



To: Executive Councillor for Housing: Councillor Kevin Price  
Report by: Suzanne Hemingway, Strategic Director  
Relevant scrutiny committee: Housing Scrutiny Committee Urgent Decision  
Wards affected: All Wards

## SHARED OWNERSHIP MODEL LEASE - URGENT DECISION

### Key Decision

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#### 1. Executive summary

- 1.1 As part of the new build housing programme, the Housing Revenue Account is delivering new shared ownership homes, to meet an intermediate housing need in the city.
- 1.2 The first of these properties, at both Homerton and Clay Farm are now being actively marketed, with the first of the transactions for the Homerton site well underway and expected to complete imminently.
- 1.3 Shared ownership properties are sold as leasehold dwellings, with the purchaser acquiring a share of the property, whilst the Council retains the residual financial interest. The purchaser acquires their share under a lease, and with the requirement to pay rent for the share which the Council has retained.
- 1.4 The Council has existing shared ownership leases for historically held shared ownership properties, but these are now outdated.
- 1.5 The new shared ownership homes at Clay Farm have been / are being, built using an element of Homes and Communities Agency grant funding. As a direct result of this, there is a requirement to use the Homes and Communities Agency (HCA) Shared Ownership model form of lease.
- 1.6 As the Council are required to use this lease in respect of the properties at Clay Farm, and considering it is the industry standard model, this report proposes the adoption of a version of this lease for all new shared ownership homes delivered by the Council.

## **2. Recommendations**

The Executive Councillor, is recommended, under urgency, to:

### **Review of Shared Ownership Lease**

- a) Approve the use of the model form of shared ownership lease, as provided at Appendix A to this report, in respect of the granting of all leases for new shared ownership housing by the Council.

## **3. Background**

- 3.1 As part of the disposal of a share of any shared ownership dwelling, it is necessary to issue a lease between the landlord and leaseholder.
- 3.2 The lease makes clear the roles and responsibilities of both landlord and leaseholder in respect of things such as; the use of the property, access to the property, repair liability, alterations, rent and service charge payments and the ability to staircase to acquire additional shares, up to 100%.
- 3.3 In the process of disposing of the first of the new shared ownership homes, it is necessary for the Council, as landlord, to consider the form of lease which it will issue. Although the Council has shared ownership lease already, these were first issued in the 1980's and 1990's, and are no longer considered fit for purpose in respect of the issue of a first lease on a new dwelling, particularly as they do not offer any protection to banks and building societies to lend against these assets.
- 3.4 The first sales to be completed will be those on the Homerton site, with the first sale(s) anticipated to complete by the end of June 2017. These sales will be closely followed by those on the Clay Farm site, where the first properties have just been handed over to the Council.
- 3.5 As the Council received grant funding from the Homes and Communities Agency for the dwellings on the Clay Farm site, there is a requirement to adopt the Homes and Communities Agency Shared Ownership model lease. This lease is considered to be the industry standard, is expected by mortgage lenders and is the lease used by the vast majority of affordable housing providers.
- 3.6 It is therefore proposed that this lease is adopted as the basis for all new shared ownership disposals. A copy of this lease, amended for our proposed use on the Homerton site, is attached at Appendix A.

- 3.7 Although the model lease is not dissimilar to our existing shared ownership lease in many ways, there is one clause which has been introduced since the creation of our original lease in the 1980's.
- 3.8 The lease includes a mortgagee protection clause (as detailed in section 8 of the attached lease), which is in place to provide protection to lenders of mortgages for shared ownership dwellings, in the event of default by the leaseholder / borrower. Without this clause, it will prove difficult for leaseholders to obtain the required finance to acquire their share of the property.
- 3.9 The mortgagee protection clause will only apply if the mortgagee enforces its security on the property, in effect re-possessing the property.
- 3.10 In the event of a lender foreclosing, and assuming that the Council still holds a legal interest in the property as landlord, the lender is afforded rights and protection under this clause of the lease, subject to certain conditions. It is for the Council to provide this protection and this clause is deemed to be a fundamental clause of the model shared ownership lease which cannot be deleted or amended where HCA funding is provided.
- 3.11 Section 8 of the model lease details the mortgagee protection clause, which in summary allows the lender to deduct monies from the receipt which the Council would otherwise receive for the market disposal of their remaining interest in the property.
- 3.12 From the total sale value (100% share), the lender is entitled to deduct a maximum of the aggregate (total) of:
- *an amount equivalent to interest on the Loan for a period of 18 months from the Enforcement Date at the interest rate applicable to the Loan immediately before the Enforcement Date*
  - *the Loan;*
  - *any amounts advanced by the Mortgagee and applied in discharging any arrears of rent and/or Service Charge under this Lease; and*
  - *any costs and fees incurred in enforcing the Mortgagee's security for the Loan (capped at 3% of Market Value at the time of such enforcement).*
- 3.13 The inclusion of this clause means that in the rare event that a lender is forced to foreclose, the Housing Revenue Account will be required to bear that part of the lenders the loss (capped at the above amounts) which exceeds the total of the gross sale proceeds received from a disposal of

the Leaseholders interest in the Premises, such loss to be in the form of accepting a capital receipt for their share which will be lower than the market value.

- 3.14 Although this clause introduces a potential future financial risk for the Housing Revenue Account, it is a requirement for the funding which we have already received and in any case, it is very unlikely that banks and building societies will lend without the inclusion of it. The Housing Revenue Account budget includes the assumption that capital receipts will be received from the sale of the initial shares as part of the funding model for each scheme, and as such facilitating the sale of shares is business critical.
- 3.15 Appendix B illustrates the perceived financial risk to the Council. In calculating this risk, quantified at £2,472 (based upon only 0.71% of properties being re-possessed in the experience of those we have spoken to), a number of assumptions have been made, including, for example' the level of shares purchased, deposits paid, the length of time it would take to sell a property, the interest rates available for purchasers and the incidence of actual claims in other registered providers experience. Based upon the experience of a few registered providers who operate in this part of the country, the incidence of claim is small, with no cases experienced by one provider, 2 cases by another and 17 in the case of the largest provider, who holds stock in excess of 2,000 properties. All of these providers have significantly greater stock numbers than we will have initially, on our first two sites. If we were to experience a single claim, the financial loss to the Council is estimated to be between £7,500 and £13,500.
- 3.16 The Council is able to consider any lending against a shared ownership property, and as such any request to a lender for a further advance will also be known to the Council. This provides the ability for the authority to ensure that these relate to staircasing payments only, thus mitigating the financial risk to a degree. If a lender does not obtain prior consent to advancing funds, they will not be able to benefit from the mortgagee protection clause.
- 3.17 The Council's current insurers are not able to offer the Council any form of insurance policy to mitigate against this financial risk. There is a possibility that specialist insurers may provide such indemnity, and if identified, officers will consider the cost of any such insurance against the perceived financial risk. As the perceived financial risk is relatively small, it is likely that any product available may cost more than the potential liability over a number of years. The Council has a stop loss policy for insurance of its housing stock as a whole, and as such, carries the risk of the first £250,000 of claims in any one year. The additional risk identified in this report is considered to be far lower than risk already borne by the HRA.

## **4. Implications**

### **(a) Financial Implications**

There are no immediate financial consequences associated with this report, with no new funding approval required. The report does however, highlight the potential future financial risks associated with the granting of the Homes and Communities Agency industry standard leases, in respect of shared ownership dwellings.

### **(b) Staffing Implications**

There are no direct staffing implications associated with this urgent decision.

### **(c) Equality and Poverty Implications**

An Equalities Impact Assessment has not been undertaken in respect of this urgent decision, as the decision is for the Council to adopt the Homes and Communities Agency, industry standard model lease. The direct impact of this policy decision is for the Council and prospective mortgage lenders.

### **(d) Environmental Implications**

There are no direct environmental implications associated with this urgent decision.

### **(e) Procurement**

There are no direct procurement implications associated with this urgent decision.

### **(f) Consultation and communication**

Consultation with tenant and leaseholder representatives is an integral part of the Housing Scrutiny Committee process.

### **(g) Community Safety**

There are no community safety implications associated with this report.

## **4. Background papers**

These background papers were used in the preparation of this report:

HCA Shared Ownership Model Lease

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## **5. Appendices**

- Appendix A - The proposed HCA / Cambridge City Council Shared Ownership Lease is appended to this report.
- Appendix B – Calculation of perceived financial risk to the Council.

## **6. Inspection of Papers**

To inspect the background papers or if you have a query on the report please contact:

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