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| Subject: | FIRST HOMES POLICY (2024) |
| Meeting and Date: | Cabinet – 8 July 2024 |
| Report of: | Rachel Collins, Head of Housing |
| Portfolio Holder: | Councillor Pamela Brivio, Portfolio Holder for Housing, Skills and Education |
| Decision Type: | Key Decision |
| Classification: | Unrestricted |

Purpose of the report: To provide detail in relation to the proposed First Homes Policy (“the Policy”) and seek Cabinet approval for the Policy to be adopted.

Recommendation: That Cabinet:

1. Approves and adopts the proposed First Homes Policy.
2. Delegates authority to the Strategic Director (Finance and Housing), in consultation with the Portfolio Holder for Housing, Education and Skills, to make minor amendments to the policy as required.

1. Summary

- 1.1 First Homes are a form of discounted market sale housing which meets the definition of affordable housing as defined by the Government via Homes England and the Planning Policy Guidance (“the PPG”) (para. 16.2) and became part of Planning law from 28 December 2021.
- 1.2 The Council has an established policy for First Homes which was approved by Cabinet in 2022. The First Homes Policy (“the 2022 Policy”) sets out how the Council will manage its administrative and governance duties. However, this Policy needs to be reviewed and updated for the following reasons:
 - DLUHC published the ‘Local Authority Guidance Notes’ (“the Guidance Notes”) which provides an update to the scheme, eligibility and qualifying criteria and a better understanding of the administrative and governance duties and responsibilities expected of local authorities; and
 - The formal review of the existing 2022 Policy is due to take place every two years.

2. Background

- 2.1 The Written Ministerial Statement (WMS) (“the Statement”) (para. 16.1) and the PPG published in May 2021 set out national planning policy for a new affordable housing product called First Homes. In June 2021 Homes England launched a pilot of the scheme (Phase 1), and through the subsequent Early Delivery Programme 2021 - 2023 (Phase 2). Phase 2 was expected to deliver an estimated 1,500 First Homes. The experiences and feedback gained from the Early Delivery Programme has been used to refine the scheme.
- 2.2 In February 2024, the Government published the ‘Local Authority Guidance notes’ (“the Guidance”) which provided greater detail and information on the administrative

and governance functions as experienced by of local authorities during the Early Delivery Programme 2021-2023. The Guidance notes have been used to inform the changes and amendments to the Policy (Appendix 1).

- 2.3 So far, there are 6 First Homes being delivered in the district. However, now that the scheme is part of national planning policy and falls under the definition of affordable housing, more units will be brought forward where affordable housing applies to a development site (as part of the affordable housing tenure mix). Therefore, the numbers of First Homes will increase over time.
- 2.4 Across Kent, sites in Swale and Gravesham have had First Homes delivered through the Early Delivery Programme 2021-2023.

3. About First Homes

- 3.1 First Homes are delivered through the planning system, via developer contributions and First Homes exception sites, and must comply with all applicable planning policies and/or building regulations that apply to the rest of the development. First Homes must form 25% of all affordable housing units developed on applicable sites.
- 3.2 They are sold with a discount of at least 30% from the full market value, however local authorities or neighbourhood planning groups can increase the minimum discount to 40% or 50% if a local need has been identified and evidenced. First Homes discounts are secured through the planning obligations attached to the land.
- 3.3 The maximum price for a First Home on its initial sale, after the discount has been applied, will be £250,000. Local authorities can set lower price caps as part of local policy, again if there is evidenced need.
- 3.4 There is set eligibility criteria for First Homes. Applicants must be first time buyers (as defined in Paragraph 6 of schedule 6ZA of the Finance Act 2003) with a household income of £80,000 or less per year and have a mortgage to cover at least 50% of the discounted price.
- 3.5 The Council can set some aspects of buyer eligibility criteria, such as restricting purchases to those who are key workers and/or who meet a local connection test, and/or whose household income falls below a lower household income cap of £80,000. The Council can also determine which professions constitute 'key workers' according to local needs.
- 3.6 Local restrictions that apply to a scheme will be time-limited to the first 3-months from the start date of marketing to ensure the homes do not remain unsold. Thereafter, developers are required to actively market the properties under the national eligibility criteria. However, there may be situations where local criteria will need to continue for longer than 3 months. This is because the period of marketing according to any local eligibility criteria should not expire if there are 3 months or more to go before practical completion of the properties. This requirement is stipulated in the model section 106 clauses.
- 3.7 Members of the Armed Forces, the divorced or separated spouse or civil partner of a Member of the Armed Forces, the spouse or civil partner of a deceased Member of the Armed Forces, or veterans within 5 years of leaving the Armed Forces are exempt from any local connection or key worker criteria.
- 3.8 First Homes must be the owner's only or main residential property for the duration of their ownership. While First Homes are not designed as capital investments, the scheme does permit owners to let their property for up to 2 years in aggregate over the course of the owner's ownership of the property, subject to the terms of their mortgage statement. Owners can let their property for longer than 2 years in exceptional circumstances, but they must obtain the Council's permission to do so.

The Council must be informed by the owner if they decide to let out their property, whether for 2 years or more.

- 3.9 At resale, the owner must sell their property to an eligible buyer as per the eligibility criteria attached to the property. The cascade is as follows:
- If local eligibility criteria applies – 3 months local eligibility, followed by 3 months national eligibility
 - If sole national eligibility applies – 6 months
- 3.10 If the seller has been unable to locate an eligible buyer within 6 months, they can sell the property on the open market, but they will only receive the total sum minus the discount received when they purchased the property. The remaining discount (30%, 40% or 50%) is paid to the Council minus any legal costs incurred by the buyer.
- 3.11 First Homes covenants and criteria are enforceable through the Section 106 Agreement. This means that the Council can enforce as it would with any usual Section 106 breach, whether against a developer or a future owner of the First Home property. Mortgage lenders may also conduct enforcement action against the owner where there is a clear breach of the mortgage agreement.

4. The Council's Position on First Homes

- 4.1 The Council published a First Homes Position Statement (“the Position Statement”) (para. 16.4) in November 2021, to account for the introduction of First Homes as part of the affordable housing aspect of development sites, and to address the changes to planning policy.
- 4.2 Based on the evidence provided for the Position Statement (para. 16.5), the following Affordable Housing requirements on all schemes will be sought where they meet the qualifying criteria set out in DM5 of the Local Plan, with exception to Dover:
- 25% First Homes
 - 20% Shared Ownership
 - 55% Social/Affordable Rent
- 4.3 Paragraph 9.3 of the Statement states:
- 9.3 The discount rate for First Homes will be 30%, and the national eligibility criteria will be applied until adoption of the Local Plan 2040. This position statement will remain a material consideration until this time.*
- 4.4 Paragraph 9.3 of the Position Statement and DM5 of the Local Plan are reflected within the proposed Policy.

5. The Policy

- 5.1 The Policy (Appendix 1) has been developed to take account of the new Local Authority Guidance (para. 16.3) as well as the Position Statement (para. 16.4). The Policy is an update to the 2022 version and sets out how the Council will oversee the administrative and governance functions expected of it, as well as the expectations of other key stakeholders throughout the process.
- 5.2 The aims of the Policy are:
- First Homes are sold in compliance with regulatory and legislative requirements.
 - The Council is meeting its obligations towards the delivery of First Homes.
 - The set eligibility and qualifying criteria for applicants for First Homes schemes is clearly defined.

- Staff and other stakeholders are aware of their responsibilities and expectations with regards to the sales, resales and letting of First Homes.
 - Help to encourage and support sustainable home ownership for residents within the district.
- 5.3 The administrative and governance functions the Council is responsible for and which the Policy explains in depth are:
- The assessment of the application packs received for eligibility and compliance.
 - The issuing of the Authority to Proceed, Eligibility Certificate and Conveyancers Information Pack.
 - Assessing the legal undertakings completed by the purchaser's solicitor.
 - The issuing of the Authority to Exchange and the Compliance Certificate.
 - At resale, issuing Marketing and Eligibility Guidance to the owner and their appointed estate agent.
 - Approving the letting of First Homes properties for longer than the 2-year aggregate.
- 5.4 The Policy sets out what the stages are for the sale, resale, or lettings processes, and includes an 'enforcement' section explaining how First Homes covenants can be enforced by the Council.
- 5.5 Data privacy and confidentiality, and complaints sections have been updated to reflect the First Homes Data Privacy notice and the Council's Complaints Policy.
- 5.6 The Policy proposes the use of a 'First Homes Record' ("the Record") to document and track the application stages (for initial and resale applications). The Record will also help the Council keep track of the number of First Homes properties which are let for an aggregate of 2 years, or more. This is to ensure that the Council can appropriately monitor owner's letting period so that they do not breach the First Homes covenants. The First Homes Stakeholder Guidance advises Local Authorities to put into place monitoring arrangements, including keeping a record of sales, resales, and lettings (para. 104, 16.3).
- 5.7 To accompany the Policy several procedures have been drafted collaboratively between Strategic Housing and the Legal Team for those involved in the processes to follow. These processes will be reviewed so that they reflect scheme-based and Council operational practices.

6. Data Protection

- 6.1 To process purchase applications and administer the scheme, the Council is classed as a data controller. This is because the Council will collect data on individual applications, and it will be the Council that determines such matters as data use and retention.
- 6.2 Data will also be shared between organisations (the Council, the developer, estate agent, solicitor, mortgage advisor) during the sale, resale and letting processes. The data will include personal and financial information pertaining to the purchase. Section 12 of the Policy outlines the Council's responsibilities regarding data protection.
- 6.3 A data protection impact assessment has been completed and a First Homes Privacy Notice developed and is available on the Council website.

7. Consultations

7.1 The following teams have been included and consulted with throughout the review and development of the Policy:

- Strategic Housing
- Planning
- Legal
- Accounts
- Equality and diversity
- Data protection

8. Policy Monitoring and Implementation

8.1 Formal reviews of the Policy will be conducted every 3 years or where changes to legislation and / or regulations require an immediate review. If the Policy is approved for use, the next expected review date will be in 2027.

8.2 Staff will be provided with guidance and processes to ensure that they can (1) comply with the Policy and (2) provide good customer service and care to applicants and owners of First Homes properties.

8.3 A copy of the Policy will be provided online via our website for residents to access. Alternative forms of communication can be provided where requested.

9. Equality Impact Assessment (EIA)

9.1 In accordance with our Public Sector Equality Duty (PSED) (Section 149 of the Equality Act 2010), a full equality impact assessment (Appendix 2) has been completed for the proposed policy and has identified that there are some potential negative impacts to individuals with protected characteristics as a result of the scheme's eligibility criteria. Actions have been identified to mitigate against the potential negative impacts.

10. Identification of Options

10.1 Option A: Cabinet agrees to the recommendations of this report.

10.2 Option B: Cabinet does not agree to the recommendations of this report.

11. Evaluation of Options

11.1 Option A is the preferred option for the following reasons:

- The Council will have an updated Policy that reflects the changes in the Local Authority Guidance Notes published in February 2024.
- The Policy sets out how the Council will administer and oversee the sale, resale and letting of First Homes in accordance with the Local Government Guidance Notes as well as the Council's own internal processes.
- The Policy provides guidance to staff and stakeholders, such as developers, estate agents, solicitors, applicants, vendors, and mortgage advisors on the First Homes scheme in the Dover District.
- The Policy will help the Council remain compliant with the Local Authority Guidance Notes and PPG on the First Homes scheme.
- Associated processes will enable staff to complete tasks compliantly with the Policy while providing a consistent and fair service to applicants, and other stakeholders.

11.2 Option B is not the preferred option since it would be counterproductive to the points raised in 9.1.

12. Resource Implications

Financial Implications

- 12.1 In 2022 the Council recruited for the New Homes Officer role to fulfil the administrative and governance functions for the First Home scheme, and to support the Legal team with reviewing and assessing applications. The additional role is paid for via the HRA.
- 12.2 The Council does not have a financial interest in First Home properties. The Council's role is primarily administrative. Such duties will be carried out within existing budgets.
- 12.3 Local authorities received £150 from the house builder for each First Home delivered in their area through the Early Delivery Programme. This was to support the additional resource requirements created by participating in the programme. The question of local authority resourcing is being considered for delivery through the planning system.
- 12.4 If a First Home property is sold to a non-eligible buyer, the discounted amount is deducted from the sale price and a portion of the discounted amount is paid to the Council. This figure can be used to support affordable housing development.

Operational Implications (including staff resources)

- 12.5 The Policy does not make significant changes to current Council operations.
- 12.6 The scheme will have an impact to staff resources, primarily those within the Legal Team who will be required to conduct checks throughout the application stages and signing off on eligible purchases, for the initial sale of the property and subsequent resales.
- 12.7 A dedicated staff member, the New Homes Officer, has been in post since 2022 and will work with Officers in the Planning and Legal teams to oversee the administrative aspect for First Homes initial sales, subsequent resales, and lettings.

Policy/Legislative Implications

- 12.8 The Policy does not state or request anything that is not covered in the Local Authority Guidance Notes.
- 12.9 First Homes are now part of planning law. The Council will need to ensure that developers are adhering to national and local policy, and where applicable, to enforce First Home covenants.
- 12.10 The Council has a responsibility to check applications for eligibility and compliance. Failure to carry out these tasks compliantly with the Local Authority Guidance Notes could result in First Homes properties being sold to ineligible candidates or First Homes being used inappropriately (i.e., used for capital gain). The Council also risks reputational damage should the scheme be incorrectly administered and governed.

13. Climate Change and Environmental Implications

- 13.1 No implications or impacts have been identified in the preparation of this report or the development of the proposed Policy to climate change or the environment.

14. Corporate implications

- 14.1 Comment from the Director of Finance (linked to the MTFP): Accountancy have been consulted in the writing of this report and have no further comment to add (AC)
- 14.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make. (SRD)
- 14.3 Comment from the Equalities Officer: As noted at paragraph 9.1 the adoption of this policy will potentially have a negative impact upon two protected characteristic groups: age and disability. Proposals to mitigate these impacts are detailed in the Equality Impact Assessment. The Equality Officer has no further comments to make, other than to remind Members that in discharging their responsibilities they are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

15. Appendices

Appendix 1 – First Homes Policy

Appendix 2 – Equality Impact Assessment

16. Background papers

[Written Ministerial Statement – First Homes – 24 May 2021](#)

[First Homes Planning Policy Guidance](#)

[Local authority guidance notes - GOV.UK \(www.gov.uk\)](#)

DDC First Homes Position Statement (November 2021)

[HEB01d Modelling the Demand for First Homes \(doverdistrictlocalplan.co.uk\)](#)

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