

Housing & Property Services

Right to Buy Policy

2022 - 2025



North Kesteven
DISTRICT COUNCIL

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1. Introduction

This Right to Buy Policy statement sets out North Kesteven District Council's position as a landlord in relation to Right to Buy issues. It seeks to adopt a responsible approach which balances the business needs of the Council's Housing and Property Service with its statutory responsibilities.

2. Context

2.1. What is the Right to Buy?

2.1.1. Eligibility

The Right to Buy scheme helps eligible council tenants in England to buy their home with a discount set by the Department for Levelling Up, Housing and Communities (DLUHC)¹. This figure is reviewed each year in line with the percentage change in the Consumer Process Index (CPI) in September of the previous year. It is a statutory right of secure tenants. From May 2015, the eligibility criteria was reduced from five years public sector tenancy to three years. This means secure tenants who have been a tenant for three years can apply to buy their home.

2.1.2. Financing the Right to Buy

There is nothing in law that specifies how a Right to Buy purchase can be financed. A family member (or someone else) can provide the funding for the purchase. However, legal ownership of the property can only be in the names of the eligible tenant(s) and other eligible applicants.

Joint applications for the Right to Buy are relatively common; in addition to joint tenants, the Right to Buy may be shared with:

- Spouses or civil partners; and
- Up to 3 family members who have lived with the tenant(s) for the past 12 months. It must be their main home.

¹ <https://www.gov.uk/right-to-buy-buying-your-council-home/discounts>

2.1.3. Discount

The following discount levels apply in relation to eligible tenancies, depending on tenancy length:

- 3 years – 35% discount for a house, and 50% discount for a flat
- 4 years – 35% discount for a house, and 50% discount for a flat
- 5 years – 35% discount for a house, and 50% discount for a flat
- 6 years plus – add 1% per year for houses (up to 70% or the cash maximum – whichever is lower), and 2% per year for flats (up to 70% or the cash maximum – whichever is lower)

Any period spent in armed forces accommodation can count towards the three year qualifying period for Right to Buy and the qualifying period for the discount. If the tenant's husband / wife / civil partner was a member of the armed forces and they lived with them in this type of accommodation is also counted. This is significant in North Kesteven, which has a high level of former armed forces personnel resident in the district.

2.2. Right to Buy Sales and Business Planning

Right to Buy Sales receipts (post tenant discount awarded) are subject to Central Government pooling conditions. The receipt is shared between the Council and DLUHC, subject to a detailed calculation based on allowable debt, bedroom sizes, dwelling type and capital valuation per dwelling sale. The calculation determines what proportion of the sales receipt is paid over to the Government. The remaining capital receipt retained by the Council can only be used to invest in future Housing Revenue Account (HRA) Capital Programme schemes (New Build).

The Council is permitted to retain an additional amount of the Right to Buy disposal sales receipts, as the Council is signed up to the Government's "1-4-1 replacement" arrangement. The additional sales receipts retained under this agreement can only be used to fund the delivery of new affordable housing units via the HRA Capital Programme.

2.3. Risk

The risk to the Council's income and its ability to plan its business is clear from section 2.2. Additionally, the Council is exposed to the risk posed by fraudulent Right to Buy applications. This risk is managed through the Council's Social Housing Fraud Policy, and includes:

- a) Identity checks (this includes household members wishing to be included in the application);
- b) Verification of claimed tenancies (discount); and
- c) Additional check on the financing of the purchase.

There is also the potential for family members to take advantage of being able to purchase a heavily discounted property, and the tenant inadvertently putting their home at risk / unwittingly entering into a deferred resale agreement and triggering the repayment of the discount.

3. Specific Policy Areas

Naturally, the Council will act lawfully at all times and absolutely respect the statutory rights of tenants. However, where the Council has options it will choose to act reasonably but robustly to protect its rental income and assets.

3.1. Rural Exemption

Section 157 of the Housing Act 1985² provides that local authorities in certain areas can impose certain restrictions on the subsequent resale of homes acquired under the Right to Buy scheme. The areas concerned are (i) National Parks, (ii) Areas of Outstanding Natural Beauty, and (iii) areas designated by the Secretary of State as 'rural'.

Local authorities may apply to have specified areas designated as 'rural'. These areas might be a whole district or part of a district. When an application is submitted, an assessment is made for each parish in the area for which designation is sought. The criteria are that:

- There should be a population density of no more than two persons per hectare, and
- Towns with more than 3,000 inhabitants are ineligible.

The first criterion (the density test) can be applied flexibly. For example, some parishes just over these limits may be designated in order to avoid a 'patchwork' situation where some parishes are designated while others, broadly similar, are excluded.

The Council applied to the Secretary of State to designate qualifying Parishes in the District, as "rural", within the terms of Section 157 of the Housing Act 1985.

The Secretary of State granted Rural Designation status to these Parishes, through Statutory Instrument 2018/265, with effect from 1 July 2018. Details of the Policy giving effect to this status are specified in Appendix 1A - Rural Designation.

² <https://www.legislation.gov.uk/ukpga/1985/68/section/157>

3.2. Right to Buy Applications

3.2.1. Eligibility and Discount

While also ensuring that the correct legal procedure is followed, the Council will robustly check both the eligibility and qualifying tenancies (discount) of Right to Buy applicants. It will work with applicants and keep them informed throughout the Right to Buy process, but will also expect applicants to provide clear and unambiguous evidence of their eligibility and qualifying tenancies. Admittance of the Right to Buy and qualifying period must be authorised by the Neighbourhood Services Manager or, in their absence, the Head of Housing and Property Services.

3.2.2. Family Members

The Council will allow family members to share the Right to Buy, but only where the qualifying criteria is met and evidence is provided. This must be authorised by the Neighbourhood Services Manager or, in their absence, the Head of Housing and Property Services.

3.2.3. Valuation

Works undertaken by the tenant without the written permission of the Council will be discounted for the purposes of the valuation. The Council will honour the valuation of the independent surveyor; it will expect a tenant who disagrees with the valuation to seek the review of the District Valuer.

An application for a review must be made within three months from the initial offer of sale (Section 125 Notice).

3.2.4. Notice Periods

The Council will seek to serve the relevant notices to either accept the offer or to complete the Right to Buy without delay (i.e. the tenants must complete the sale or the application lapses). Notices must be authorised by the Neighbourhood Services Manager or, in their absence, the Head of Housing and Property Services.

3.2.5. Completion

The Council is not bound to complete the sale if there are more than four weeks' arrears and it expects no outstanding rental debt at completion. However, each case will be considered

individually having regard to the reason why rent (or any other payment) remains outstanding. Completion with rent arrears can only be authorised by the Neighbourhood Services Manager or, in their absence, the Head of Housing and Property Services, and only in exceptional circumstances.

3.2.6. Mortgage and Financial Assistance

The Council will not offer mortgages or other financial assistance to Right to Buy applicants.

3.2.7. Cost Floor Provisions

Where the Council has built or acquired new properties, Cost Floor provisions will apply to the sale of these properties, under the Right to Buy scheme. This will affect the level of discount granted to tenants applying for the Right to Buy.

When properties have been built or acquired before 1 April 2012, this ruling applies for 10 years from the date of building/acquisition. Properties built, acquired or extensively re-developed after that date will be subject to this rule for 15 years from the date of building, acquisition or re-development.

In determining the Cost Floor, the Council must take account of the following in arriving at the discount entitlement, and the resulting selling price of the property:

- Construction costs of the dwelling, including site development and land acquisition costs
- Acquisition costs of a dwelling bought rather than built;
- Repair and maintenance, or re-development costs, where the aggregate costs exceed £5,500;
- Legal and administrative costs (provided by Financial Services).

3.3. Post-Right to Buy Options

3.3.1. Right of First Refusal

Properties purchased under the Right to Buy scheme after 18 January 2005 are subject to the Right of First Refusal for 10 years after purchase if the buyer (or successors in title) during that 10 year period wish to re-sell the property. This means that the owner must first offer the property to either their former landlord or another social landlord in the area at full market value.

The market value must be agreed between the parties, or if unable to do so, the value will be determined by the District Valuer. If the offer is not accepted within 8 weeks, then the owner is free to sell on the open market.

Where a property has been offered back to the Council under the Right of First Refusal, proceeding with a purchase is not automatic or guaranteed. The decision on re-purchase will be subject to requirements for property types, location, condition of the property, and availability of financial funding.

In all cases the new owners will be unable to register their ownership with the Land Registry unless formal confirmation that the covenant has been complied with and the Council has declined to pursue re-purchase under the Right of First Refusal provisions.

Exceptions to the Right of First Refusal may apply under the following circumstances:

- Some property transfers and disposals between family members or due to a Will may be “exempt disposals” under Section 160 of the Housing Act 1985.
- Properties where applications were received after 1 July 2018 and subsequently sold, that are in the areas of the District designated as Rural Areas, will not be subject to the Right of First Refusal but will be subject to the provisions in place for properties with Rural Designation as per Statutory Instrument 2018/265.

3.3.2. Discount Waiver on Resale

Any request to exercise the discretion to waive repayment of the discount will be considered on its merits, but it is only expected to apply in exceptional circumstances. It will be necessary to establish both the facts justifying the move and that the move could not take place unless all or part of the discount repayable were waived. The Council will follow the Department for Levelling Up, Housing and Communities guidance, which includes examples of where the use of discretion may be justified. This decision to waive a covenant will be taken in accordance with the Council’s Constitution.

3.3.3. Covenants on Works to the Property following purchase under the Right to Buy

The Property Services Manager or, in their absence, the Head of Housing and Property Services will consider requests for permission to undertake work; permission will not be unreasonably withheld, but the Council may impose conditions to any permissions granted to ensure its assets are protected and no costs are incurred to the Council.

3.3.4. Repayment of Discount

Within the conveyance of the property freehold or leasehold, a Covenant is included regarding the repayment of discount during the 5 year period from the date of sale completion, if the property is sold on during this time. This is within the terms of Sections 155³ and 156⁴ of the Housing Act 1985, and constitutes a charge on the property, during this 5-year period, registered with the Land Registry.

When a property is sold then discount can be reclaimed by the Council, based on the market value at the time of sale, reduced by 20% for each complete year that has elapsed from the sale completion date.

There may be elements to be disregarded in the property valuation attributable to home improvements, effected by the new owners, whilst the Council does have discretionary powers regarding discount repayment, where demonstrable, personal hardship is established.

3.3.5. Deed of Postponement

On occasions, people who have bought a Council property may wish to carry out improvements to the property, including structural alterations. In doing so, they may wish to borrow extra money from their lender to fund the proposed work. If this is during the 5 year period when they are still liable to repay some or all of the discount granted, then the Council retains a legal interest in the property, known as a 'charge'. In these circumstances the lender will ask the Council to agree to a 'postponement of charge', meaning the lender would recoup the money borrowed from them, before the discount was repaid to the Council.

The Housing Act 1985 stipulates two situations where the Council must agree to postpone its charge:

- To allow the borrower to pay our service charges (likely to be for more extensive communal property repairs); or
- To enable the borrower to effect home improvements to the property.

There are no other circumstances where the Council is likely to agree to postpone their charge.

³ <https://www.legislation.gov.uk/ukpga/1985/68/section/155>

⁴ <https://www.legislation.gov.uk/ukpga/1985/68/section/156>

4. Supporting Documents & Procedures

There are six Appendices to this Policy:

- Appendix 1A: Rural Designation
- Appendix 2: RTB District Eligibility Map
- Appendix 3: Housing (Right to Buy) (Designated Rural Areas and Designated Regions) (England) Order 2018 (SI 2018/265)
- Appendix 4: Housing Act 1985 S157
- Appendix 5: Sample Statutory Declaration (S157) Restriction
- Appendix 6: Housing Act 1985 S156A

5. Monitoring

This policy will be monitored every other year against its aims by the Housing Policy, Performance & Systems Manager.

6. Consultation & Communication

Consultation has taken place within NewsNK and the tenants' At Home magazine.

The policy will be made available on the corporate website, and to tenants who enquire about submitting a Right to Buy application.

7. Policy Review

This policy will be reviewed every three years in response to changes in legislation or statutory instruments by the Housing Policy, Performance & Systems Manager or Head of Housing & Property Services and submitted to Executive Board for approval. Any other minor amendments i.e. changes to post titles will not be submitted for approval.

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North Kesteven
DISTRICT COUNCIL

District Council Offices, Kesteven Street, Sleaford, Lincolnshire NG34 7EF
Telephone Number: (01529) 414155
180912-JA2