# North Tyneside Council
# Report to Cabinet
# Date: 16th April 2012

**ITEM 6(e)**

**Title: Reinvigorating Right to Buy**

| | |
|---|---|
| **Portfolio(s):** **Housing** | **Cabinet Member(s):** **Councillor Paul Mason** |


**Report from Directorate:** **Community Services**

**Report Author:** **Ian Conway, Head of North Tyneside Homes** **Tel: (0191) (643 7500)**


**Wards affected:** **All**

**PART 1**

**1.1 Purpose:**

The purpose of the report is to inform Cabinet of key changes to the Right to Buy scheme and seek decisions on aspects on the revised scheme.

**1.2 Recommendation(s):**

It is recommended that Cabinet:

(1) Note the changes to the Right To Buy Scheme as detailed in the Department of Communities and Local Government publication "Reinvigorating Right to Buy and One for One Replacement - Information for Local Authorities".

(2) Agree that the current Council policy, limiting the persons sharing in the purchase of a property to (a) those family members who are named on the tenancy agreement or, to (b) those who have lived in the property (as their only or principal home) for at least 12 months immediately prior to the Right to Buy application being made, be retained.

(3) Authorise the Head of North Tyneside Homes, in consultation with the Cabinet Member for Housing, the Strategic Director of Finance and Resources and the Head of Legal, Governance and Commercial Services, to:

(a) Enter into an agreement with the Government, as appropriate, to retain any net receipts from Right to Buy sales that may be used towards the provision of new affordable homes;

(b) Apply for an exemption from the Department of Communities and Local Government for any new homes developed by the Council to be excluded from the Right to Buy pooling arrangements if they are subsequently sold;

(c) take all other appropriate steps or actions necessary or ancillary to implementation of reinvigorating the right to buy and one for one replacement arrangements, as described in this report, in addition to the matters specifically authorised pursuant to this report;

(4) Agree that at least 50% of the “assumed” income from sales is set aside to repay debt and all of the attributable debt per additional sale, to assist in protecting the viability of the Housing Revenue Account (HRA) Business Plan going forward, as at section 1.5.3.5 of this report.

**1.3 Forward Plan:**

This report does not appear on the current Forward Plan. However, it is required to be considered at this Cabinet meeting because the changes to the Right to Buy Scheme were announced by the Government on the 12th March 2012 and came into force with effect from the 2nd April 2012.

**1.4 Council Plan and Policy Framework**

The Right to Buy contributes to providing council housing and affordable rented housing in partnership with the private sector and registered social landlords.

**1.5 Information:**

**1.5.1 Background**

The Right to Buy scheme was introduced in the Housing Act 1980 and gives qualifying social tenants the right to buy their home at a discount. The scheme was repealed and replaced by the present scheme in the Housing Act 1985, which remains the primary legislation. The Scheme is only available to secure tenants who have completed a minimum of 5 years as a public sector tenant.

The scheme provides a maximum discount of up to 60% in the case of a house and 70% in the case of a flat for qualifying tenants on the purchase price of their home. There is currently a regional cap on the maximum amount of discount which is set at £0.022m.

The Council experienced high volumes of applications under the scheme in the initial years and following subsequent amendments to scheme the number of sales reached 989 in 2003/04.

In recent years the number of homes sold under the Right to Buy Scheme has significantly fallen. The number sold in 2011/12 fell to just 30.

In “*Laying the Foundations: A Housing Strategy for England”* (November 2011) the Government announced its intention to increase the caps on Right to Buy discounts to enable more tenants to achieve their ambition for home ownership. The document also set out the Government's commitment to ensure that the receipts on every additional home sold under the Right to Buy are used to fund its replacement, on a one for one basis, with a new home for Affordable Rent.

The Government has now announced its planned changes to the Right to Buy scheme, with details of how one for one replacement will work. These changes took effect on 2 April 2012.

### 1.5.2 Key Changes

The key changes to the Right to Buy scheme are set out in the Department of Communities and Local Government publication "Reinvigorating Right to Buy and One for One Replacement - Information for Local Authorities" issued on 12th March 2012. These are:

- An increase in the cap on the level of discount from £0.022m to £0.075m. The existing qualification period of 5 years as a public sector tenant and percentage discounts based upon the length of the tenancy, up to 60% for a house and up to 70% for a flat, remain unchanged.
- For every additional home sold under Right to Buy there is an expectation that it will be replaced by a new home for affordable rent, with receipts from sales recycled towards the cost of replacement.
- Local authorities will be able to retain the receipts for replacement housing – provided they sign up to an agreement with Government that they will limit the use of the net Right to Buy receipts to 30% of the cost of the replacement homes.
- Councils will be able to deduct the necessary amount to cover debt from the receipt but will not be required to use this part of the receipt to repay loans.
- Councils will also be able to deduct a certain amount from receipts for the cost of withdrawn applications. Authorities will be able to retain £2,850 in London and £1,300 in the rest of England to cover the costs of administration.
- The Buy Back provisions will be retained and local authorities will be allowed to fund up to 50% of the cost of re-purchasing a former council home and up to a maximum of 6.5% of any additional net receipts (i.e. receipts available to support one for one replacement).
- The 'cost floor' (see 1.5.3.4) has been extended from 10 years to 15 years; and councils can still apply for exemption from pooling arrangements (and therefore one for one replacement) for Right to Buy receipts from new social homes built after 2008. This would ensure that the costs incurred by the Council in developing a new home would be covered in full by the capital receipt through the cost floor arrangement, and retained locally. Without these changes, the Government recognise there could be a financial disincentive for local authorities to provide new affordable rented homes in future.

### 1.5.3 Other Issues

#### 1.5.3.1 Delivery of one for one replacement homes

Local authorities will be able to retain Right to Buy receipts for replacement housing provided they sign up to an agreement with Government.

After discussion with local government, the Government has decided that receipts from Right to Buy sales will in future be applied as follows:

- councils may deduct certain costs, namely: an amount to cover the housing debt supportable from the income on the additional Right to Buy sales; transaction and administration costs; and an amount which reflects the income the council might reasonably have expected from Right to Buy sales prior to the new scheme;
- councils must also pay the Government an amount which reflects the income which the Treasury expected from Right to Buy sales prior to the new scheme;
- once these costs are deducted, the remaining receipts (the 'net receipts') are available to fund (and must be applied to) replacement affordable rented homes.

The Government expects that, if it were to retain the net receipts from Right to Buy sales, it would be able to provide at a national level one for one replacement affordable rented homes, while restricting the contribution made from the net Right to Buy receipts to 30% of the cost of the replacement homes.

Where a local authority is satisfied that it can match this expectation (and raise the other 70% of the cost of any new affordable rented housing), the Government will be prepared to enter into an agreement that the authority may retain the remaining receipts.

In short the Secretary of State will agree to:

i. Allow the Council to retain additional Right to Buy receipts to fund the provision of replacement stock; and
ii. Allow the Council two years (from commencement of the agreement) to invest those receipts before asking for the money to be returned.

In return the Council would need to agree:

i. That Right to Buy receipts will not make up more than 30% of total spend on replacement stock; and
ii. To return any unused receipts to the Secretary of State with interest of 4% above base rate on a day to day basis with 3-monthly compounding i.e. after each three months the interest starts to accrue interest.

As the Council is already at the debt cap it would be unable to borrow any additional resources and fund this from the future rental income in the short term. The Council would therefore need to find an alternative means of funding the shortfall directly from revenue or other resources, or alternatively would need to support a Registered Provider to do this on the Council’s behalf. Registered Providers can borrow additional resources up to 70% needed to fund the cost of affordable homes, whereas in the short-term the Council is restricted.

There are inherent uncertainties in this area. In addition to the Council’s ability to borrow being limited in the short term, it is also not possible to forecast the likely volume of RTB sales and therefore receipts. However options do exist for the council to build affordable homes directly or through another social housing provider by “topping up” the RTB receipts with other resources. Potential sources of funding include the “Housing Building Fund” created in the 2012-2013 HRA Budget approved by Council from forecast saving between the actual interest rate achieved on the £128m additional debt and the budgeted rate at around £0.651m per annum and from the sale of land held by the HRA.

Where authorities do not wish to enter into such an agreement with Government, the remaining receipt will be returned to the Department for Communities and Local Government, and re-distributed for new affordable rented housing by the Homes and Communities Agency (or, in London, the Greater London Authority).

Therefore, despite current uncertainty, it is recommended that authority is given to the Head of North Tyneside Homes, in consultation with the Cabinet Member for Housing, the Strategic Director of Finance and Resources and the Head of Legal, Governance and Commercial Services, to sign up to such an agreement as appropriate once the further detail is known.

**1.5.3.2 Worked Examples on one for one replacement**

The table below demonstrates some possible scenarios for a single year (2012-13) based on the following assumptions:

- Average sale valuation £0.090m (actual for last 3 years has been £0.080m, but this is based on very low sales of predominantly flats);
- Total Government assumed income for the year- £1.318m;
- Total Local Authority (LA) assumed income for the year- £0.549m;
- Assumed debt under self-financing - £0.862m in the self-financing model;
- Attributable debt on each home sold - £0.017m;
- Transaction Costs allowance - £1,300 per sale;
- Receipt per home sold under new discounts - £0.036m assuming maximum discounts apply.

These figures are illustrative only and the actual figures will vary depending on actual sale valuations, and calculations of attributable debt etc.

| | **Estimated Sales (100) i.e. 60 additional (£)** | **Estimated Sales (200) i.e. 160 additional (£)** |
|---|---|---|
| Total Receipts £36,000 x sales (£) | 3,600,000 | 7,200,000 |
| **Costs:** | | |
| Attributable Debt on units | 1,700,000 | 3,400,000 |

| | | |
|---|---|---|
| (£17k per property) | | |
| Less assumed debt per self- financing model | (862,000) | (862,000) |
| Transaction Costs (£1,300 per sale) | 130,000 | 260,000 |
| **Total Costs (£)** | **968,000** | **2,798,000** |
| **Net Receipt** | **2,632,000** | **4,402,000** |
| Government assumed income (£) | 1,318,000 | 1,318,000 |
| LA assumed income (£) | 549,000 | 549,000 |
| Buy Back Allowance (£) | 0 | 0 |
| | | |
| **Money for replacement homes (£)** | **765,000** | **2,535,000** |
| **Amount per additional sale (£)** | **12,750** | **15,844** |

It can be seen from the examples above that North Tyneside will be a long way short of being able to generate a 30% contribution to the costs of a new “affordable” home on a one for one replacement basis, based on the Government’s assumptions, unless it contributes significant additional resources of its own.

### 1.5.3.3 Rent Implications of One for One Replacements

To maximise borrowing it may be necessary to charge an Affordable Rent but, in the case of new council homes, that is a decision for the Council.

The Policy Planning Statement no3, published on 9 June 2011 includes the definition of Affordable Rented housing as:

Rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

Affordable rents are higher than those currently charged by the Council for its social rented stock. Therefore, if the Council was to develop new homes under the affordable rent arrangements through the “one for one replacements” under Right to Buy, this would result in a two tier rent structure.

The key differences between Social Rent, Target Rent and Affordable Rent are:

| ‘Social Rent’ homes | Target Rent homes | ‘Affordable Rent’ homes |
|---|---|---|
| Set according to a Government formula to reach the target rent by 2015-16 known as rent restructuring, increase by RPI + ½% + | Target Rent is the recommended social rent this type of dwelling should be at using the Government formula. This rent is increased by | Set according to market conditions – up to four-fifths (80%) of market rent levels. |

| | | |
|---|---|---|
| difference between current rent and Target up to a max of £2.00- typically around three fifths (60%) of market rent levels | RPI (at September ) + ½% each year<br>Social rented homes are required to be at their target rent level by 2015/16. | |

An example of a North Tyneside Council social rent in areas compared to it being charged as an Affordable/Target rent:

| | Social Rent | Target Rent | Affordable Rent | Market Rent |
|---|---|---|---|---|
| **Weekly rent on three-bedroom house in Wallsend area** | **£74.00** | **£80.64** | **£99.50** | **£124.38** |
| **Weekly rent on a three-bedroom house in Whitley Bay area** | **£79.08** | **£88.65** | **£122.76** | **£153.46** |
| **Weekly rent on a three-bedroom house in North Shields area** | **£75.64** | **£80.64** | **£109.28** | **£136.61** |
| **Weekly rent on a three-bedroom house in North West area** | **£74.61** | **£81.87** | **£90.27** | **£112.84** |

### 1.5.3.4 One for One Replacements and Pooling Arrangements

Where a council sells a home under the Right to Buy provisions, the receipts are subject to pooling arrangements. This means that after allowing for administrative costs the council may retain 25 per cent of the remaining receipts and the balance of 75 per cent is paid to government.

Under one for one replacement arrangements the council can apply for any receipts from any new homes that are subsequently sold to be excluded from the pooling arrangements. This means that the council would retain 100% of the receipt. This coupled with cost floor provisions will mean that if the council builds a new home and subsequently sells it, it could not be sold at less than it cost to build, and all of the receipt from the sale would be retained. Without this arrangement councils would be discouraged from building new homes as they would otherwise potentially be left with 100% of the cost and only 25% of the receipt to meet it.

**1.5.3.5 Impact of changes on Self-Financing**

There will inevitably be an impact on the HRA Business Plan both in the short-term and the long-term if Right to Buy levels return to levels seen previously.

The Government assumes that councils will be able to set aside the attributable debt on all additional sales generated, and councils also have the option to do the same with the assumed income on the sales included in self-financing.

The more difficult issues will be around rental streams and costs – the Council will immediately lose the rental streams forever on the additional sales. This will be countered to some extent by eventual reductions in maintenance and major repair costs, and debt financing but the rate at which management costs reduce will be slower and there will not necessarily be a linear reduction in costs to match the income loss.

Therefore, it is recommended that at least 50% of the “assumed” income from sales is set aside to repay debt, and all of the attributable debt per additional sale – this will help to protect the viability of the HRA Business Plan going forward. The balance of the assumed income could be used to “top-up” the 30% contributions for new “affordable” housing.

We will continue to monitor the situation closely, and revise the Business Plan modelling accordingly to take account of changes in stock levels that will be brought about by the changes.

**1.5.3.6 Persons sharing in the Right to Buy**

Family members may join in the purchase of a home if they are party to the tenancy agreement or if they have lived in the property (as their only or principal home) for at least 12 months immediately prior to the Right to Buy application being made. The Government does not intend to make any legislative changes in this area and has left the decision as to whether to include other family members who do not meet these criteria to the discretion of local councils.

Restricting non-qualifying persons from joining in purchasing a property under Right to Buy will prevent potential abuse of the scheme and safeguard the Council’s assets. The Council’s current arrangement is not to allow family members to join the purchase who do not meet the above criteria and it is recommended that this policy approach be retained.

**1.6 Decision options:**

The following decision options are available for consideration by Cabinet:

(1) Agree the recommendations set out at section 1.2.of this report.

(2) Agree only some or none of the recommendations.

**1.7 Reasons for recommended option:**

**1.7.1** Restricting non qualifying members from joining in purchasing a property under Right to Buy will prevent potential abuse of the scheme and safeguard the Council's assets.

**1.7.2** By signing up to an agreement with the Government to use the Right to Buy receipts the Council would support the Council's aim of developing new homes and retain a greater level of local decision making and control

**1.7.3** Applying for an exception from pooling receipts would ensure that the costs incurred by the Council in developing a new home would be covered in full by the capital receipt through the cost floor arrangement and retained locally. Without these changes there could be a financial disincentive for local authorities to provide new affordable rented homes in future.

**1.7.4** By setting aside at least 50% of the "assumed" income from sales will help to protect the viability of the HRA Business Plan going forward. The balance of the assumed income could be used to "top-up" the 30% contributions for new "affordable" housing.

**1.8 Appendices:**

**Appendix 1**: Reinvigorating Right to Buy and One for One Replacement: DCLG's Information for Local Authorities, March 2012

**1.9 Contact officers:**

Paul Worth, Housing Needs Manager, North Tyneside Homes, tel. (0191) 643 7554
Ian Hearn, Leasehold and Right to Buy Team Leader North Tyneside, North Tyneside Homes, tel. (0191) 643 7569
Darrell Campbell, Principal Accountant, Finance and Resources Directorate, tel (0191) 643 7052

**1.10 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) Reinvigorating the Right to Buy and One for One Replacement: Consultation

(2) Reinvigorating Right to Buy and One for One Replacement: Consultation - Summary of Responses, and Government response to consultation.

(3) The Policy Planning Statement no3, published on 9 June 2011.

(4) Reinvigorating the Right to Buy (RTB): Retainment of receipts for replacement housing issued by Department of Communities and Local Government April 2012.

(5) Reinvigorating the Right to Buy (RTB): Information for Local Authorities issued by Department of Communities and Local Government April 2012

## PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

### 2.1 Finance and other resources

There are a range of potential financial implications for the Housing Revenue Account arising from the changes now being implemented in relation to the Right to Buy (RTB).

**Revenue** – currently the Council is only able to recover administration costs in relation to RTB based on the proportion of overall applications that lead to a sale. This is being changed to a flat rate per transaction of £1,300 to reflect all administration costs. Hence, depending on the level of actual sales and the efficiency of the administration process, there could be a revenue benefit to the HRA from the revised process.

**Capital Receipts –** the revised system assumes that we will treat the receipts in the following order:-

- <u>Gross RTB receipt</u> net of discount (based on cap or %);
- <u>Less "attributable" debt</u> on the additional sales (because self-financing has already calculated debt on an assumed level of sales);
- <u>Less transaction costs</u> (£1,300 per sale);
- <u>Less Treasury "assumed" receipts</u> based on self-financing model (estimated at £1.300m for 2012-13);
- <u>Less Council "assumed" receipts</u> based on self-financing model (estimated at £0.549m);
- Leaving a net figure "Money for Replacements" which can be applied to building new "affordable" homes if we sign up to the Government agreement;

The Government estimates that this net figure needs to be in the region of £0.040m-£0.045m per additional property sold, to be able to fund approximately 30% of the costs of a new "affordable" home, with the balance of cost coming either from borrowing against future rental streams, or other internal resources including land. Alternatively, we can use the funds to support a Registered Social Landlord by funding up to 30% of the costs of an "affordable" scheme with the receipts.

The Government is aiming for a one for one replacement on a national basis of all additional properties sold. The worked examples in the report show that this is very unlikely to be achieved within North Tyneside. The report also details how the receipt could be applied in conjunction with other funding sources.

**HRA Business Plan**

It is recommended that at least 50% of the "assumed" income from sales is set aside to repay debt, and all of the attributable debt per additional sale, which will help to protect the viability of the HRA Business Plan going forward.

**Potential future interest costs**

Any amounts which are retained by the Council but are not spent within two years will be returned to Communities and Local Government and would have interest charged on them. There are no short term (2012/13) financial implications of this nature on entering this agreement but due consideration will need to be given to this as part of the 2013/14 budget setting process.

## 2.2 Legal

(1) Part V of the Housing Act 1985 is the primary legislation for Right to Buy. It sets out the requirements and procedure to be followed by the Council and qualifying tenants whenever such a tenant is seeking to exercise their statutory right to buy their Council home. Secure tenants have the statutory right to buy their council home (subject to certain statutory exceptions) provided that they meet the criteria to be able to do so, such as the requirement to have completed at least 5 years as a tenant under a public sector tenancy in accordance with section 119 and Schedule 4 of the Housing Act 1985. Section 129 and Schedule 4 of the 1985 Act sets out the percentage discounts available to tenants who wish to purchase their Council home referred to earlier in the report.

(2) Section 131 of the Housing Act 1985 has been amended by Statutory Instrument (2012/734) to allow a longer period to be taken into account for determining any "cost floor" and introducing the universal cap on discounts of £0.075m (previously regional limits). There are no other changes to the primary legislation.

(3) Appropriate legal advice will be obtained as work on implementing the new arrangements is taken forward, including in relation to the implications of entering into the legal agreement with Government in relation to retention of sale receipts.

## 2.3 Consultation/community engagement

### 2.3.1 Groups consulted

(1) A presentation has been provided to the Housing and Economic Prosperity Sub Committee on the proposals for reinvigorating the right to buy. A response was prepared by the committee and provided to the Department of Communities and Local Government as part of the consultation process.

(2) A briefing on the new arrangements has been provided to the Elected Mayor and Cabinet.

(3) A response was provided by the Council to the DCLG on the consultation paper.

(4) Staff briefings have been undertaken.

(5) Briefings have been provided to the Overview Panel of Tenants and other involved residents concerning the Government proposals.

(6) An email survey has been undertaken with tenants from our involvement database.

(7) Once full details are clarified, an all Member briefing will be provided through the regular Member Briefing sessions.

**2.4 Human rights**

The importance of housing is recognised in the United Nations Covenant on Economic, Social and Cultural Rights, which includes 'the right of everyone to an adequate standard of living for himself and his family, including adequate housing'. The United Kingdom is legally bound by this treaty. Protecting people's human rights in housing is therefore important in its own right.

**2.5 Equalities and diversity**

There are no significant equalities and diversity implications arising from this report.

**2.6 Risk management**

There are some financial risks relating to the HRA Business Plan potentially arising from these changes. The sale of additional council homes over and above those built into the HRA Business Plan will result in the loss of rental income to the HRA. It will be important to ensure that adequate provision is made for repaying HRA debt on properties sold. The impact of the loss of some stock could potentially be mitigated by the development of new housing stock although based upon our projections how this will be achieved needs further clarity.

It is recommended that at least 50% of the "assumed" income from sales is set aside to repay debt, and all of the attributable debt per additional sale, which will help to protect the viability of the HRA Business Plan going forward.

**2.7 Crime and disorder**

There are no significant crime and disorder issues arising from this report.

**2.8 Environment and sustainability**

There are no significant environmental sustainability implications arising from this report.

**PART 3 - SIGN OFF**

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| • Strategic Director(s) | X |
| • Mayor/Cabinet Member(s) | X |
| • Chief Finance Officer | X |
| • Monitoring Officer | X |
| • Strategic Manager of Policy and Partnerships | X |