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**PART A: MATTERS DEALT WITH UNDER DELEGATED POWERS**

**REPORT TO: POLICY AND RESOURCES COMMITTEE**

**DATE: 12 NOVEMBER 2020**

**REPORT OF THE: PROGRAMME DIRECTOR FOR ECONOMIC  
DEVELOPMENT, BUSINESS & PARTNERSHIPS -  
PHILLIP SPURR**

**TITLE OF REPORT: REMOVAL OF RESTRICTION ON SALE OF PROPERTY**

**WARDS AFFECTED: ALL EXCEPT MALTON, NORTON EAST & WEST, AND  
PICKERING EAST & WEST**

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

1.1 The purpose of the report is to agree revised wording for the council's s.157 guidance, and the process for determining any future requests to remove s.157 restrictions on the sale of ex-RDC properties.

### **2.0 RECOMMENDATION**

2.1 It is recommended that:

- the council's guidance on the removal of s.157 restrictions is amended in line with the proposed wording set out at s.6.4.
- any future decisions on the lifting of a s157 restriction be delegated to the Programme Director for Economic Development, Business and Partnerships, in consultation with the Chair of the Policy & Resources Committee

### **3.0 REASON FOR RECOMMENDATION**

3.1 Under s157 of the Housing Act 1985, a local authority may impose a restriction limiting the freedom of a former tenant, and any subsequent owners, from selling their dwelling where such a property is located in a National Park, Area of Outstanding Natural Beauty (AONB), or within a rural area designated by Order of the Secretary of State. The restriction limits sales to persons who have either worked or lived in either the National Park, AONB, or other designated area for at least three years prior to the purchase.

3.2 The purpose of the restriction is to stop former council-owned properties being acquired as second or holiday homes in an attempt to keep them available for local people, as far as that is possible.

- 3.3 The outcome of an investigation into a complaint made by the owner of a former RDC property seeking the lifting of a s.157 restriction has found that further clarity is required in the Council's guidance on s.157s and upon the process for determining requests for their removal. The purpose of this report is to approve revised guidance and the process for making decisions on any requests for the removal of the restriction.
- 3.4 Subject to agreement of the recommendations set out at s.2.1 a decision will be made by the Programme Director for Economic Development, Business and Partnerships, in consultation with the Chair of the Policy & Resources Committee, upon the specific case which generated the complaint which brought to light the requirement to clarify the wording of the guidance.

#### **4.0 SIGNIFICANT RISKS**

- 4.1 The purpose of s.157 restrictions is to keep ex-council homes in the North York Moors National Park/other designated areas available for local people as far as that is possible.
- 4.2 The council's current guidance upon s.157 restrictions (see s.5.2) is contradictory, indicating both that restrictions will not be lifted, but also that restrictions can be lifted, but only in exceptional circumstances.
- 4.3 It is possible that clarifying the guidance could lead to requests from the owners of other ex-RDC homes in the national park/other designated areas to have the restriction lifted from their property. It must be made clear, however, that the proposed amended guidance explicitly states that any lifting of restrictions on properties will be judged against 'exceptional circumstance' criteria, and will only be agreed if the test of an 'exceptional circumstance' is met.

#### **5.0 POLICY CONTEXT AND CONSULTATION**

- 5.1 RDC's policy is to ensure that homes within the national park are accessible and affordable for local people. The purpose of the s.157 policy is to achieve this by restricting the sales of ex-RDC homes to those who have lived or worked in the area for three years immediately prior to purchase. The purpose of the restriction is to stop former council-owned properties being acquired as second or holiday homes in an attempt to keep them available for local people, as far as that is possible.

- 5.2 Current guidance on the policy states:

'The Council will not remove Section 157 restrictions. It can exercise its discretion in allowing non qualifying people to occupy the property, this may be where the property has been marketed for a period of 12 months and no buyer meeting the restriction has come forward. If this is the case you can apply to the Council's Housing Service Manager who in liaison with the Council's solicitor may agree to let a non-qualifying person occupy the property. The reason for not removing the restriction is that the pressure on providing houses for local people remains a big issue within the district. If you feel you have an exceptional circumstance and wish to apply for the restriction to be lifted, you must contact the Housing Services team in writing.'

- 5.3 The guidance is unclear, stating both that the council will not remove s.157 restrictions, but also stating that restrictions can be removed in exceptional circumstances. The ability to remove the restriction in exceptional circumstances has been confirmed by the Council's Legal Department, which has confirmed that it is 'a well-established

principle of local government law that a local authority should not “fetter its discretion”, so it is appropriate to allow the removal of restrictions in exceptional circumstances. It is proposed that the wording of the guidance is clarified in line with the proposals at s.6.4 to address this issue.

## 6.0 BACKGROUND

6.1 In August 2020 the owner of an ex-council home wrote to the Chief Executive raising complaints which included a complaint around discrimination relating to a decision not to remove a s.157 restriction on their property.

6.2 A thorough investigation has been undertaken into the complaints raised, with the outcome of the investigation to be reported back to the complainant very shortly.

6.3 The investigation into the complaints revealed that there is inconsistency in the Council’s guidance on s.157, with information on the Council’s website stating:

‘The Council will not remove Section 157 restrictions. It can exercise its discretion in allowing non qualifying people to occupy the property, this may be where the property has been marketed for a period of 12 months and no buyer meeting the restriction has come forward. If this is the case you can apply to the Council’s Housing Service Manager who in liaison with the Council’s solicitor may agree to let a non-qualifying person occupy the property. The reason for not removing the restriction is that the pressure on providing houses for local people remains a big issue within the district. If you feel you have an exceptional circumstance and wish to apply for the restriction to be lifted, you must contact the Housing Services team in writing.’

6.4 The guidance is unclear in stating both that the Council will not remove s.157 restrictions, but also stating that restrictions can be removed in exceptional circumstances. The option to remove the restriction in exceptional circumstances has been confirmed by the Legal Department as set out at s.5.3, above, and so in order to clarify the position it is proposed that guidance is revised with the highlighted wording below added to make it clear that the Council will consider removing a s.157 restriction, but only in exceptional circumstances.

‘The Council will not remove Section 157 restrictions, **except in exceptional circumstances.** It can exercise its discretion in allowing non qualifying people to occupy the property, this may be where the property has been marketed for a period of 12 months and no buyer meeting the restriction has come forward. If this is the case you can apply to the Council’s Housing Service Manager who in liaison with the Council’s solicitor may agree to let a non-qualifying person occupy the property. The reason for not removing the restriction, **except in exceptional circumstances,** is that the pressure on providing houses for local people remains a big issue within the district. If you feel you have an exceptional circumstance and wish to apply for the restriction to be lifted, you must contact the Housing Services team in writing.’

6.5 Subject to agreement, guidance on the Council’s website will be amended to reflect the revised wording.

6.6 It is further recommended that any future decisions upon requests to remove a s.157 restriction are delegated to the Programme Director, Economic Development, Business and Partnerships in consultation with the Chair of the Policy & Resources Committee.

## 7.0 IMPLICATIONS

7.1 The following implications have been considered:

a) Financial

There are no direct financial implications for RDC resulting from the revised guidance, nor from the removal of s.157 restrictions.

b) Legal

Under s157 Housing Act 1985, a local authority may impose a restriction limiting the freedom of a former tenant, or any subsequent owner, from disposing of their dwelling house where such a property is located in a National Park, Area of Outstanding Natural Beauty (AONB), or within a rural area designated by Order of the Secretary of State. The limitation restricts sales to persons who have either worked or lived in the either the National Park, AONB, or other designated area for at least three years prior to the sale.

The power to impose a s157 restriction is discretionary, and accordingly, local authorities are free to decide whether or not to place a restriction on a Right to Buy property which is being sold.

The Council has issued guidance on s157 restrictions which outlines the reasons for the restriction and its effects. Also included in the guidance is a note explaining that s157 restrictions will not be lifted, save in exceptional circumstances. The guidance note also contains information on applications for consent to sell a property to someone other than those living or working in the protected area. As highlighted above, it is recommended that the wording of the guidance is clarified, and the process for decision-making upon requests to remove restrictions is confirmed.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental and Climate Change, Crime & Disorder)

There are no direct implications.

### **Phillip Spurr**

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