

Subject: **GYBC Right to Buy Policy**

Report to: ELT, 8th July 2019
Housing and Neighbourhoods Committee, 25th July 2019

Report by: Amanda Nugent, HRA Income Service Manager

SUBJECT MATTER/RECOMMENDATIONS

This report details a Right to Buy Policy for GYBC

That the Housing & Neighbourhoods Committee approve the Right to Buy Policy and delegates authority to the Housing Director and HRA Income Service Manager for discretionary matters.

1. INTRODUCTION/BACKGROUND

GYBC manages the Right to Buy Service within the HRA Income Service Area.

2. RIGHT TO BUY POLICY

- It is good practice to produce a Right to Buy Policy which provides guidance for applicants on the Right to Buy process, provides information on where discretion can be exercised and by whom and sets out the approach of the Council to the prevention of Right to Buy fraud.
- In January 2019 an Audit Inspection within the service area recommended a Right to Buy policy to be implemented.
- The policy for consideration brings together current practice and provides a protocol for the handling of Right to Buy applications, including discretionary decisions.

3. FINANCIAL IMPLICATIONS

None

4. **RISK IMPLICATIONS**

None

5. **CONCLUSIONS**

A Right to Buy policy will provide the framework for delegated authority to be approved and confirms an anti-fraud process will be used.

6. **RECOMMENDATIONS**

That the Housing & Neighbourhoods Committee approve the Right to Buy Policy and delegates authority to the Housing Director and HRA Income Service Manager for discretionary matters.

7. **BACKGROUND PAPERS**

None

Areas of consideration: e.g. does this report raise any of the following issues and if so how have these been considered/mitigated against?

Area for consideration	Comment
Monitoring Officer Consultation:	Via ELT
Section 151 Officer Consultation:	Via ELT
Existing Council Policies:	Not applicable
Financial Implications:	Not applicable
Legal Implications (including human rights):	No
Risk Implications:	N/A
Equality Issues/EQIA assessment:	In the policy
Crime & Disorder:	Yes. Potential prosecutions in cases of proven fraud. Existing procedures in place
Every Child Matters:	N/A



GREAT YARMOUTH
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RIGHT TO BUY POLICY

Document created	June 2019
Agreed by Housing & Neighbourhoods Committee	

Review date	June 2021
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1 BACKGROUND

Great Yarmouth Borough Council (GYBC) has been delivering the Right to Buy (RTB) scheme since its introduction in 1980. It enables the Council's secure tenants who are eligible for the scheme to purchase their homes at discounted rates. Whilst the RTB policy is governed by national legislation there is some limited discretion as to how it is implemented at local level.

2 PURPOSE OF POLICY

The purpose of the policy is to set out how GYBC implements the Government's RTB scheme.

3 POLICY AIMS

This policy aims to ensure that:

- 3.1 GYBC's RTB scheme is delivered in accordance with national legislation and guidance.
- 3.2 The potential for fraud is significantly reduced.
- 3.3 The scheme is fair and accurate.
- 3.4 RTB procedures are clear and transparent.
- 3.5 Tenants are well-informed about becoming a home-owner, their responsibilities, costs and financial commitments.

4 LEGISLATION, REGULATION AND GUIDANCE

- 4.1 The RTB scheme is governed by the Housing Act 1985, as amended. Under current legislation council tenants have the RTB their home at a discount. The amount of discount is dependent upon the length of time as a tenant of an eligible landlord and is subject to a cap on the maximum percentage and amount of discount.
- 4.2 Tenants who buy their home through the RTB scheme are protected by the Consumer Protection from Unfair Trading Regulations 2008.
- 4.3 The Ministry of Housing, Communities and Local Government (MHCLG) produces a range of information and guidance documents on RTB. Information is available on the Right to Buy using this link: <https://righttobuy.gov.uk/>
- 4.4 The forms used to make a RTB application can be found using this link: <https://www.gov.uk/government/collections/right-to-buy-forms-and-guidance>
- 4.5 In line with legislation, GYBC will inform tenants about RTB at least once every 5 years. Information on the RTB is also available on the GYBC website: <https://www.great-yarmouth.gov.uk/article/2266/Can-I-buy-the-home-I-rent-from-you>

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- 4.6 GYBC will give tenants the support and guidance needed to ensure they make an informed choice when purchasing their home.
- 4.7 The Prevention of Social Housing Fraud Act 2013 allows GYBC to work with other social landlords and statutory agencies to detect and report fraud.

5 LOCAL POLICIES

This policy should be read in conjunction with the following:

- Anti-Fraud, Corruption and Bribery Policy
- Anti-Money Laundering Policy
- Equality Approach and Actions
- General Data Protection Regulations (GDPR) Policy
- Housing Strategy
- Leasehold Management Policy
- Leasehold Service Charge Arrears Policy
- Rechargeable Repairs Policy
- Safeguarding Adults Policy
- Social Housing Tenancy Fraud Policy
- The Adaptions Policy
- The Corporate Plan

6 IS A TENANT ELIGIBLE TO APPLY FOR A RTB?

- 6.1 We will support tenants with enquiries made at the office in person before an application is submitted to establish if they and their property may be eligible for the RTB. Tenants can also use the Right to Buy website to get an indicative view of whether they are eligible and the level of discount they may be entitled to by using the following links:

<https://righttobuy.gov.uk/am-i-eligible/>

<https://righttobuy.gov.uk/what-discount-could-you-get/>

The tenant may apply if:

- They live in a property that is not exempt. More information is available in Section 9 of this policy.
- They are a public-sector secure tenant for three years or more.
- The property is their only or principle home

- The tenant is not subject to any type of possession order as they are not a secure tenant.

7 TIMESCALES

7.1 The following timescales for assessing a RTB application are set by legislation:

- 7.1.1 RTB applications (RTB1) will be assessed by GYBC within 4 weeks of receipt or within 8 weeks if the tenant has had a tenancy with any other landlord which is needed to meet the minimum statutory qualifying periods. The tenant will receive a RTB2 notice to confirm if the application is admitted (accepted) or denied. If the application is admitted, then the process will continue.
- 7.1.2 The tenant will receive a Section 125 Notice (s125) giving them the RTB within 8 weeks (if it is a house) or 12 weeks (if it is a flat).

8 THE APPLICATION PROCESS

8.1 The flowchart at the end of this policy demonstrates the process (Appendix A).

8.2 Tenants may ask us as their landlord for an application form (RTB1) in person at the office, or we will post a form within 5 working days of the request being made. The application will be sent to the property address or tenants may download an application form on the Right to Buy website using the following link:

<https://righttobuy.gov.uk/apply/rtb-2014-form/>

8.3 Tenants may seek support with completing their application and the information they will need to have to hand before completing the application form using the following link:

<https://www.gov.uk/government/publications/your-right-to-buy-your-home-summary-2/right-to-buy-summary-booklet#applicationform-guide>

8.4 All applications must be fully completed, signed by all parties and be accompanied by evidence as applicable.

8.5 The RTB process will commence from the date the application is received.

8.6 A pre-sale home visit will be made to the property within two weeks of the application being received. We will give five working days' notice of the visit in writing and telephone or text to confirm the appointment date and time. The tenant and family members included on the application will be required to be at the property during this visit to complete further identification checks, gather any other evidence and completion of a property inspection.

8.7 The property must be the only or principle home of the tenant or if joint tenants, only one is required to be living at the property. All other named persons on the application will be required to demonstrate it has been their only principle home for a minimum of 12 months.

- 8.8 If GYBC or the tenant are unable to verify or demonstrate evidence of a tenancy period within the statutory timescales for assessing the application, then only verified tenancies will be included in the discount calculation.
- 8.9 If a Notice to Quit has been served by the landlord or Notice to Leave served by the tenant and it has exceeded the 28 day notice period, they may no longer be a secure tenant.
- 8.10 Where a tenant is in receipt of full or partial Housing Benefit or is in receipt of Universal Credit to meet the cost of their housing, the paying authority will be notified of the application made. The paying authority will also be advised of any family members who have been included on the application to reduce the risk of potential fraud.
- 8.11 Succession
- 8.11.1 Where a tenant has obtained their tenancy by way of succession they may be permitted by legislation to count all the years spent in living in the property since the age of 16 towards their discount upon providing proof that they have occupied the subject property continuously as their only or principle residence or
- 8.11.2 Where the tenant has left the property; the tenant is only entitled to rely on those years after returning to the home as their only or principle home with no other periods of absence.

9 PERMISSION TO PROCEED OR DENY

- 9.1 The tenant will receive a notice to either deny, suspend or admit the application.
- 9.1.1 Denying the RTB
- If a RTB application is to be denied the tenant will receive a notice which will include the reason(s) for denying the RTB. There are a range of reasons an application may be denied including:
 - If the tenancy is held as part of their contract of employment.
 - If the property is sheltered housing or other housing particularly suitable for elderly or disabled people.
 - The home is scheduled for demolition.
 - The tenant is not a secure tenant for the minimum period of 3 years.
 - Any tenant or person named on the application who is subject to a Bankruptcy Order or have a petition pending.
 - The property is not being used as the only or principle home of the tenant.
 - Any persons named on the application are subject to a possession order relating to a tenancy breach.

- The tenant or any family member named on the application is more than four weeks in rent arrears, or has a housing related debt; GYBC will not progress or complete the sale until all arrears are cleared. (For the avoidance of doubt, GYBC will not allow any rent or housing debt arrears to be settled through the sale completion)
- Family members who are seeking to buy the property with the tenant and are named on the application form must satisfy both of the following two requirements:
 - They must be a relevant family member who are specified as:
 - the spouse or civil partner of the tenant
 - the tenant and that person live together as if they were husband and wife or civil partners
 - the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece and:
 - been living at the property for 12 months immediately preceding the date of the application, except in the case of spouses or civil partners where 12-month residential requirements do not apply. They must also live in the property as their only or principle home and not been subject to any possession orders or have any housing related debts.

The list is not exhaustive, and tenants may refer to the following link to refer to the various reasons on pages 19 to 21:

<https://righttobuy.gov.uk/resource/sample-practical-info/>

- 9.2 The property must be the only or principle home of the tenant or, if joint tenants, only one is required to be living at the property. All other named persons on the application will be required to demonstrate is has been their only principle home for a minimum of 12 months.

9.2.1 Suspending or losing the RTB

There are some reasons a RTB may have been initially available, but it is then lost or suspended.

- If the tenancy ceases to be secure before completion (e.g. if the tenant moves out or gives notice that has exceed 28 days).
- Where the council has obtained a possession order. This includes a postponed or suspended possession order.
- To complete further checks during the application or sale process as part of our responsibilities reducing fraud under the Prevention of Social Housing Fraud Act 2013. We will seek legal advice from our solicitors, NP Law and instruct them to act on our behalf.

9.2.2 Permission for the RTB application to continue

- The tenant will receive a notice document called the RTB2 to confirm that they and their property are eligible to proceed with the RTB application. This is known as 'admitted' to the RTB.
- The RTB application will now proceed to the next stage to instruct the Valuer, calculate the sale price and prepare the offer notice.

Please note: at any time during the application to buy the home if information is obtained where the application is to be denied the tenant will receive a revised notice.

10 PREPARING AN OFFER NOTICE TO SELL

- 10.1 Once the RTB has been admitted to proceed, the Council will arrange for a formal valuation of the property to be carried out.
- 10.2 Property Valuations will be carried out by an Independent Valuer who will visit the tenant's property when instructed to do so. The tenants will be required to be present during the visit.
- 10.3 The basis of the valuation is:
 - 10.3.1 The valuation will be at the date of which the RTB application was received (RTB1 form).
 - 10.3.2 The Valuer will be provided with the following information:
 - Any tenant improvements stated on the RTB1 form will be given to the Valuer for consideration as part of the valuation.
 - Any specific covenants or conditions relating to the property.
 - A plan of the property, indicating the boundaries.
 - Details of any known structural defects and if applicable details that the property is defective under the act or is of non-standard construction.
 - 10.3.3 If a tenant is purchasing a flat or property within a block it will be purchased on a leasehold basis with a lease period of 125 years or such other term the Council is able to grant. Tenants will be made aware of their rights, responsibilities and will receive a forecast of the annual charges they will incur for the first 5 years. Tenants will also be invited to attend an office interview with our Leasehold Officer to understand the commitments of a leasehold property.

11 CALCULATING THE DISCOUNT

- 11.1 RTB discounts are calculated in line with legislation:
 - 11.1.1 Any discount will only be included where evidence has been supplied and verified in line with legislation. The amount of discount will be reduced if the tenant has previously purchased under the RTB.

- 11.1.2 For house and bungalow (freehold) sales the tenant is awarded a 35% discount for the minimum 3-year qualifying period. The discount remains at 35% for the 4th and 5th qualifying period. A further 1% for each additional complete year of confirmed tenancy, up to a maximum of 40 years is then added, which will give a 70% discount.
- 11.1.3 For flat (leasehold) sales the tenant is awarded a 50% discount for the minimum 3-year qualifying period. The discount remains at 50% for the 4th and 5th years. A further 2% for each additional complete year of the confirmed tenancy, up to a maximum of 15 years is then added, which will give a 70% discount.
- 11.1.4 The maximum monetary discount that can be applied to either freehold or leasehold properties is amended annually in line with legislation. At as April 2019 the maximum discount which can be provided is £82,800. The maximum amounts increase with the consumer price index in April of each year.

12 COST FLOOR PERIOD AND CALCULATION

- 12.1 The Cost Floor Period & Calculation is the money which has been spent on an individual property over a set period prior to the RTB application being made is known as the Cost Floor.
- 12.2 The Cost Floor will always be considered when calculating the RTB discount and GYBC will apply the rules on the Cost Floor in line with legislation.
- 12.3 The money spent on the individual property within the 10-year period prior to the RTB application or;
- 12.4 The money spent on the individual property within the 15-year period prior to the RTB application if the property was built or acquired by the Council after 1st April 2012.

13 THE OFFER TO BUY THE HOME

- 13.1 Once the Council has assessed the RTB application and received the formal valuation it will determine whether the application can proceed or not.
- 13.2 If the application is accepted, the tenant will receive a s125 offer notice. This notice will confirm the right to proceed, confirm the value of the property, the percentage and amount of discount as well as the purchase price.
- 13.3 The tenant will have up to 12 weeks to respond to the s125 offer notice if they want to proceed with the purchase or the date following any determination.
- 13.4 If the tenant fails to respond to the s125 offer notice they will receive a notice giving them a final 28 days in which to respond.

- 13.5 If no response is received to this final reminder their RTB application will be considered withdrawn and cancelled.

14 SALE COMPLETION

- 14.1 Once the tenant has confirmed that they wish to proceed with the purchase the first notice to complete will be issued 12 weeks after the date of the s125 notice.
- 14.2 Prior to completion of the sale of the property to the tenant, all costs and debts owing to GYBC Housing Services will need to be settled in full. Debts may include rechargeable repairs and any outstanding rent, other housing charge or former tenant debts. The application will be suspended until these costs, rent and charges are paid in full.
- 14.3 We recommend the tenant seeks a solicitor to support them with the purchase process.
- 14.4 If there has been no contact from the Tenant or their solicitor within 3 months of NP Law being instructed to deal with the sale. NP Law will issue a further two notices to complete and if there have been no extensions agreed or contact made the application will be cancelled.
- 14.5 Any requests for extensions of the sale process will be considered by the Housing Director and will be required to be made in writing with any evidence. Please refer to section 19, "Discretionary Decisions".

15 POST SALE COMPLETION

- 15.1 The tenant should note that there are restrictions on the sale of their home for a certain period after they have exercised the RTB. In summary these are:
- 15.1.1 If a RTB property is to be sold within the first 10 years of ownership, the property must be first offered back to GYBC as a Right to Offer and to receive a decision notice before it is put on the open market.
- If a RTB property is offered to GYBC and is rejected, the owner will receive a notice in writing with a rejection notice; this will be valid for a 12-month period.
 - If the property is not sold within 12-month period, then the owner is required to offer it back to the Council.
- 15.1.2 If the property is sold within 5 years a certain part of the discount will have to be repaid to GYBC. The amount will depend on the time since the property has been purchased through the RTB scheme and the level of discount initially received as well as the current value of the property at the time it is offered back. This right is enforced through a charge on the property.
- 15.1.3 Confirmation is to be sought from GYBC if the sale of a property is exempt and would not trigger a repayment of discount. Please refer to section 19.

- 15.1.4 Please note: GYBC will exercise in full its right to recover any part of the discount in the event of a subsequent re-sale of a property bought under the RTB which is owed to it.
- 15.1.5 Where the homeowner is seeking to increase the amount of borrowing on a RTB property the Council will only agree to increase the borrowing where there is sufficient equity to repay the discount at the point of re-mortgaging. The resale costs of the home will also be considered, and evidence is to be supplied of the source of funds being used?
- 15.1.6 Any owner of a home previously purchased through the RTB can choose to offer the Council to purchase their property at any time after the initial 10 year buy back period has expired.

16 IMPORTANT INFORMATION

- 16.1.1 When a tenant has been accepted for the RTB, GYBC will only carry out essential repairs on their home.
- 16.1.2 Essential repairs are repairs that are necessary to maintain the health and safety of the tenants, the household, neighbours or visitors. The normal repairs and maintenance service will be resumed if the RTB application is withdrawn.
- 16.1.3 Each RTB application will have a further unannounced pre-sale home visit as part of the Council's process to ensure and review that properties are not bought within fraudulent circumstances.
- 16.1.4 Fraud checks will be completed during all stages of the application and after sale completion.

17 INFORMATION FOR LEASEHOLDERS

- 17.1 Upon completion of the RTB purchase, buyers of leasehold properties will receive a pack containing the following:
 - 1. Leasehold Management Policy
 - 2. Leasehold Service Charge Arrears Policy
 - 3. Rechargeable Repairs Policy

18 DELAY PROCEDURES

A tenant may use the delay procedure at any time if they believe GYBC as their landlord are delaying the process. There are statutory timescales set for the first two stages in the RTB process. These are the RTB2 and Section 125 notice. If we do not meet the statutory timeframes tenants may submit a Notice of Delay. The link below explains this in more detail. <https://www.gov.uk/government/publications/initial-notice-of-delay>

19 DISCRETIONARY DECISIONS

Where the legislation allows discretionary decisions to be made by the landlord; any such decision will be made by the Housing Director. In summary these are:

- 19.1 Any request for extension of the sale completion time outside the scope of legislation will only be agreed in exceptional circumstances such as a tenant having a medical condition and not for financial reasons.
- 19.2 Waiver of GYBC's right to recover the discount will only be considered in exceptional circumstances and proof of residence must be provided.
- 19.3 To allow persons who meet the requirements of a relevant family member, but are not resident at the property for the full 12 months prior to the application, to be named as an additional applicant.

20 DELEGATED DECISIONS

All RTB decisions are made by the HRA Income Service Manager with the exception of discretionary decisions which will be made by the Housing Director.

21 FRAUD AND MONEY LAUNDERING

- 21.1 GYBC staff are alert to the possibility of RTB Fraud and possibility of Money Laundering activities taking place through a RTB purchase. The Council has a legal duty to report fraud or money laundering where it is suspected. The Council needs to ensure that its properties are not bought by fraudulent means and that it is not involved in any financial transaction that could amount to its handling the proceeds of crime (money laundering). The Council's legal advisors will therefore require proof of the source of funds which will be used to purchase a property through the RTB.
- 21.2 GYBC will use and share information with colleagues from other registered housing providers, the Department of Work and Pensions and other departments that may help us to identify potential fraud as part of the National Fraud Initiative.
- 21.3 All tenants and family members will be subject to a credit and insolvency check.
- 21.4 Where a tenant or family member meets certain fraud triggers, enhanced checks will be carried out to ensure that any property sale is not completed fraudulently.
- 21.5 GYBC reserves the right to suspend an application pending the conclusion of appropriate fraud checks.
- 21.6 We will take legal action against anyone found to be perpetuating RTB fraud.
- 21.7 We will aim to detect fraud in accordance with the methods outlined by the National Fraud Initiative.

22 DATA SHARING

- 22.1 GYBC respects an individual's right to data privacy and data protection in line with the General Data Protection Regulations (GDPR).

22.2 The following GDPR statement is included on RTB documents and forms in order that tenants and family members are informed about how their data will be used:

‘Your data will be used for this specific purpose although your details will be shared between Council departments and other agencies where there is lawful authority to do so as defined in Article 6(1)(c) of the GDPR. For more information, please refer to the full privacy notice: <https://www.great-yarmouth.gov.uk/article/4063/Article-61c-Legal-Obligation>

23 EQUALITY AND DIVERSITY

The policy takes into consideration the Equality Act 2010, Public Sector Equality Duty and protect from discrimination and will be regularly reviewed. We will assess each case on its own merits to minimise any loss of public funds.

24 MONITORING AND PERFORMANCE

The policy will be monitored using the following performance measures:

- % of RTB applicants (RTB1) which have been assessed by GYBC within 4 weeks of receipt
- % of applicants who have received an offer notice (RTB2) within 8 weeks (if it is a house) or 12 weeks (if it is a flat) of acceptance of an application by GYBC
- % of applications withdrawn or denied
- number of fraud investigations
- number of council homes purchased under the RTB by tenants who were in receipt of Housing Benefit or Universal Credit Housing Costs direct to the landlord
- number of homes previously sold under the RTB that were re-acquired by the council following a fraud investigation.

25 COMPLAINTS

Any applicant who is not satisfied with the way in which the RTB service has been delivered may use the GYBC Complaints Procedure as detailed in the Complaints Policy. This can be found at: <https://www.great-yarmouth.gov.uk/commentscomplimentsandcomplaints>

26 POLICY REVIEW

The policy will be subject to bi-annual review unless there is a fundamental change of legislation.

27 GLOSSARY

GYBC Great Yarmouth Borough Council

RTB Right to Buy

S125 Section 125 Notice

Prepared by: GYCH HRA Income Service Manager and Housing Strategy, Policy and Performance Officer	Approved by:
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Appendix A



GREAT YARMOUTH
BOROUGH COUNCIL

