

Spitalfields Housing Association: Disposals Policy

In accordance with the Housing (Right to Buy) (Information to Secure Tenants) (England) Order 2005 SHA is publishing its disposals policy and associated information in respect of tenants' rights in respect of their eligibility to secure home ownership.

Policy Background

Over the last 20 years, house prices have risen quite significantly in some areas, but salaries have not increased at the same rate. The Barker Review stated that:

“housing has become increasingly unaffordable over time”

Yet the:

“aspiration for home ownership is as strong as ever”.

In England, particularly London and the South East, demand for housing for sale has been outstripping supply and there is now a shortage of affordable housing. The Barker Review indicated that in the late 1980's 46% of new households in the UK could afford to buy housing. By 2002 this had reduced to 37%. In areas of high pressure such as London and the South East, the numbers are much lower and the reduction over time even greater.

The impact of this has been to polarise communities in areas of greatest demand for housing, as lower to middle income earners are forced to look elsewhere for homes, with the consequent effect on the labour market, particularly affecting public services.

Spitalfields Housing Association Limited (“SHA”) is a not-for-profit community-based housing association. SHA was set up in 1979 to provide good quality, affordable housing to those in most need.

Any private company, such as SHA, usually has a general unfettered power to dispose both of land and any interest in land. In the case of SHA, however, it is also a registered social landlord, (“RSL”) and as such, is governed by the requirements of the Housing Corporation.

Affordable homes for sale have historically been produced with some form of public subsidy, because an affordable sale price alone has not been sufficient to cover the acquisition or development costs of the home. Housing associations such as SHA produce affordable homes for sale through a combination of grants, private borrowing and reserves.

Since the early 1990’s, Section 106 powers have been used to deliver some affordable housing as part of larger housing schemes, at reduced or nil cost to the public purse. Alongside this and on a relatively small scale so far, some sub-market and non-SHG (Social Housing Grant) funded low cost home ownership schemes have been developed.

The Housing Corporation has clearly indicated that it will:

“only fund Section 106 sites which integrate different tenures in a single site design”.

The way the Housing Corporation distributes public funds for the development of new housing has undergone significant changes over the last two years. In 2004 Investment Partnering was introduced. SHG was allocated to a smaller number of housing associations and consortia for 2 year programmes, with a minimum allocation of £10m, rather than on the previous scheme by scheme basis. The rationale behind this was to help achieve the delivery of more homes by increased economies of scale and more efficient procurement.

The programme was developed through the 2005-6 round of bidding for Housing Corporation funds. The ADP been re-named the:

‘National Affordable Housing Programme’ (NAHP) and has been opened up for the first time to allow private bodies to bid for SHG. The bids for SHG under the NAHP still have to be proven to be within the Regional Housing Strategies.

At the same time the Government replaced ‘shared ownership’ with three new products under the ‘HomeBuy’ label.

The Housing Corporation’s funding for low cost home ownership is also focused towards these three products.

The Housing Corporation has also introduced a system of Zone Agents, who are responsible for providing a one stop shop for applicants who wish to apply for assistance in respect of the various low cost home ownership products.

Government policy on homeownership

The publication of the DCLG Five Year Action Plan: ‘Sustainable Communities-Homes for all’, attempts to lay the foundations for:

“a wide range of measures to extend the opportunities for homeownership”.

Within this are proposals to:

- Help 80,000 people into home ownership by 2010, including a First Time Buyer’s Initiative, using publicly owned land for new homes.
- A package of schemes under the banner “A choice to own”, including the extension of Homebuy (Social HomeBuy)-a scheme that allows tenants of Local Authorities and Housing Associations to buy a stake in their home at a discount.
- Ensure the proceeds from Homebuy sales are re-invested in housing
- Continue the Right to Buy and Right to Acquire schemes for people who qualify to purchase their home from their local authority or housing association.
- A competition to build a home for £60,000, delivering quality homes at lower costs.

At the same time, plans were announced to deliver housing growth responsibly in the South, including four Growth Areas in the wider South East, with the aim of delivering 1.1 new homes by 2016.

Spitalfields' role in helping to deliver low cost home ownership.

Helping the Government to achieve its target of helping 80,000 more households into home ownership by 2010 will require greater levels of investment in low cost home ownership schemes. The principle mechanism through which this is to be achieved are Social HomeBuy, NewBuild HomeBuy and Open Market HomeBuy, which are intended to bring home ownership within the reach of more lower income households. These are in addition to the existing statutory disposal schemes.

Statutory Disposal Schemes

Statutory Disposal Schemes are those schemes whereby typically a tenant has been given by statute, the right to acquire an interest in land. This is a right which rests in the tenant to be exercised by them, generally at their discretion.

(1) Right to Buy (Housing Act 1985)

Secure tenants of non-charitable registered housing associations have the right to acquire the landlord's interest in their dwelling, at a discount, or in the case of a flat, (where the landlord holds the freehold) a long lease (Housing Act 1985 Section 118).

These general provisions are regulated by the Housing Corporation and are the same that are applicable to local authority tenants.

In order to exercise the Right to Buy, the following provisions apply:

- The tenant is a secure tenant
- There is a two year residence requirement for the tenant's only or principal home. For tenancies starting on or after 18 January 2005 the required period is 5 years.
- A number of housing associations are excluded from these regulations. The position relating to Spitalfields is that tenants of Spitalfields who have tenancy agreements pre-dating 15 January 1989 would have become by law secure tenants and would have gained the statutory right to buy when Spitalfields became a non charitable housing association in 1979. However, when Spitalfields subsequently became a charitable housing association, the tenants with the existing right to buy would have lost the right to buy, (because there is no right to buy against charitable housing associations). However, it should be noted that the Housing Corporation expects any housing association which converts from non charitable to charitable status to offer a contractual right to buy on the same terms as the statutory right to buy to all those tenants who previously enjoyed the right to buy, in order to ensure that their rights are protected. To summarise then, those tenants whose tenancies pre-date 15 January 1989 will be granted a contractual right to buy on the same terms as the statutory right to buy, in order to satisfy Housing Corporation requirements, (subject to other qualifying criteria being satisfied). These include:
 - The tenant must not be an undischarged bankrupt or have a bankruptcy petition pending against them, or be the subject of an arrangement with his/her creditors the terms of which remain to be fulfilled, or be the subject of a possession order where a date for possession has been fixed and has passed. The right to buy can also be refused in certain circumstances where the tenant is involved in anti-social behaviour (Housing Act 1985 Section 121A).

- The dwelling house is not one which has features:

“substantially different from those of ordinary dwelling houses and which are designed to make it suitable for occupation by physically disabled persons”. and social services or special facilities are provided for the disabled residents. (In order to maximise the qualifying criteria for low cost home ownership, SHA has specifically excluded the provision of aids and adaptations funded by Disabled Facilities Grant from this definition).

- The dwelling is not one that is fit for occupation by the mentally disordered or formerly mentally disordered persons and special facilities have been provided for assisting those people.
- The dwelling is not one of a group of dwellings which are particularly suitable having regard to the location, size, design, heating systems and other features for occupation by elderly persons and it is the practice of the landlord to let them for occupation by persons age 60 or over or for occupation by such persons in that there are special facilities such as a resident ward or the use of a common room are provided in close proximity for the means of assisting these facilities.

If there are any queries or matters requiring further explanation, the procedures for secure tenants to exercise their right to buy, (including the mechanism to establish the level of discount), is set out in detail in the Housing Act 1985.

In respect of SHA tenants, the key eligibility criteria are:

- the tenant must be a secure tenant
- a tenant of SHA will only be a secure tenant if their tenancy began before 15 January 1989

Appendix 1 is a flow chart showing how to determine the eligibility of any right to buy application.

(2) Right to Acquire (Section 16 Housing Act 1996).

The right to acquire ('RTA') was introduced in the Housing Act 1996 and gives eligible housing association tenants a statutory right to purchase the property in which they live at a discount, generally between £9,000 and £16,000 depending on the local authority area in which the property is located.

The scheme has recently been amended as from 18 January 2005 by the Housing Act 2004.

In order to have a 'right to acquire' a tenant must:

- Be a secure or an assured tenant of an RSL.
- The property must have been built or purchased by the RSL on or after 1 April 1997 and funded through social housing grant provided by the Housing Corporation.
- Alternatively, the property must have been transferred from a local authority to the RSL on or after 1 April 1997.
- The RSL must own the freehold of the property
- The applicant must have spent a total of 2 years as a public sector tenant (or in accommodation provided by the armed services).
- Alternatively, if the first public sector tenancy was created on or after 18 January 2005, the tenant must have spent a total of five years as a public sector tenant.
- The house or flat must be a self-contained property
- The house or flat must be the tenant's only or main residence

In the case of SHA, the key eligibility criteria is that the property must have been built or purchased on or after 1 April 1997 through SHG provided by the Housing Corporation.

NB: This requirement relates to the property not the tenancy. (Thus a tenant who takes out a tenancy after 1 April 1997 of a property which was built before 1 April 1997 will not be eligible).

The key issue of 'right to acquire' is that the dwelling must have been provided with public money. A dwelling is treated as provided with public money for this purpose only if it is:

- Funded wholly or in part by means of social housing grant under the 1996 Act
- Funded out of the sales assets from disposals
- Acquired after the commencement of the 1996 Act from a public authority

(3) The Preserved Right to Buy (Housing Act 1985 Sections 171A-H).

These provisions preserve the right to buy of local authority secure tenants whose properties are transferred to a private landlord including an RSL under either a 'large scale voluntary transfer' or 'stock transfer'.

If a tenant is a secure tenant of a local authority and at the time of the transfer had the right to buy their property, their right to buy will be preserved.

The preserved right is in favour of the tenant, including his qualifying successors, (as defined in the Housing Act 1985 section 171B).

The preserved right to buy applies where:

“a person ceases to be a secure tenant by reason of the disposal of the dwelling house to a person who is not...a body capable of granting secure tenancies under the Housing Act 1985 Section 80”.

The property must be transferred from a local authority to the RSL on a stock transfer.

Where an individual tenant ‘transfers’ from a local authority to an RSL by giving up their secure tenancy (or assigning it under a mutual exchange) and taking a tenancy with an RSL, they do not gain the preserved right to buy.

Other non-statutory schemes enabling tenants to buy a home

The New Homebuy Scheme

The new Homebuy scheme provides an opportunity for those tenants who do not have the Right to Buy, Preserved Right to Buy or the Right to Acquire, (or cannot afford it), to buy a share in their rented home.

- **Social Homebuy**

This scheme enables SHA tenants to buy a share in their current home at a discount. Only existing secure or assured tenants of participating housing associations or councils are eligible.

Tenants who are facing legal action for anti-social behaviour or other breaches of their tenancy agreement cannot take part.

Tenants can buy a minimum initial share of 25% of their home. The remainder of the equity is retained by their landlord, who can take a charge of up to 3% on the capital value of their retained equity.

Buyers receive a discount equivalent to the 'Right to Acquire' discount, (i.e. between £9,000 and £16,000 (depending on the local authority area they live in), pro-rated to the share purchased.

Participation by social landlords in the Social Homebuy scheme is voluntary, but SHA has decided to enable tenants to benefit from the opportunities afforded by this scheme.

Properties which are exempt from the 'Right to Acquire' scheme, including those provided for people with long-term disabilities or special needs are exempt from Social Homebuy. (SHA's Board has decided that aids & adaptations funded by DFG are not subject to this restriction).

If the property is sold within five years, the discount is repayable. When the purchaser comes to sell their home, SHA will have the chance to buy the property back at market value or nominate another purchaser.

Only existing secure or assured tenants are eligible.

- **New Build Homebuy**

This scheme enables tenants to buy a share of a newly built property. Tenants can buy a minimum initial purchase of 25% of a newly built home. SHA holds the remainder of the equity.

SHA will be able to levy a charge of up to 3% on their equity. Tenants may buy further shares in their home when they can afford to do so, (a process known as ‘staircasing’). Further shares are sold at market value.

Purchasers need to raise a mortgage for the share they purchase and pay rent on the share that SHA retains.

If the purchaser wishes to sell the property in the future, another household will generally be nominated by SHA. Alternatively, it may be possible to staircase to 100% and sell the property on the open market.

It is also possible for the shared owner to sell their share on the open market if SHA is unable to nominate a new shared owner within the period defined in the lease.

SHA may also be able to buy the property in order to ensure that it remains in the market for other households who want to take advantage of low cost home ownership opportunities.

All key workers, existing social housing tenants and those in priority housing need are eligible to apply for newbuild Homebuy property.

If a key worker subsequently changes to a job where they can no longer be considered a key worker, they have five years to buy the property outright or to sell it, (either to someone of their choice or back to SHA).

- **Open Market Homebuy**

This scheme enables tenants to buy a property on the open market with the help of an equity loan.

Tenants will be expected to raise finance to buy around 75% of a home on the open market. A housing provider will provide a loan of up to £50,000 for the required balance.

The loan is repaid when the purchaser sells their home. The amount repayable will be the same percentage (e.g. 25%) of the value of the home.

The scheme is primarily for key workers but is also available on a more limited scale to tenants.

Average equity loan levels will vary according to local house prices.

Prospective purchasers can apply by contacting their local Homebuy Zone Agent, (details available from SHA office).

- **Homebuy Zone Agents.**

Zone Agents (a small number of larger housing associations appointed by DCLG following a competition process), provide a one-stop shop and point of contact for potential purchasers of Open Market and New Build Homebuy products, handling the entire application process.

Role of the Zone agents include:

- registration of an applicant's interest
- Assessment of their eligibility
- Provide basis scheme details that they think will interest the applicant

Zone Agents will work closely with housing associations developing new homes in their regions, although individual housing associations developing the schemes will deal with the final selection of purchasers.

In effect:

- Social Homebuy operates alongside the existing Right to Buy and Acquire schemes, enabling social housing tenants to buy a share in their homes.
- NewBuild HomeBuy merges the principles of existing HomeBuy, Shared Ownership and Key Worker Living programmes together with the First Time Buyers Initiative and London Wide Initiative schemes.
- Open Market HomeBuy merges the principles of the existing HomeBuy, Shared Ownership and Key Worker Living.

For further information and to apply for any of the above mentioned schemes, please contact Graeme Seely, Development & Technical Services Manager, telephone: 020 7392 5414