grant does not constitute a public works contract. For a public works contract to exist, the council needs to exercise a decisive influence over the design, for there to be enforceable obligations to carry out the work and for some form of economic benefit. With regard to the design, it is the grant recipient that is generating the specification for the proposed arrangement rather than the council. If there is a failure to deliver the project, then the only consequence is that the grant recipient has to return funding to the council. Also, there is no economic benefit taken in the grant by the external housing provider beyond the general receipt of the funds, as the council is agreeing to cover only actual cost rather than to fund any profit element.
- 6.5.6 It is clear that each external housing provider who receives a grant may gain an advantage in the market place generally for example, in respect of bidding for funding and work opportunities that could subsequently arise and this raises state aid issues. However, in the circumstances detailed in the body of the report it is not considered such a grant would constitute unlawful state aid.
- 6.5.7 It is clear that the funds are available in order to create affordable housing in Brent and the proposed grant documentation refers to definitions of affordable (and social) housing as set out in Sections 68 – 71 of the Housing and Regeneration Act 2008. Affordable housing is regarded as one of the Services

of General Economic Interest which is one of the State Aid exemptions. In the circumstances, it is not considered that the proposed arrangements breach State Aid laws.

7.0 Equality Implications

N/A

8.0 Consultation with Ward Members and Stakeholders

8.1 All Registered Providers have been consulted on the development of the grant funding procedure for RTB receipts.

Related Documents

[Cabinet report – Affordable Housing Supply Programme – Right to Buy 2015 – 2019](#)

[Cabinet report – Housing Right to Buy Receipts Programme – Phase 1 update and Phase 2 Procurement](#)

Report sign off:

Phil Porter

Strategic Director for Community
Wellbeing