

TONBRIDGE & MALLING BOROUGH COUNCIL

STRATEGIC HOUSING ADVISORY BOARD

9 November 2009

Report of the Director of Health and Housing

Part 1- Public

Matters for Information

1 HOUSING & REGENERATION ACT 2008

Summary

This report informs Members of the key components of the 2008 Housing and Regeneration Act. The Act is in two distinct sections, the first describes the creation of the Homes and Communities Agency (HCA) and the delivery of more affordable homes. The second describes the creation of the Tenant Services Authority (TSA) which seeks to empower tenants and give them more choice over their housing environment.

1.1 Background

1.1.1 The 2008 Housing and Regeneration Act has been created to deliver the commitments set out in the both the "Housing Green Paper" of July 2007, (which aimed to provide more and greener homes, in mixed and sustainable communities), and the 2006 Cave Report "Every Tenant Matters", which sought to drive up standards of housing provision.

1.1.2 In response to those recommendations the Act creates the Homes and Communities Agency (HCA) and the Tenant Services Authority (TSA), and the actions that came out of both reports are detailed below.

1.2 Delivering on the Housing Green Paper Recommendations

1.2.1 After more than 40 years of regulating and funding the sector, the Housing Corporation was dissolved and replaced by the HCA. In broad terms the HCA aims to increase the supply of housing by working with local partners to support the regeneration, development and maintenance of communities. This includes looking at more innovative approaches to delivery, such as through new Local Housing Companies or Community Land Trusts.

1.2.2 As Members will recall from earlier reports to this Board, the HCA brings together the functions of English Partnerships (EP), the investment functions of the Housing Corporation (HC), the Academy for Sustainable Communities and key housing and regeneration programmes delivered by Communities and Local Government (CLG).

- 1.2.3 The HCA has responsibility for Thames Gateway delivery, Housing Market Renewal, Decent Homes, and Gypsy and Traveller Sites Grants.

1.3 Delivering on the Cave Review (Empowering Tenants)

- 1.3.1 The Act implements the recommendations of Professor Cave as set out in his report "Every Tenant Matters, A Review of Social Housing Regulation". The aim of these provisions is to improve and simplify the regulation of social housing, whilst reducing the level of unnecessary regulation and bureaucracy previously suffered by Registered Social Landlords (RSLs).

1.4 Housing Revenue Account Changes

- 1.4.1 Although of little relevance to Tonbridge & Malling, the Act enables certain stock holding authorities to opt out of the Housing Revenue Account (HRA) system. This means that those authorities will be able to keep receipts from rents, but at the same time no longer receive subsidies from Government from the wider HRA.

1.5 Tenant Ballots

- 1.5.1 The Act makes tenant ballots mandatory, so any stock holding local authority has to now hold a statutory independent ballot to ascertain tenants' views before seeking consent from the Secretary of State to transfer the housing stock to a RSL.

1.6 Affordable Housing Provider Definitions

- 1.6.1 The act does away with the concept of the Registered Social Landlord. There is instead a register of providers of social housing, giving rise to the term "Registered Provider" (RP).
- 1.6.2 Unlike RSLs, RPs may be commercial organisations, and there will be two categories of RP, namely the profit-making organisation and the non-profit organisation. With this change the historic link between registration as a social landlord and access to grant has finally been broken.
- 1.6.3 RSLs will automatically be treated as non-profit RPs, and will not be permitted to adopt profit-making status. The TSA will have the power to set standards for RPs, a breach of which may trigger regulatory intervention similar to that seen under the previous Housing Corporation regime.
- 1.6.4 The standards may attempt to deal with issues such as allocations, tenancy terms, rent levels, and maintenance. These standards may also deal with matters relating to the management of the financial affairs of RPs. The TSA's powers can broadly be categorised as day-to-day regulatory powers and intervention powers for when things go wrong. This can include in extreme cases the transfer of an underperforming housing association's stock to another Registered Provider.

1.7 Affordable Housing Definitions

1.7.1 The Act (for the first time) provides a statutory definition of Social Housing:

1.7.2 "Social Housing means:

(a) Low cost rental accommodation - accommodation which is available to rent below market rate in accordance with procedures to ensure that it is available to those whose needs are not served by the commercial housing market.

and

(b) Low cost home ownership – includes shared ownership, shared equity, and shared ownership trust. All of which are to provide for those who are not adequately served by the commercial housing market.

1.7.3 In addition, any property owned by an RSL immediately prior to the Act coming into force on 1 December 2008 is automatically defined as social housing.

1.7.4 Once designated as social housing, social housing remains social housing until it is disposed of in accordance with the Act.

1.7.5 Disposals are now defined as the sale, lease, mortgage, charging or disposing of property or granting of any interest in it in any other way. Consent is required for the disposal of a dwelling by a RP from the TSA where the dwelling in question is social housing as defined above. However, the Act allows RPs to dispose of social housing to existing tenants by way of outright sale and shared ownership arrangements without the consent of the TSA.

1.7.6 A RP may dispose of land without the consent of the TSA, however, any sales do need to be notified to them under the Act.

1.7.7 The whole objective of the above is that the TSA aim to greatly reduce the administrative burden on RPs that has previously existed.

1.8 Right to Buy

1.8.1 The Act seeks to improve the administration of the Right to Buy scheme, and clarify interpretation of the present Right to Buy rules. However, these changes do not significantly affect the terms under which social tenants can buy their homes.

1.8.2 Local authorities also now able to provide greater assistance to right to buy leaseholders who have difficulty in paying service charges, e.g. by purchasing an equitable interest in the flat.

1.9 Service Charges

1.9.1 The Act provides tenants with additional rights with regard to service charges. For the first time tenants will be able to request and study detailed information

regarding the service charge they pay. This will create the right to withhold payment if that information has not been provided by the RP.

1.10 Improving Homelessness Services

1.10.1 The Act has impacts on various aspects of the Council's Housing Needs service:

- *Ineligible persons from abroad: statutory disregards*

1.10.2 Following a declaration by the courts that the Housing Act 1996 is incompatible with the European Convention on Human Rights, a new section of the Act remedies the incompatibility while ensuring that a person who requires leave to enter or remain in the UK but does not have it, or has leave to enter or remain on condition of 'no recourse to public funds', cannot convey priority for, or entitlement to, social housing on another person. Consequently the Act introduces a new class of "restricted person".

- *Armed Forces Personnel*

1.10.3 In deciding who gets priority for social housing, the Housing Act 1996 allows local authorities to take into account whether someone has a local connection with their district. This puts service personnel at a disadvantage as an individual cannot establish a local connection with an area through residence or employment there when serving in the Armed Forces. The Act will amend legislation and ensure that service personnel are treated fairly and put on an equal footing with other people applying for social housing.

- *Family Intervention Projects (FIPs)*

1.10.4 FIPs work with households at risk of eviction due to serious ASB. They often involve moving a household from their home into specialist accommodation. The Act will provide for a form of tenancy provided by social landlords (local authority or RSL), which offers less security than either a secure or assured tenancy, thereby providing families with more of an incentive to co-operate with their support programme. Where the families do not co-operate, the landlord can seek eviction without proving grounds in court. Current schemes cannot provide such tenancies.

1.11 Leasehold Enfranchisement

1.11.1 Current legislation on leasehold enfranchisement is inconsistent in relation to shared ownership. In some cases, landlords risk shared owners circumventing the terms of their shared ownership lease by enfranchising (i.e. buying their freehold) before they have bought 100 per cent of the property through shares. This can discourage private developers from providing houses on a shared ownership basis. Also, proposals being developed to allow restrictions to the full purchase of a property in certain circumstances would make housing associations and local authorities similarly vulnerable to early enfranchisement.

1.12 Tolerated Trespassers

- 1.12.1 Creation by the courts of “tolerated trespassers”- occupants of social rented housing who have lost tenancy status following a possession order – causes serious problems for tenants (e.g. loss of rights around succession and repair) and landlords (issues around entitlement to rent, including rent increases, voting rights in stock transfer/tenant management ballots). Remedies exist to restore tenancy status individually to existing tolerated trespassers, but are costly and time consuming. Amendment to primary legislation is required to deal effectively with the issues.
- 1.12.2 The main objective is to remove the problems which the tolerated trespasser doctrine has caused for landlords and tenants by ensuring that tolerated trespassers are not created in future. The Act also restores tenancy status to existing tolerated trespassers.

1.13 Leasehold Reform

- 1.13.1 Lessees can be asked to hand over large sums of money to housing associations to pay for the upkeep of their property. The Act now provides some protection for this money including the right to ask for a summary of service charges and to see supporting documents.

1.14 Implications of the 2008 Housing & Regeneration Act

- 1.14.1 Members will recall in earlier reports to this Board the changes brought about by the arrival of the HCA, and the Single Conversation process for the allocation of funding.
- 1.14.2 The Act will have the greatest impact on local authorities who have retained their housing stock, but there are still some implications for Tonbridge & Malling. The Act will require the Council to amend the content of its affordable housing policies and guidance in relation to some of the changes described in this report:
- The Council’s adopted Core Strategy and Affordable Housing Supplementary Planning Document (SPD) will need to be read alongside the definitions within Annex A for both affordable housing and RSLs, but these changes of definition do not materially affect the policy content of the document;
 - The Act creates the opportunity for developers to become Registered Providers and seek grant funding from the HCA for future affordable housing schemes within the Borough. The Affordable Housing SPD currently makes no specific reference to this and the Council will need to augment the SPD with a specific policy statement on how we will tackle this method of providing social housing, along with our expectations for developers working with our housing association partners. This will be

formally incorporated in the Affordable Housing SPD when it is next updated;

- it is important to note that the Council will continue to be consulted by the HCA to understand the degree to which we support or otherwise any bid for grant that a developer that has acquired “Registered Provider” may make. The Council will of course continue make a decision on a site by site basis, weighing up all the relevant factors including sustainability, value for money, and if the scheme meets our identified housing need and
- the details and timeframes for exactly how the Council will amend our affordable housing policies and guidance to reflect the changes instigated by the Act will be included in a future report to this Board.

1.15 Legal Implications

1.15.1 The Council will need to amend our affordable housing policies and guidance to reflect the changes brought about by the 2008 Housing and Regeneration Act, as detailed within this report.

1.16 Financial and Value for Money Considerations

1.16.1 None arising from this report.

1.17 Risk Assessment

1.17.1 None arising from this report.

Background papers:

contact: Chris Knowles

Nil

John Batty
Director of Health and Housing