


<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET</p> <p align="center">5 February 2018</p>	
<p align="center">REPORT OF THE DEFEND COUNCIL HOMES UNIT</p>	
<p align="center">Report of the Cabinet Member for Housing – Councillor Lisa Homan</p>	
<p>Open</p>	
<p>Classification: For decision Key Decision: Yes</p>	
<p>Consultation: <i>Housing, Legal, Finance</i></p>	
<p>Wards Affected: All</p>	
<p>Accountable Director: Jo Rowlands, Lead Director Regeneration, Planning and Housing Services</p>	
<p>Report Author: David Burns, Head of Housing Strategy</p>	<p>Contact Details: Tel: 020 8853 6090 David.burns@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1. To protect the future of the Council's Housing Stock in the long term from unwanted development, the Council established the Residents Commission. The Residents Commission looked at several options and recommended to the Council a stock transfer to a new housing association. The Council accepted this recommendation and wanted to progress it. Government policy has prevented this from proceeding, as the government will not provide debt support.
- 1.2. Therefore, In February 2017, the leader of the Council established the Defend Council Homes Unit to explore other ways of safeguarding Council Homes for the long term against the threat of unwanted development. The final report of the unit and its recommendations is presented here. The Cabinet is asked to approve consultation with residents on the implementation of these recommendations.

2. RECOMMENDATIONS

That Cabinet:

- 2.1. Note the conclusions of the Defend Council Homes Unit and its report, and its recommendation that the Council consults on the Unit's preferred option of a Defend Council Homes Policy, supported by an Advisory Body and the registering of a restriction on title related to the new Policy.
- 2.2. Agree to delegate authority to the Lead Director for Regeneration Planning and Housing Services to consult with residents on a Defend Council Homes Policy.
- 2.3. Note that following this consultation process and the development of an implementation plan a further report will return to cabinet for approval of any Policy, formal consultation, and the creation of any structures to support the policy.

3. REASONS FOR RECOMMENDATIONS

- 3.1. The Leader of the Council commissioned the Defend Council Homes Unit (DCHU) to find a way of safeguarding the future of the Council's Housing stock against unwarranted and unwanted redevelopment.
- 3.2. The DCHU is made up of a resident Chair, Shirley Cupit, and independent advisors, Peter Bevington and Anthony Mason. They have been supported by Trowers and Hamlin's to explore the legal possibilities for safeguarding Council homes. The Leader of the Council appointed the commissioners on the basis of their expertise in housing, policy, legal and financial matters and their experience as members of the residents' commission.
- 3.3. The DCHU have now completed the review of the options and developed some clear recommendations for the Council to consider.
- 3.4. To implement these recommendations, the Council now needs to consult with residents and develop an implementation plan.

4. PROPOSAL AND ISSUES

- 4.1. The Defend Council Homes Unit was set up with these terms of reference:
 - a. The provision of affordable, quality homes in places where people are proud to live is at the heart of the Council's vision and the DCHU supports this vision.
 - b. On the basis that the RCCH's recommendation to transfer the HRA stock to a Community Gateway Association is unlikely to be achieved in the near future, DCHU will explore the options which remain open to the Council to achieve its strategic objectives. Such options will be evaluated against the "key messages" of the RCCH as set out in the

Report, DCHU will therefore consider whether the options have the potential to:

- i. safeguard council homes and estates for the future;
- ii. give residents greater control over their homes;
- iii. protect tenants' rights and keep rents and service charges at levels residents can afford; and
- iv. fund improvements to homes and housing services.

c. DCHU will, with the assistance of external advisers, closely focus on the legal and financial viability of any HRA stock option explored.

d. In evaluating HRA stock options, DCHU will include the views of residents and key stakeholders, and consider how to engage and involve residents in the most effective ways

e. DCHU is non-partisan. This is why its membership will not include Council officers or Councillors and it will analyse HRA options independently of the Council. Nevertheless, DCHU will be supported by the Council, both practically and financially. Should DCHU's activities conflict with these Terms of Reference, the Council will be entitled to reconsider its support. The Council will not withdraw its support from DCHU without first providing the Chair with notice of any matter which it considers to be in conflict with the Terms of Reference and an opportunity for DCHU to remedy such matter (if it is remediable).

f. DCHU will report its findings and proposed solutions to the leader of the Council.

4.2. The DCHU have now produced their final report which is set out in Appendix 1. The options that were considered are set out below.

- Option 1 – a Council policy commitment supported by a restriction on title
- Option 2 – Disposal of a legal interest in the HRA land to a CLT
- Option 3 – A restriction on title in respect of the HRA land and property in favour of a CLT
- Option 4 – Disposal to and leaseback from a Community Land Trust

4.3. The DCHU recommends that option 1 is implemented. There are four elements to this policy set out below.

4.4. The Policy

4.5. The Council adopts a Policy that sets out how residents' interests will be protected in the event of a redevelopment proposal that could result in the disposal of their homes.

4.6. The Policy in itself represents a procedural commitment to all residents of council housing in the Borough, but within it, as part of this procedural commitment, is an undertaking to give certain substantive commitments to residents affected by redevelopment proposals:

- 4.6.1. first, in the event of specific proposals coming forward that could involve the disposal of homes in a given area, through written undertakings to the residents in that area setting out how they will be consulted on, and involved in, the consideration of those proposals;
- 4.6.2. second, in the event of a specific scheme that would involve the disposal of homes in the area coming forward for planning approval, through further written undertakings to the residents affected setting out their rights and entitlements and how they will be treated in the event of the scheme being implemented.

4.7. The Advisory Body

- 4.8. Interpretation and application of the Policy and any substantive commitments are carried out with reference to an Advisory Body, potentially to be composed of residents and experts nominated by professional bodies.

4.9. The Restriction on Title

- 4.10. In addition to adopting the Policy, the Council registers a 'restriction on title' with the Land Registry covering the entirety of the land and buildings held in the HRA. The restriction (which prevents the title of anything covered by the restriction changing hands) can only be lifted if the Council's Solicitor certifies either that the Policy (including any written undertakings given by the Council to residents) has been complied with or that the disposal is exempt – with reference to a defined list of exemptions.

4.11. The Principle of Legitimate Expectation

- 4.12. The existence of the Policy, followed at subsequent stages as appropriate by the receipt of written undertakings by the Council, creates for residents a 'legitimate expectation' that the Policy, and especially the more specific written undertakings, will be complied with by the Council. This therefore represents a means of legal redress against the Council should a resident's 'legitimate expectation' not be met.
- 4.13. The significant effect of this set of arrangements is to commit the Council to Best Practice in any situation where it is considering the disposal of residents' homes. Importantly however, the restriction on title element will also act as a discipline on the Council in circumstances where, for example, a development partner might be approached with a view to redeveloping an area or estate. Any due diligence process will alert the developer to the need to deal with the restriction before any redevelopment requiring disposals can proceed.

4.14. Implementing the DCHU's recommendations

- 4.15. To implement the DCHU's recommendations the Council will need to consult with residents on the scope of the proposed Policy, and this report recommends that the Council carry out this consultation.

- 4.16. The Council will need to develop a detailed implementation plan and return to cabinet for final approval. This would include approval of any new structures, the budget for implementation and ongoing running costs and confirmation that any consultation meets the requirements of section 105 of the 1985 Housing Act.

5. CONSULTATION

- 5.1. The DCHU has presented its progress to the housing representatives forum and has established a website to communicate what it is doing. It will also present its report to the Borough Forum. However, a fundamental recommendation is now for detailed consultation with residents and stakeholders to implement this, and that any future consultation would meet the requirements of the section 105 of the 1985 Housing Act.

6. EQUALITY IMPLICATIONS

- 6.1. There are no perceived negative impacts on any protected groups as a result of the adoption of the Defend Council Homes policy.
- 6.2. The consultation will be accompanied by an equalities assessment to ensure that all residents are able to participate should they choose to do so.
- 6.3. Implications completed by Peter Smith, Head of Policy & Strategy, tel. 020 8753 2206.

7. LEGAL IMPLICATIONS

- 7.1. Trowers and Hamlins have advised the Council and the DCHU on this project and the Council is able to rely on their advice.
- 7.2. They advise that the Council has the legal powers to develop and implement a policy as described above. The Council can also apply to the land registry for a restriction on title.
- 7.3. Since the policy will impact on matters of housing management the Council must follow the requirements of section 105 of the Housing Act 1985. In adopting the policy the Council must pay due regard to the results of that consultation process.
- 7.4. The proposal to place a restriction on the title to the Council's housing land (to ensure that future disposals are in accordance with the policy) must be approved by the Land Registry.
- 7.5. The policy is intended to create a 'legitimate expectation' on the part of residents that they will be protected from unwanted future redevelopment of their properties and estates. External legal advice from Trowers and Hamlins is that this is the most effective way of reassuring residents that they can rely on the commitments in the policy, notwithstanding future changes to it.

7.6. Implications verified by Dermot Rayner, Senior Property Solicitor, 020 8753 2715.

8. FINANCIAL IMPLICATIONS

8.1. The costs of consulting on the DCHU's recommendations will be accommodated within existing HRA budgets and led by the resident involvement team.

8.2. The costs of implementation (primarily legal costs) and any ongoing running costs (which are likely to be minimal unless there is an event which triggers actions under the policy) will need to be included in the Cabinet Report for approval of any Policy, formal consultation and the creation of any structures to support the policy.

8.3. Implications completed by: (Kathleen Corbett, Director of Finance & Resources, 020 8753 3031).

9. IMPLICATIONS FOR BUSINESS, COMMERCIAL AND IT IMPLICATIONS

9.1. There are no business, commercial and IT implications due to the nature of this report.

9.2. *Implications completed by: Dave Burn Head of Housing Strategy, 020 8753 6090.*

10. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

10.1. None

LIST OF APPENDICES

Appendix 1 – Report of the Defend Council Homes Unit