**NORTH & EAST YORKSHIRE RURAL HOUSING ENABLER NETWORK**

**AGENDA ITEM NO: X**

**REPORT TO: North & East Yorkshire Rural Housing Enabler Network**

**DATE**: 7th February 2018

**SUBJECT:** Shared Ownership in Designated Protected Areas

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1. **Purpose**
   1. To aid a Network discussion around the issues presented when providing shared ownership homes in Designated Protected Areas (DPAs) and agree recommendations to Local Authorities via the YNYER Housing Board.
2. **Background**
   1. Schedule 4A of The Leasehold Reform Act 1967 as amended by section 302 of the Housing and Regeneration Act 2008 gives power to the Secretary of State to designate any area in England as a “protected area” if the Secretary of State considers it appropriate to do so. The effect of this designation is to prevent a tenant in that area from exercising the right to enfranchisement (acquiring the freehold), if certain statutory conditions are met in respect of the lease. These regulations came into effect on 7 September 2009 and aim to ensure that shared ownership homes are retained as such in areas where they would be difficult to replace.
   2. The second Order, The Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 (Statutory Instrument 2009/2097) requires landlords to include in their shared ownership lease, for houses within a ‘Protected Area’ provisions to either:

* restrict the leaseholder’s equity share to a maximum of 80%; **or**
* ensure that once the leaseholder has acquired 100% share of the house, it is sold back to the landlord when it becomes available for resale.
  1. The Regulations aim to provide greater certainty for strategic housing authorities that proposals for shared ownership in areas with identified need and where opportunities to build are scarce can be brought forward without the risk of those homes being lost to the open market. As the buyer is unable to purchase 100% of the property it can never be sold on the open market and future buyers will be subject to eligibility checks. Thus the property remains affordable in perpetuity. The legislation aims to ensure that grant funded shared ownership property in difficult to replace areas can be retained for the benefit of local people.
  2. A key aspect of the Designated Protected Areas regulations is that shared ownership leases issued in respect of property in Designated Protected Areas must contain certain clauses to retain the property as shared ownership for future purchasers.
  3. The repurchase arrangements allow providers to buy a property back from an existing leaseholder to enable a resale to a local household in housing need. The aim of the arrangements is to retain low cost housing for rural communities. Where providers have “robustly explored” and exhausted all other funding options, including the use of recycled grant and or a transfer of recycled grant, Homes England will positively consider applications to fund the repurchase of grant funded property within a Designated Protected Area, where funding is available.

1. **Current Situation**
   1. The restriction on shared ownership sales in DPAs appears to be presenting challenges to RPs in rural North and East Yorkshire and the number of requests for Local Authorities to waive the DPA restrictions is increasing for a number of reasons, not least that the development of shared ownership properties is increasing due to the government focus on supporting home ownership, particularly through the Homes England Shared Ownership and Affordable Homes Programme. The responses by the Local Authorities in the partnership area to requests for a waiver have been mixed. A further challenge is that the Designations are not consistent i.e. some rural areas are within DPAs and others, often smaller settlements than those protected, are not.
   2. The main issues presented in developing shared ownership in a DPA is that the number of lenders willing to lend on a shared ownership property decreases significantly where there is a restriction in staircasing due to the DPA status.
   3. Currently there are 17 lenders operating in the shared ownership sector. Where a lease includes a cap on stair-casing, this number reduces to two. The result of this is that:

* buyers have less choice of mortgage product and may need a larger deposit;
* future potential purchasers may not be able to obtain mortgages due to lender exposure limits;
* it may be more difficult to match Homes England and mortgage lender affordability assessment. Those with the greatest housing need may not be able to meet the criteria of the lenders available; and
* any further withdrawal from restrictive clause shared ownership lending in the future would impact on a buyer’s ability to change mortgage products or sell on their property should their circumstances change.
  1. RPs appear to be increasingly reluctant to take on shared ownership properties in DPAs due to the risks associated with lender restrictions. It may therefore be difficult to secure an RP partner on sites that lie within DPA areas and may also act as a barrier to bringing forward new affordable sites.
  2. That said, levels of stair-casing, both to increase the initial share and to full ownership, are low. Research published by the Cambridge Centre for Housing & Policy Research in 2012[[1]](#footnote-1) showed that rates of stair-casing to 100% had gradually decreased over the preceding 10 years, down to a level of 0.9% of shared ownership stock in 2010-11. Feedback from RPs has also shown very low stair-casing over the last three years.
  3. Under certain circumstances Homes England is able to waive the conditions of grant relating to DPA status. All other conditions of grant would remain. The application must be made by the relevant Local Authority following a request from a RP. Applications for a waiver of DPA grant conditions can only be made regarding specific sites within the DPA. Homes England is unable to remove DPA status from an entire area.
  4. The overriding criterion in designating an area as ‘protected’ is that the location is one in which shared ownership homes would be hard to replace. Areas with high levels of existing or proposed development would be expected to provide an ongoing pipeline of new shared ownership properties to replace any that are ‘lost’.
  5. For non grant funded properties (such as those delivered through S106), the decision to enforce the DPA restrictions lies with the Local Authority. Homes England have indicated that local authorities should have regard to their criteria when making a judgement. Their guidance further states that ‘the Agency would suggest that the Authority carefully consider the merits of such a restriction if it imposes the same barriers to development that the Agency is seeking to overcome.’
  6. In some Local Authorities, requests for DPA waivers have been refused, in others the decision had been made not to enforce DPA restrictions in some areas on non grant funded schemes and will review requests for waivers on a case by case basis. In others the standard shared ownership lease has been altered to take account of the DPA restrictions and include a buy back clause for the RP and is used in cases where a site is within a DPA.

**5.0 Recommendation**

NYRHE Network members are requested to **discuss** and **agree** the following:

* + - * + The extent of the issue
        + The preferred response to this
        + The use of shared ownership leases which include the buy back option
        + Any recommendations to the Housing Board about consistency of approach on this issue across the Partnership area
        + Any recommendations or further questions to Homes England on this issue.

**Further Information**

<https://www.gov.uk/guidance/capital-funding-guide/1-help-to-buy-shared-ownership#sec137>

Further guidance on Designated Protected Areas and the waiver form can be found at <https://www.gov.uk/government/publications/designated-protected-areas>

1. Cambridge Centre for Housing Policy & Research (2012) *Understanding the second-hand market for shared ownership properties* <http://www.cchpr.landecon.cam.ac.uk/Projects/Start-Year/2011/Understanding-second-hand-market-shared-ownership-properties/Project-Report>  [↑](#footnote-ref-1)