

Right to Buy Financial Charge Postponement – Policy Update



Report to:	Cabinet
Date:	24 April 2025
Portfolio Holder:	Councillor David Carter, Deputy Leader and Portfolio Holder for Housing
Lead Officer:	Alan Townshend, Executive Director
Contributing Officer:	Ella-Hope Crocker, Junior Legal Assistant
Key Decision:	No
Forward Plan:	Forward Plan Number I018396
Call In:	This item is subject to call in procedures
Corporate Mission:	Delivering high-performing council services
Wards Affected:	None specifically

Executive Summary

- A** This report asks Cabinet to agree an updated policy framework for decisions on whether to postpone or defer charges secured against Right to Buy (RTB) properties, in favour of a charge secured by a commercial lender. The proposed updated policy will provide greater clarity as to the circumstances in which the council will, or will not, postpone its charge in favour of a commercial lender. At present, it is not clear enough and therefore, an updated policy is recommended.

Recommended that:

- A** Cabinet approves the updated RTB Financial Charge Postponement Policy attached as Appendix A to the report.

Reason for decision

- A** Where the council has discretion, deciding whether to postpone its RTB charge in favour of a charge secured by a private lender requires a balancing exercise to be undertaken. The council must balance the rights of RTB property owner to improve and enjoy their property against the need for the council to ensure that the public

purse remains adequately protected in terms of its ability to ensure repayment of the RTB discount when due.

- B** The proposed policy sets out a clearer framework to help RTB homeowners when making applications and the council in determining the same.
- C** Approval of such a policy is a matter for Cabinet upon the recommendation of the Portfolio Holder.

Other Options

- A** To continue using the council's current policy, but this is sub-optimal as it doesn't clearly address the balancing exercise as set out above. That can lead to misplaced expectations amongst applicants, uncertainty in decision making and, in a worst-case scenario, can jeopardise the council's financial security.

Background

1. The council retains a legal interest in a property purchased under the RTB scheme for up to ten years after the RTB sale. Within that time, the council is entitled to "first refusal" if the RTB owner wishes to sell the property. The council is also entitled to repayment of the RTB discount upon initial sale. The amount the council is entitled to recover tapers down to zero after a five-year period. The council secures these legal interests by placing a charge on the property.
2. The council's charge ranks behind or is secondary to a mortgage taken to buy the property initially. Should a RTB owner wish to take out additional borrowing secured against the property, a lender will typically want the security for that borrowing to rank above the RTB charge secured by the council. The lender will seek the council's consent to deferring or postponing its charge and, if the council agrees, this will be transacted through a Deed of Postponement with the council.
3. If the additional borrowing proposed is for an approved purpose, as specified in Section 156 of the Housing Act 1985, the council is bound to provide its consent. Approved purposes are:
 - The cost of works to the dwelling;
 - The cost of service charges;
 - Advances to repay the original mortgagee (like for like re-mortgage).
4. In all other circumstances, the council has discretion whether to postpone its charge, but it will not approve applications for other purposes except in exceptional circumstances.

Issues/Proposals

5. Under the current policy, the council receives applications to postpone its RTB charge for borrowing for costs that are not always associated with improvements which

preserve or enhance the value of the dwelling in question. The current policy simply states that further advances must be for an “approved purpose” under the 1985 Act but provides no further explanation in that regard.

6. The proposed revised policy seeks to provide greater clarity for applicants in this regard. It clarifies a requirement for qualifying works to include works that are necessary to maintain the structure, weather tightness or safety of the property, but that they will not include things like gardening, landscaping, decorating, new carpets/flooring or soft furnishings.
7. The proposed revised policy also seeks to provide greater clarity for applicants in terms of what they can expect the council to require from them to be better assured that:
 - They are in receipt of a qualifying loan offer
 - The loan offer matches the cost of the proposed works
 - The proposed works will be carried out
 - The residual value of (or equity in) the property does not adversely affect the council’s security

Implications

Equalities and Diversity

There are no direct implications, however where requests for further advances relate to adaptations that may be required in respect of protected characteristics, that will be taken into consideration when determining whether or not to consent to a postponement of the council’s charge.

Climate Change

There are no direct implications.

Finance

The revised policy proposed is a prudent revision to provide greater clarity around applications and decisions on matters which can ultimately affect the security of sums which may become repayable to the council. As the taper effect reduces the sums secured on a property-by-property basis, the financial risk to the council diminishes. Determining applications is ultimately a question of assessing financial risk, on a case-by-case basis, and will be a matter for the S151 Officer (or duly authorised delegate) with professional valuation and/or legal advice as required.

Author: Jacqueline Van Mellaerts, Assistant Director – Finance and Section 151 Officer

Governance

The legal and governance implications are adequately addressed in the body of the report.
Author: Daniel Dickinson, Assistant Director – Legal and Democratic Services (Interim) and Monitoring Officer

Appendices

Appendix A - Draft Right to Buy Financial Charge Postponement Policy

Background Papers

None.

Glossary of terms/abbreviations used

RTB – Right to Buy