SHAKESPEARE MARTINEAU

The FIRST HOMES Initiative

The Pros and the Cons

In the words of the first housing philanthropist George Peabody, affordable housing should "ameliorate the condition of the poor and needy…, and…promote their comfort and happiness". Registered providers (and their forebears) have for over 150 years been providing such a service through a multitude of tenures and schemes, but now a new initiative has been proposed which will impact the sector – First Homes.

What is the "First Homes" initiative?

First Homes is the government's latest initiative designed to support people struggling to enter the housing market.

How does it work?

The government's consultation in February 2020 produced guidance on what First Homes are to be, and in the simplest terms the initiative allows qualifying first time buyers (the term "first time buyers" is taken from the definition used in the Finance Act 2003 for the purpose of the Stamp Duty Land Tax exemption), a minimum discount of 30% of the market value of new properties which are valued at or below £250,000 (or £420,000 or below in Greater London).

In order to qualify the buyers household income must not exceed £80,000 (or £90,000 in Greater London).

Are local variations permitted?

Yes, in addition to the above, local areas will be permitted to offer higher discounts if they can demonstrate the "need for and viability" of this through their local plan making process (for example in areas where prices are well ahead of local earnings or where there is an extreme paucity of supply – known as 'affordability pressures' in the planning world). Likewise the local authority may also look to demonstrate a case for a different income threshold or qualifying criteria (such as local connection tests, or employment), again through the local plan or an interim policy statement.

Will they meet need?

There will almost certainly be a demand for discounted market homes within the qualifying population. Local housing authorities have expressed some concerns that affordable and social rent products lost to this substituted product will hit those most in need and this falls at a time of vulnerability post-COVID. However, some say the new product has the potential to improve viability and options for a deliverable development, in which case we may see more homes as a result. Of course, that presumes a ready supply of land for homes.

Discounts passed on to future eligible buyers

The discount offered is intended to remain in perpetuity to subsequent eligible buyers. The government's intention is for this to roll forward and continue affordability by First Homes being resold to new first time buyers, and the 30% discount remaining (so if the current owner after living in the property for some time sells on the property for a new value of £300,000 the appropriate discount is allocated to the new buyer and they are only required to pay the reduced amount (£210,000 if the discount was 30%)).

Excluding the usual mortgage protection clause provisions which allow resale within three months of offer by the mortgagee free from restrictions, where it is not possible to sell to a first time buyer the owner will be permitted to resell to any private buyer free from the restrictions. However the property must be marketed for six months first unsuccessfully, and any discount previously given must be repaid (or as much as possible following repayment of any mortgage).

The Planning Policy Guidance Notes (PPG) tells us that the homes will be delivered and secured through S106 and policed by way of a certification process. How the system will resolve disputes in respect of value, marketing and discount (possibly third party beyond the point of sale) remains to be seen with local planning and housing authorities under resourced and potentially unskilled in this area.

Is this a genuinely new product? It sounds familiar…

Some of you may well recall the “Starter Homes” initiative announced by David Cameron at the conservative party conference in October 2015. With a certain ring of familiarity to it, that scheme allowed qualifying first time buyers , to purchase homes at a discount up to a maximum purchase price

However, this scheme failed to deliver any homes, despite the list of some 85,000 people who had signed up through the portals in anticipation. This is because while the Housing and Planning Act 2016 implemented the framework for Starter Homes to be delivered, it required secondary legislation to bring the scheme into effect and this secondary legislation was never passed). The initiative was informally abandoned in 2017 when the Housing White Paper shifted policy on home ownership options, and was formally terminated quite some time later in 2020.

So how is First Homes different?

In reality it isn’t that different (no doubt because the principles in Starter Homes are those which underpin all such schemes: qualifying buyers, new builds and discounts for rent or sale) but there are a couple of minor changes which set it apart and help make the scheme slightly better than before:

a) First Homes offers a <u>higher discount</u> that Starter Homes. The discount is now 30% as opposed to 20% under the Starter Homes model. This is a good step but it will be interesting to see if this makes any difference. For example, Halifax states that the average first time buyer now pays a deposit of £59,000 (a rise of £12,000 in the past year). Even with a discount of 30% this will still mean a deposit of over £41,000 is required and with the problem for most first time buyers being the ability to save for a deposit due to high rents, it is hard to see how this will offer to help the real issue of initial deposit. The government backed mortgage guarantee scheme, seems to be more of an effective tool in this regard – though this only helps creditworthy and loan-to-income appropriate households…surely in many cases the ones least in need?

b) The upper age limit has been scrapped. This is to be welcomed – why should your age preclude you from the right to buy your first home through this or any other scheme?

c) Finally, in a similar vein to previous key worker purchase schemes, any discount has to be passed on to the next buyer if the home is sold to another qualifying buyer (i.e. a first time buyer). This aspect is also to be welcomed as it encourages the scheme to have some longevity in that it may serve future first time buyers as well, though concerns have been raised in some quarters that in addition to problems of regulation this just moves the problem up the chain, so that first time buyers who sell with the discount will then struggle to make the next step.

What methods will ensure these homes are provided?

There will technically be two routes to providing First Homes – via First Homes Exception sites or via S106 developments.

Government planning policy and guidance on First Homes

The National Planning Policy Framework (NPPF) was amended in July 2021 and the latest version has not been amended to expressly refer to First Homes (in much the same way as it was never amended to refer to Starter Homes). The preference, in the meantime, appears to be for the proposals to carry weight in planning decisions by virtue of a Written Ministerial Statement dated 24 May 2021. The NPPF tells us, of course, that ministerial statements 'may' be a material consideration for the purposes of any planning application.

First Homes Exception sites

The PPG was amended in May 2021 to say that Rural Exceptions sites can be used to deliver First Homes provided this is supported by appropriate evidence of local need, such as a local housing needs survey (see earlier concerns of some local housing authorities).

Paragraph 72 of the NPPF allows Entry Level or Rural Exception sites to be developed outside designated settlement boundaries (on land not allocated for housing) as long as these are adjacent to existing settlements, and do not exceed one hectare or 5% of the existing settlement (whichever is smaller).

The PPG also tells us that Rural Exception sites can deliver a small proportion of market housing, provided that it can be demonstrated that this is necessary to ensure the overall viability of the site. They will also be permitted to allow other forms of affordable tenure housing. The written ministerial statement confirms that the intention was to amend the NPPF to substitute First Homes Exception sites for Entry Level Exception sites. While the reference to First Homes did not find its way in, 'Entry Level Exceptions sites did and perhaps the expectation is that the terms should be seen as interchangeable, although confusing and could cause further points to disagree with the planning authority on.

S106 First Homes

For First Homes secured by virtue of the section 106 regime, the government has issued planning practice guidance alongside the Written Ministerial Statement, detailing how the homes will be delivered and secured, and the discount protected.

The S106 will be expected to both secure the delivery of the homes, and ensure that a legal restriction is registered onto each home's title on its first sale. The government is intending to publish template planning obligations in due course.

The restriction on title should prevent transfer of title to another owner without certification from the local authority that the First Homes criteria and eligibility criteria have been met. Mention is made above of the resources and skill set available to local planning and housing authorities - one issue which seems bound to occur is response times. The restriction will expressly name the local authority as needing to provide consent, but in time of pressured sales and mortgagee repossessions it is conceivable that this could lead to substantial delays in getting any consent or restrictions removed (if applicable). The local authority will need to be contacted very early on to ensure this does not hold up the transaction.

So is First Homes a good thing then?

Yes and no. Improved options for home ownership are welcome at a time of need in the market and for the stimulus they can bring to the housing ladder. The new proposals here pose genuine concerns and issues to registered providers as they very much look to ride roughshod over the affordable housing provisions on S106 developments, resulting (somewhat counter-intuitively) in a reduction in genuine affordable housing availability, as mentioned previously.

What are the problems with this initiative?

An issue immediately identifiable is the "one size fits all" approach. First Homes are intended to be at a price not exceeding a cap, but reflecting the needs of first time buyers in the area, and physically indistinguishable in quality and size from equivalent market homes (in terms of space standards). Of course these are all obvious attempts to prevent poor quality housing being fired out to meet this obligation, but the key point is that these three criteria are not independent. It will be the market value of an area that will determine the size of a home. It will be interesting to see how successful developers are at convincing local authorities of the need to bend one or more of these criteria in some areas and in turn the Inspectorate and the Ministry for Housing, Communities and Local Government (MHCLG) if an appeal looms. Of course, local authorities will face the same question if developing policies in local plans when they are examined by the Planning Inspectorate. Eyes will no doubt be on the front runners as First Homes start to make their way through the system.

Affordable affordability?

While the scheme aims to reduce the value of the home being purchased, it does nothing to affect the availability of finance for purchasers using the scheme. Research by the homeless charity Shelter found that across most of England someone on an average salary or lower could not afford to buy one of the new-build homes in such a scheme. In fact it demonstrated that almost two-thirds (63%)

of private renters in England have no savings at all for a deposit. New-build properties in England cost £307,000 on average. A 30% discount would offer a saving of approximately £92,000 but would still require a significant deposit (in excess of £21,000 if we take the standard 10%) – the same problem of being able to save such a deposit applies.

Shared Ownership impact

Another issue is financial viability – but in this case for the charitable registered providers who are already seeing financial issues on the horizon with the new Homes England shared ownership lease. The First Homes proposals require 25% of all affordable homes delivered through the S106 regime to be First Homes. The proposals also specify that Social Rent levels are required to remain the same. At first glance this seems entirely reasonable – this is after all a flagship policy so should be having a chunk of such schemes, and social rent is the key safety net so should be unaffected shouldn't it? However if we drill down into the implications a little further we can see the issues:

The financials

For example, if we say that a hypothetical local plan requires an affordable housing mix of 20% shared ownership, 40% affordable rent and 40% social rent. The registered provider uses the capital raised by the sale of the 20% shared ownership sales to cross subsidise the affordable provision on the development which is why these models work so well). Under the First Homes proposals this will now be required to deliver a flat 25% of First Homes. Given that 40% are already Social Rent, this then leaves only a flat 35% to be divided up between Shared Ownership and Affordable Rent in the ratio set out in the aforementioned local plan (being 2:1) meaning that affordable rent requirement drops to a flat 23% but, more pertinently for registered providers, the shared ownership requirement drops to 12%.

Reducing supply – I thought this was intended to increase it?

As you can see from the above example the policy actually reduces the amount of shared ownership units available via S106 schemes – an area which is already becoming hyper-competitive (we are seeing smaller providers target smaller and smaller sites to enable them to afford the units on offer). This reduction is a substantial concern for any provider, for reasons of both affordability themselves and delivery of cross-subsidy, but especially those whose business model focuses on smaller S106 schemes where there are inevitably lower margins.

When does this scheme start?

It is already underway. The initial First Homes to have been built went on the market on 4 June 2021 as part of an early delivery project in Bolsover in the West Midlands. The anticipation from government is that a further 1,500 homes will enter the market from August 2021 and "up to" 10,000 homes a year in the following years, if there is demand. It is suggested a hefty pinch of salt be taken alongside thoughts of meeting the top end of such a target at this stage.

What about schemes which are already underway – are these affected?

No, the proposals contain transitional provisions which exclude the following:

a) Schemes where planning consent is in place before December 2021 or there has been "significant" pre-application engagement and the application is determined prior to March 2022; or

b) Local plans and neighbourhood plans submitted for examination before June 2021, or that have reached publication stage by June 2021 and subsequently submitted for examination by December 2021

However, providers will need to bear in mind these timescales if they enter into any contracts conditional on planning, and may wish to include the First Homes requirements as an unreasonable condition in any such contract to allow them to re-evaluate any scheme which goes beyond this timescale before planning is obtained.

A shift towards self-delivery?

Schemes that offer 100% affordable housing are exempt from the First Homes requirement – could this lead to a further shift away from S106 schemes towards self-development by registered providers? Not a problem for larger providers, but this is not an option for smaller providers who don't necessarily have the skills or resources to undertake such a shift.

Tackling the cause or the effect?

It remains to be seen if this scheme will make any meaningful progress on the issue of affordability and increasing access to the market. The principal is in many ways a good one – attempting to resolve the issue of affordability amidst rising prices – and it is clear that less and less people are able to make the step into ownership.

However, as always it is supply that is the issue: the problem is more with the availability of mortgage products for new buyers than it is the price of the house (though you could argue the two are linked). Even as far back as 2006 the government was attacking the problem through discounted pricing via the First Time Buyer's Initiative (although in that case funding went to the developer not the purchaser) but the overall effect on such policies is actually counter-productive as they keep house prices effectively supported more strongly than before.

As we have highlighted above, most registered providers rely on shared ownership sales to cross-subsidise the provision of social rented and affordable rented units. Therefore if the number of shared ownership units is reduced it may result in some schemes not being financially viable and result in a *reduction* in affordable housing provision in some areas both via non-viability and reduction in numbers as a whole through the 25% First Homes provision. This is in despite of the fact that in reality shared ownership homes are more affordable at entry level than First Homes (especially on new build schemes and where the new Homes England model lease is used with the lower minimum 10% initial purchase price requirement).

What about Rent To Buy?

In terms of the problems of being caught in a rental trap and not being able to save a deposit, the Rent to Buy model (or Intermediate Rent) can offer a much more effective solution if it were to be adapted to be a little more flexible in terms of tenancy length (currently most rent to buy products are a fixed five year term but some providers such as Rentplus has had more success with variable five, 10, 15 or 20 year terms dependant on the tenant's circumstances).

Given that a number of mortgage providers and brokers are reporting record levels of demand for shared ownership products, it is strange that this popular and successful ownership tool is being so heavily undermined, and it will be interesting to see how this change in policy and approach affects this going forwards. Policy makers also seem to have forgotten, that all those in need of housing are not necessarily buying for the first time – housing need is not just the requirement of the young or those who are starting out. Often it can be generated by change in circumstance (financial or otherwise) and this policy effectively reduces the availability of affordable ownership to anyone who is not buying for the first time. We would suggest that this is not an approach which sits well with the provision of affordable housing for all those in need by providers.

The scheme makes attractive headlines but the impact of the First Homes initiative could have considerable repercussions for registered providers, affecting their ability to fund and build new homes. To discuss the options available to providers or any of the detail provided in this guidance note contact Kevin Edwards or David Pendle or another member of the social housing team in your local office.