



Ministry of Housing,
Communities &
Local Government

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London Borough of Hammersmith & Fulham

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West Ken Gibbs Green Community Homes Ltd

Kit Malthouse MP
Minister of State for Housing

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Dear Sirs,

Request for Determination pursuant to Regulation 13 of the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 (the “RTT Regulations”)

Request for Determination pursuant to Regulation 12(2) of the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 (the “RTT Regulations”)

Background

I am writing with regard to the applications submitted to the Secretary of State by both the London Borough of Hammersmith and Fulham (**LBHF**), and West Ken Gibbs Green Community Homes Limited (**WKGGCH**). I am taking the decision on behalf of the Secretary of State.

These applications were made to the Secretary of State following the transfer proposal notice dated 11 August 2015 (**Notice**) submitted by WKGGCH to LBHF. This notice is designed to require LBHF to consider the transfer of property and land in the West Kensington and Gibbs Green (WKGG) estates to a Private Registered Provider.

LBHF acknowledged receipt of WKGGCH Notice on 4 September 2015 and informed them that they considered they had grounds to reject the Notice. At the same time, LBHF stated their intention to submit their own request for a determination to the Secretary of State.

Following this, WKGGCH submitted their application of 21 September 2015 in accordance with Regulation 12(2) of the RTT Regulations (**Regulation 12 request**) asking the Secretary of State to determine whether LBHF validly rejected their Notice and had actual grounds to reject it. The application also asks the Secretary of State, in the event that he found that the Notice was invalid, to direct that the Notice be accepted by LBHF in any event, on the basis that it had acted in breach of Regulation 3 (which obliges authorities to have regard to the statutory guidance when complying with the RTT Regulations).

LBHF submitted their application for a determination on 25 September 2015 pursuant to Regulation 13 of the RTT Regulations, (**Regulation 13 request**) asking the Secretary of State to determine whether the proposed transfer of houses would “*have a significant detrimental effect on the provision of housing services ... or the regeneration of the area*”.

I am therefore required to make two determinations in accordance with the RTT Regulations.

Process

Following the process set out in Regulation 25 of the RTT Regulations, in the autumn of 2015, WKGGCH and LBHF provided the Secretary of State with submissions and evidence to support their determination requests, under Regulation 12 and Regulation 13 respectively.

In May 2016, MHCLG officials wrote to WKGGCH and LBHF providing an update on progress and invited them to provide any further representations to the Secretary of State on both issues. WKGGCH and LBHF therefore engaged in a further round of submissions which was completed by July 2016.

In the interest of procedural fairness, MHCLG allowed two further rounds of submission of evidence. This followed correspondence from WKGGCH informing my officials of commercial discussions between LBHF and Capco, relating to a proposal to develop an improved Earls Court master plan which might impact on the future of the WKGG estates. These further rounds were completed on 2 February 2018 and 2 October 2018 respectively.

MHCLG officials commissioned a socio-economic evaluation by independent consultants to assist me in relation to my determination of the Regulation 13 request.

I have now received a copy of the final socio-economic evaluation, which takes account of all evidence submitted by all relevant parties at the various stages. I have completed my deliberation of both requests (in tandem, as indicated in correspondence of May 2016). I am writing to respond to both WKGGCH’s Regulation 12 request and LBHF’s Regulation 13 request, and set out my determinations below.

WKGGCH’s Determination in Accordance with Regulation 12(2), RTT Regulations

WKGGCH in its application asked the Secretary of State to determine the following:

1. First, did LBHF by its letter of 4 September 2015, validly reject the Notice per Regulation 10(1)(a)(ii); and
2. Secondly, did LBHF have actual grounds to reject the Notice (i.e. was the Notice procedurally valid or not).
3. Finally, WKGGCH invited the Secretary of State (if the Notice was found to be invalid) to direct that the Notice be accepted by LBHF in any event, on the basis that LBHF was in breach of Regulation 3 (which obliges authorities to have regard to the Guidance when complying with the Regulations).

Question 1 - Did LBHF by its letter of 4 September 2015, validly reject the Notice per Regulation 10(1)(a)(ii)?

Regulation 13 provides that an authority may request a determination from the Secretary of State “At any time after the service of the proposal notice”. This indicates that, once the proposal notice has been served, there are no restrictions as to when a request under regulation 13 can be made. The fact that a proposal notice is also being rejected at the same time does not prevent a request under regulation 13 from being made.

In my opinion it is permissible for an authority when it responds to a notice in accordance with Regulation 10(1)(a) both to reject the notice and also to indicate an intention to serve a determination request pursuant to Regulation 13. The options in Regulation 10(1)(a) are not mutually exclusive.

Finding 1

I am therefore satisfied that the Notice was validly rejected by LBHF, by its letter of 4 September 2015.

Question 2 - Did LBHF have actual grounds to reject the Notice?

Having considered the Legal Framework and all the available evidence/submissions (see list enclosed), I find as follows:

Finding 2 - Summary

WKGGCH does not meet the criteria for a tenant group set out in Regulation 4, and therefore LBHF had valid grounds to reject the Notice on the basis of Regulation 5(2)(b).

Finding 2 – Detail

The fundamental issue is whether or not WKGGCH meets the requirements of the RTT Regulations as a ‘tenant group’.

Whilst I concur that the RTT Regulations do not explicitly specify classes of member who may not be included in a tenant group, the definition of a ‘tenant group’ must be read in the context of the definition of ‘tenant’ at Regulation 2, and the RTT Regulations as a whole.

Regulation 4 specifies both that the tenant group must have at least 20% of all *tenants* (i.e. people who have a tenancy from a local authority) of houses in the relevant area as members, and also that it must have at least 20% of *secure tenants* in the area. It also stipulates that membership must be open to all such tenants. Regulation 4 therefore envisages that no one but tenants – i.e. people who hold a tenancy from a local authority - can be members of a tenant group. This is consistent with the purpose and intent of the Regulations which were enacted in order to empower local authority tenants to change their landlord. Our view is that membership can only include local authority tenants.

In summary, the RTT Regulations enable a change in the nature of the property rights of *tenants*, and so ‘membership’ cannot be read as referencing anything other than the ownership (tenancy) of the property rights in question.

This point is reinforced by Regulation 5(4)(c) which says that all members of the tenant group must be entitled to vote (albeit in the interests of the tenant community as a whole, the RTT Regulations require secure tenants to be in the majority of a tenant group if it is to be eligible to serve a notice in accordance with the RTT Regulations). Given that this is essentially about the identity of the landlord with whom tenants will have a legal relationship, to permit non-tenants a vote would subvert the purpose of the legislation.

Annex 1, which was attached to WKGGCH’s ‘further evidence’ supplied on 12 November 2015, discloses that non-tenants were accepted, had a vote and exercised their voting rights. Furthermore, whilst WKGGCH clearly had a written constitution, that constitution provides that even non-residents, so long as they could demonstrate an interest in the estates, would be accepted as members of the group.

I therefore find that the Notice did not meet Regulation 5(2)(b) and that LBHF had grounds to reject it. In reaching this conclusion, I reserve my position in relation to the other grounds raised by LBHF related to the validity of their Notice.

Question 3- Should the Notice be accepted in any event?

I agree that the RTT Regulations require authorities to have regard to the Guidance and that paragraph 23 of the Guidance encourages local authorities to be helpful in suggesting to a tenant group how to frame or re-present a notice to make it acceptable.

In the interests of fairness and transparency, MHCLG expects local authorities to be helpful towards tenant groups, who may not have access to legal representation and who are likely to be inexperienced in such matters.

I accept WKGGCH's point that LBHF have access to overall figures of secure tenants so that it was difficult for them to assert with certainty that they met the relevant thresholds. I also note that WKGGCH did provide the underlying evidential material, including who voted. This was intended to enable LBHF, who had access to the overall figures, to say that the thresholds were met. I can also see that LBHF has limited itself to the technical point that the evidence was not supplied, but has not asserted that the thresholds were not met.

However, whilst Regulation 12(1) affords a level of discretion, so that an authority is not bound to reject a notice for an inconsequential technical irregularity, in this instance neither I, nor LBHF, have the power to accept a notice from a tenant group that is fundamentally incorrectly constituted in terms of its membership. Further, even if it were legitimate in principle for me to exercise my discretion so as to require LBHF to accept the notice, I do not think that it would be appropriate for me to do so in a case such as this where the tenant group includes persons who are not tenants, and who were therefore wrongly allowed to vote on the proposal.

Finding 3

I therefore find that LBHF should not be directed to accept the Notice.

LBHF's Determination in Accordance with Regulation 13, RTT Regulations

In its application, LBHF asked the Secretary of State to determine whether the proposed transfer of houses would "*have a significant detrimental effect on the provision of housing services ... or the regeneration of the area*".

I have considered the socio-economic evaluation (copy of the full report enclosed). On this basis, I now respond to LBHF's request as follows:

a) Regarding impact of the proposed transfer on the **provision of housing services in the local area**, the report concludes that there is insufficient ground to conclude that WKGGCH's proposed stock transfer will have a significant detrimental impact on the Council's ability to provide housing services for its remaining housing stock. Specifically the report found:

- There was no evidence submitted by either party to suggest that the transfer of the WKGG estates would have a detrimental impact on the Council's Housing Revenue Account stream. The value of lost income from rent and service charges currently collected from the WKGG estates would be unlikely to be sufficient to cause a significant detriment to the budget for provision of housing services for the remainder of the LBHF's stock; and

- Evidence submitted by LBHF indicates that the capital receipts from the Conditional Land Sale Agreement (CLSA) (£15m yearly instalments from 2015-2019) account for 29% of their total capital funding. It is assumed this would be foregone/repaid if the estates transfer went ahead. However, in contrast, removing the costs associated with delivering the Earls Court regeneration project from the Council's Housing Programme would result in a corresponding 40% reduction in total expenditure planned for 2016/17 to 2019/20. Thus it is not clear how LBHF's Housing Programme relies on the receipts from the Conditional Land Sale Agreement.

b) Regarding the impact of the proposed transfer on the **regeneration of the area**, the report concludes that there is sufficient ground to conclude that WKGGCH's proposed stock transfer will have a significant detrimental effect on the regeneration of the area (defined as the Earls Court and West Kensington Opportunity Area). Specifically the report found that:

- Regeneration in the Earls Court and West Kensington Opportunity Area is making concrete progress.
- The available evidence indicates the scale of benefits, including in terms of jobs created and community facilities, which would be delivered for the local and regional economy in the Earls Court regeneration plans would considerably exceed the benefits which would be delivered if the estates stock transfer were to go ahead. Substantially more homes will be delivered under the ECP Masterplan (approximately 50% more than if the estates stock was transferred to a new social landlord): Some 7,583 homes will be delivered in the Earls Court regeneration plans for the Opportunity Area, including 1,500 social and affordable homes, of which 760 will be replacement homes for existing residents. Were the estates stock transfer to proceed, the existing 760 units would be retained and the maximum possible through any regeneration of the Opportunity Area reduced to 5,137 units (including 1,341 social and affordable homes) – a reduction of 32% in aggregate.
- The expert's assessment is based on the best-case assumption that the removal of the WKGG estates from the overall regeneration scheme would not affect the viability of the remainder of the scheme (i.e. the loss would be confined to the regeneration of the land transferred). However, the report notes that this may not be the case as their removal might create considerable uncertainty over the wider deliverables of the regeneration masterplan. Whilst this adds further risk of adverse effects on regeneration (additional to those assessed in the report) the impact would be significant even on a best-case assumption.

The report also considers the additional evidence submitted by WKGGCH, LBHF and Capco completed on 2 February 2018, and those submitted by WKGGCH and LBHF in October 2018. These highlighted a number of points that could potentially impact the conclusions reached by the socio-economic assessment, as outlined above (refer to Annex D of the consultant's report).

In light of the further evidence submitted, the additional assessments concluded that until such time as an enhanced master plan has been proposed and agreed, the development proposals of the existing Earls Court Masterplan, including the WKGG estates, and contractual obligations in relation to the CLSA, remain in place. On this basis, the additional assessment concluded that:

- There is insufficient ground to conclude that the estates' stock transfer will have a significant detrimental impact on the Council's ability to provide housing services for its remaining housing stock.
- There is sufficient ground to conclude that the Earls Court regeneration scheme is making concrete progress.
- There is sufficient ground to conclude that the estates stock transfer will have significant detrimental effects on the regeneration of the Earls Court Opportunity Area.

Conclusion

On balance, the socio-economic assessments find that although the proposed transfer is not likely to impact negatively on LBHF's ability to provide housing services for the remaining of its stock, given that a large proportion (up to 32%) of the benefits of the regeneration could be removed were the WKGG estates to be transferred, there are sufficient grounds to determine that WKGGCH's proposed transfer would have a significant detrimental impact on the regeneration of the local area.

Finding

I agree with the conclusions reached in the socio economic assessments and, therefore, accept LBHF's determination on the basis that WKGGCH's proposed transfer will have a significant detrimental impact on the regeneration of the local area.

The outcome of my determination in relation to Regulation 13 request is that the stock transfer process in relation to WKGG estates should not continue.

KIT MALTHOUSE MP