

COUNCIL

27 JANUARY 2022

Report of the Director of Corporate and Customer Services

DERBYSHIRE CLAUSE POLICY & PROCEDURE

PURPOSE OF REPORT

To approve the draft Derbyshire Clause policy which provides a clear framework for decision making and administrative processes associated with Derbyshire Clause dispensations.

RECOMMENDATION

1. The Derbyshire Clause Policy be approved.
2. That authority be delegated to the Licensing and Appeals Committee and appropriate Sub-Committee to consider appeals against such decisions.
3. That the Licensing and Appeals Committee be given authority to review and amend the Derbyshire Clause Policy
4. That authority be delegated to the Director of Housing to determine requests on the Derbyshire Clause in accordance with the approved policy.
5. That authority be delegated to the Director of Housing to refer any decision directly to the Sub-Committee of the Licensing and Appeals Committee where a decision is required that would not comply with the approved policy.
6. That the fee for Derbyshire Clause dispensations set at £465 be approved.
7. That authority be delegated to the Director of Corporate and Customer Services and Legal Services Manager to determine any outstanding requests of dispensation in line with the approved policy, which were received prior to the approval of the delegations above at no charge unless the applicant chooses to appeal to the Licensing and Appeals Committee.
8. That authority be delegated to the Director of Housing to make minor changes to the policy and to amend the policy in line with any clarification given by Members following a decision made by the Licensing and Appeals Sub-Committee.

WARDS AFFECTED

Wards within the Peak District National Park

STRATEGIC LINK

Providing a higher quality customer experience by streamlining processes to achieve faster decisions that affect residents and potential residents.

1 BACKGROUND

- 1.1 On 16 December 2020 the Community and Environment Committee considered a report to consult on a new policy and procedure to streamline the decision making process in relation to Derbyshire Clause dispensation.
- 1.2 To summarise the previous report, council houses owned by the Council, prior to the transfer of housing stock to a registered social landlord, which were purchased under the Right to Buy scheme and situated in the Peak District National Park, were sold with a covenant that restricted to whom the property could be sold (or leased), namely to persons meeting the following criteria:-

- Persons who have lived or worked within Derbyshire or the Peak District National Park for a period of three years before the transaction

The Council has also agreed to allow the sale of a property in the following circumstances:-

- A person who has a local connection in the area and is returning to the area to care for another relative.
- A person who has a local connection in the area and is returning to the area to be cared for by another relative.
- To members of the armed forces with a local connection returning to live in the area.
- To be given to companies whose stated aim is to provide housing for those satisfying the qualifying criteria. Consent will be conditional on compliance with this requirement.

- 1.3 The reason for this covenant was to ensure that ex-council properties were continued to be used for people that held a local connection in order to discourage these houses being used as second homes or holiday lets and also the covenant reduces the price of the property thus assisting in providing affordable homes.
- 1.4 The Constitution delegates the decision to grant consent to proposed transactions to any person meeting the above criteria. If the person does not meet the criteria, then the delegation states that “all other cases to be referred to Committee for the exercise of their discretion.”
- 1.5 This however delays the sale of properties affected by this clause and owners have reported losing sales due to the length of time it takes to get a decision from the Council. This is not considered to provide a good customer service, especially taking into account the length of time it takes to purchase a property, with the conveyance sometimes taking up to three months or more.
- 1.6 The report to Community and Environment Committee therefore sought authority to consult on a policy that defines how and when the Council will grant a dispensation

and introduce a new procedure with Officers taking the initial decision with a right to appeal to members.

1.7 The Community and Environmental Committee approved the consultation and made the following recommendations to Council:-

- a) Subject to Council approving the proposed policy, to recommend that Council delegate authority for decision making according to the policy for Derbyshire Clauses to the Director of Corporate and Customer Services, Legal Services Manager, Principal Solicitor or Solicitor.
- b) To recommend to Council that authority be delegated to the Licensing and Appeals Committee to consider appeals against such decisions.
- c) To recommend to Council to approve charging a fee for Derbyshire Clause dispensations, set at £465.

2. REPORT

2.1 Approval is sought for the policy and new procedure as this is considered the most appropriate way to speed up decision making process through delegated powers in line with an approved policy framework set by Members, but also allowing dissatisfied applicants to submit an appeal to Members to review the decision.

2.2 In order for the new procedure to be put into effect, Council is recommended to approve this new policy and also to delegate responsibility to the Licensing and Appeals Committee and Sub-Committee to consider those appeals. Licensing and Appeals Sub-Committee is considered the most appropriate body given its existing role for considering appeals in other matters. Consideration was given to the appropriateness of the Community and Environment Committee discharging this function, but as that committee is a policy committee it was felt that the Licensing and Appeals Committee would be better suited to the function of considering an appeal.

2.3 This process provides better customer service and accountability for the following reasons

- a. It would allow for requests to be determined promptly when the above criteria does not apply.
- b. A policy would provide information to sellers and buyers providing clarity in respect of the circumstances where the Council maybe likely to allow a dispensation. Therefore parties' would not waste time in viewing properties that they are unlikely to be able to buy.
- c. It also would provide parties with clear guidance as to what evidence they would need to submit in order for the Council to consider the application.
- d. It would allow for consistent decision making in line with policy direction set by Members
- e. It would also allow Members to consider appeals for dispensations if applicants were dissatisfied with the decision.

2.4 The current system of decision making could be viewed as not providing an excellent customer experience, which is one of the Council's stated priorities. The absence of a policy accompanied by delegated decision making results in applications being reported to committee, which means that the time taken for determinations is subject

to the dates of the Community and Environment Committee, rather than being responsive to the needs of customers.

3 CHARGES

- 3.1 The Council cannot charge for services that they are required to provide unless statute allows, however they can charge for services that are discretionary.
- 3.2 To provide confirmation that someone meets the criteria when there is a covenant on the deeds is a function that is required by the Council and therefore the authority cannot charge for this letter. However if the Council receives a request to exercise its discretion to allow a purchase, then this is a service the Council does not have to provide and can charge for that service.
- 3.3 It is recommended that a charge of £465 is levied for this application. This takes into account officer time in valuing the property, reviewing the evidence, considering the request, drafting the decision letter and also for the cost of holding a Licensing and Appeals Sub-Committee if a refusal is appealed. These costs are averaged out over the year and assumes that there will be three appeals per year. This amount has been calculated on a cost recovery only basis.

4 OUTCOME OF CONSULTATION

- 4.1 The consultation raised the following five responses for which I comment upon below
 - Representation – “Clause 3.4.7 - childcare is widely available in most areas. This clause could be a loophole for those wanting to move into the area for whom childcare could reasonably be obtained elsewhere. It needs to be tighter in terms of specific circumstances in which it would apply, e.g. assistance from family in caring for a disabled child, otherwise it will, undoubtedly, be abused.” (Member of the Public)
 - Representation – “Winster Parish Council would not wish to see any dilution of the Derbyshire Clause. We understand the need for officer delegation, but this should be established on the basis of the present policy.” (Winster Parish Council)
 - Thank you for your email and firstly may I say the consultation is welcomed in my office. Having worked in the property sector locally for many years, a point of reference to clarify such matters for house sellers, buyers and agents would be very useful. We attract a lot of home-movers from out of town (and agents who don't know such things exist) and it is better being clear from the outset, rather than leave it for the matter to only unfold through the conveyancing process. As well as a clear but simple explanation of the restrictive covenant would be very useful as would access to a register of such homes would, if that would prove possible. __Some of the occupancy clauses imposed on housing associations who have built in the area over the last 10 or 20 years can prove equally confusing but also restrictive to the extent that potential sellers find themselves unable to move home. Guidance on what options are open to the home-owner in those situations would also be worthwhile, although I am not sure this consideration will be in remit of your current consultation. (Fidler Taylor Estate Agents)
 - The policy says you would take the place of employment stated in the contract of employment as evidence of the place of work but how would you measure that if you are self-employed. (Member of the Public).

- If I own a Derbyshire Clause property can I rent it out as long as it was not for holiday lets? (Member of the Public).

4.2 Even though there is childcare in the area the cost of this can be limiting to some households making it more cost effective for one parent to stay at home rather than work would could them make it unaffordable to purchase in the area. In order to address the representation the proposed additional wording has been added to clause 3.4.7

“...If a person is moving to provide childcare assistance, the Council will only consider applications where a member of the family is disabled meaning that additional support is needed by either a disabled child or a disabled parent, or where it can be shown that both parents need to work and that paying for private childcare would cause an excessive financial burden on the family resulting in the family being unable to meet general living expenses.”

4.3 The intention of this policy and procedure is not to dilute the Derbyshire Clause but to make matter more transparent and obtain decisions faster and provide a better service to those wishing to buy or sell a Derbyshire Clause property.

4.4 The comments from Fidler Taylor are welcome in that it acknowledges the need for greater clarity in this area. As the Derbyshire Clause is registered on HM Land Registry documents there are no Data Protection issues that would arise in providing a list of affected properties on the Council’s website. To address the comment that a clear and simple explanation is needed Clause 1.3 has been reworded to clearly state that the clause restricts those who can purchase or lease an affected property. With regards to comments about other social landlords and their restrictions, this is outside the control of the Council.

4.5 The comment relating to the place of employment is a valid point in that the policy is not clear on how the Council would measure whether a person who is self-employed is employed in the area. Further clarification has been given at clause 3.3.12 of the policy as to the type of evidence that the Council would expect to see to determine if the applicant works in the area.

5 PROPOSED AMENDMENTS TO DEAL WITH REQUEST TO RENT

5.1 In the Introduction section of the policy it mentions the right to lease the property but on review the policy does not clearly explain those rights.

5.2 Section 57 of the Housing Act 1985 subsection 2(b) says “

(b) there will be no disposal by way of tenancy or licence without the written consent of the landlord unless the disposal is to a person satisfying that condition or by a person whose only or principal home is and, throughout the duration of the tenancy or licence, remains the dwelling-house.

5.3 The landlord in this case means the District Council and this section of the act allows the owner to rent, by way of a lease or license, to someone that meets the criteria or to anyone if the owner still lives in the property. What this means is that if the owner lives in the property they can rent out part of the property to someone who does not

meet the criteria i.e a spare room, as long as they still live in the property as their principle home.

- 5.4 A new clause 5.8 has been added to the policy to explain that an owner can rent out the whole property, but if they wish to rent to someone who does not meet the criteria then they must get permission, the length of the tenancy must be a least 6 months and the tenant has to use that property as their principal home and the same fee applies. 6 months have been chosen as this is the standard length of an Assured Shorthold Tenancy use in private property rentals.

6 PROPOSED AMENDMENTS TO DELEGATIONS

- 6.1 The current delegations on Derbyshire Clauses were to the Director of Corporate and Customer Services. This is that historically it was Legal Services that dealt with the Right to Buy applications and thus the delegations sat with the relevant Director.
- 6.2 The report to the Community and Environmental Committee recommended that the new delegations would be extended to allow officers to make decision in line with the approved policy but also that the delegations stay with the relevant Director and also legal officers.
- 6.3 Following the report it has been considered that as the Derbyshire Clauses were introduced to promote affordable housing and Legal Services no longer deal with Right to Buy sales, the delegations are better suited within the responsibility of Housing.
- 6.4 The Director of Corporate and Customer Services recommends that delegation to make decisions on Derbyshire Clauses are given to them for a short period to allow historical requests to be completed rather than handing over the matter to Housing to decide. As these requests came in before the setting of a fee the Council would not seek to charge retrospectively, however if these application are refused applicants can still exercise their right to appeal but as this was not available previously the fee would be applied.

7 FURTHER FINAL AMENDEDMENTS

- 7.1 No policy should fetter the discretion of members to decide to divert from a policy if they deem appropriate. On review of the policy it was considered that this was not made clear and therefore an additional clause at 6.3 was added to clarify that point.

8 RISK ASSESSMENT

Legal

- 8.1 The streamlining of the decision making process backed by an approved policy reduces the risk of legal challenge and potential ombudsman complaints, therefore the legal risk is low.

Financial

- 8.2 If Council approves a fee for Derbyshire Clause dispensations, this would be treated as revenue account income and would offset the Council's costs.

The financial risk is assessed as low.

9 OTHER CONSIDERATIONS

- 9.1 In preparing this report, the relevance of the following factors has also been considered: An Equality Impact Assessment is attached this report.

10 CONTACT INFORMATION

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11 BACKGROUND PAPERS

None

12 ATTACHMENTS

Appendix 1 – Proposed Derbyshire Clause Policy
Appendix 2 – Equality Impact Assessment