

WEST DUNBARTONSHIRE COUNCIL

Report by Executive Director of Corporate Services

Housing, Environment & Economic Development Committee: 8 April 2009

Subject: Council House Sales

1. Purpose

- 1.1** This report seeks review of the Council's policy on housing improvements affecting tenants who have concluded a contract to purchase their Council house under 'Right to Buy' legislation.

2. Background

- 2.1** In the 1980's Clydebank District Council agreed a policy which prevents tenants from withdrawing from concluded contracts where any improvements to the Council house being purchased are contemplated within 2 years at a cost of £1,000 or more. It is understood that in the period prior to local government reorganisation, Clydebank District Council carried out a significant programme of improvements to Council houses and frequently tenants would seek to withdraw from concluded contracts in order to benefit from pending improvements to their homes which they would subsequently purchase at significant discount with the Council receiving no return for the improvements made to the property. The reasoning behind the policy was to protect the Council from disposing of Council stock in these circumstances.
- 2.2** At its meeting on 27 March 1996, the Council considered a report by the Director of Housing Services entitled Interim Arrangements for Housing Policies. It was agreed that, for any issue where a policy decision is required but has not yet been taken by the new Council, the policy of the former authority for the area be applied until the issue is considered by the Housing Committee of West Dunbartonshire Council. With respect to improvements to Council houses where the tenant has concluded a contract to purchase a Council house under 'Right to Buy' legislation but wishes to withdraw from the concluded contract, the policy of Clydebank District Council in respect of this issue was adopted and has not been subject to review until now.
- 2.3** From time to time tenants conclude a contract to purchase under 'Right to Buy' legislation and then unfortunately find that they are unable to secure the necessary funding from a Lender. The tenant's solicitor writes to Legal Services and requests that his/her client be allowed to withdraw from the concluded contract. This scenario has become more common in light of the present 'credit crunch'.

- 2.4** If no works are planned to the property then the usual approach would be to allow the tenant to withdraw subject to payment of legal fees due to Legal Services of £150 plus VAT for the abortive legal work carried out.
- 2.5** Should works be planned within two years at a cost of £1,000 or more, the tenant is advised that the Council do not agree to the tenant withdrawing from the concluded contract.

3. Main Issues

- 3.1** The main issue for the Council to consider is whether it wishes to continue to apply its policy or not or amend it in some way.
- 3.2** In the present economic climate there is a greater likelihood of tenants being unable to obtain suitable borrowing in terms of purchase price however, the prudent approach would be for the tenant not to conclude the contract until confirmation that the necessary funds were actually in place. For the avoidance of doubt, whether the tenant concludes the contract or not is not a matter within the control of the Council but is within control of the tenants own external solicitor..
- 3.3** Should the policy be discontinued then on withdrawal from the contract of sale, these purchasers would revert to becoming normal tenants. Like all such other tenants they would then qualify for improvements, where such are taking place.
- 3.4** Where a tenant withdraws from the concluded contract this will have a beneficial effect on the Council's statutory performance indicators in that any delay which has occurred from failure to settle the transaction will automatically be wiped out. The statutory performance indicators relate to percentage of Council house sales completed within 26 weeks and the average time taken for Council house sales.
- 3.5** Should the policy remain as it is the tenant could still potentially withdraw from the contract without the consent of the Council and would then be open to legal action for damages for all financial loss sustained by the Council should it so wish to do so. However, the Council could not claim damages in respect of future improvement works. This means that the present policy would be largely ineffective should purchasers choose to unilaterally withdraw from the sale contract.
- 3.6** It may be considered that this policy has served its purpose and now places an unreasonable burden on tenants caught in the position of wishing to withdraw from a concluded contract and unable to obtain Council improvements to their home in terms of the Capital Programme and instead being entitled to wind and watertight repairs only.

4. Personnel Issues

- 4.1** There are no Personnel issues arising from this report.

5. Financial Implications

- 5.1** Discontinuing the policy could result in improvements being carried out to Council houses at a cost which would not subsequently be recovered from the sale of the property under 'Right to Buy' legislation should the tenant re-apply to buy. However, this is a risk in relation to all secure tenancies, not just these particular cases and it is important to bear in mind that when the tenant re-applies to buy, the house is valued independently by the District Valuer as at date of each (new) application.
- 5.2** As soon as a tenant withdraws from the contract the property would be treated the same as any other tenanted property in terms of improvements being carried out and appropriate adjustments would require to be made to the budgets available to allow for their inclusion in the Capital Programme.

6. Risk Analysis

- 6.1** The risk to the Council in respect of financial issues is as set out in paragraph 5 above. Risk is reduced given that the number of Right to Buy sales has reduced now by comparison to previous years.
- 6.2** The risk to the tenant is that if he/she is unable to withdraw from the contract with the consent of the Council then the result is that a tenant remains in limbo. He/she is still a tenant under 'Right to Buy' and qualifies for wind and watertight repairs only in terms of Housing legislation. He/she continues to pay rent but does not receive the improvements provided to the other tenants who have not applied to buy. In times of economic recession the risk to the tenant is greater as Capital Funding is difficult to find. Mortgages are harder to obtain and Lenders can change their lending requirements leaving the tenant without sufficient funds to purchase. There are at present six tenants affected by the policy.

7. Conclusions

- 7.1** While it is considered that this policy has served a useful purpose in protecting the Council's interest over a period of time, it is considered that the underlying need for this policy has diminished and that it should be brought to an end. While only a small number of current transactions are affected by the policy the delays caused by these transaction affect the Council's statutory performance indicators and can cause considerable distress to those caught by the policy.

- 7.2** It would still be the intention to ensure that a tenant who has concluded a contract to purchase a Council house under 'Right to Buy' legislation is only allowed to withdraw from the concluded contract on good cause shown and subject to payment of the legal fees incurred by the Council.

8. Recommendation

- 8.1** The Committee is asked to agree that the policy, which prevents the Council agreeing that 'Right to Buy' concluded contracts are withdrawn where any improvements to the Council house being purchased are contemplated within 2 years at a cost of £1,000 or more, be brought to an end.

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Appendices:	None
Background Papers:	Minute relating to Report entitled Policy on Housing Issues presented to West Dunbartonshire Council on 27 March 1996
Wards Affected:	All