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Key Worker Housing

Briefing paper on legal note
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Introduction

Scotland's need for Key Worker Housing has never been greater with the lack of affordable and available housing causing Local Authorities across Scotland to struggle in attracting and retaining people who are fundamental to delivering key services and contributing to the economic growth in their area.

This lack of affordable and available housing is exacerbating the pressures on delivering public services and ensuring the future operations of businesses. Indeed, some areas of Scotland have announced, and others are considering announcing, a housing emergency resulting from the unaffordability and unavailability of homes.

In April 2023, the Scottish Government committed £25 million through the Rural Affordable Homes for Key Workers Fund – a five year initiative to help fund Local Authorities to identify affordable homes for Key Workers in rural communities.

Following this, in October 2023, the Scottish Government published the Rural and Islands Housing: Action Plan. In the Action Plan the Scottish Government acknowledged that Scotland's remote, rural and island areas face significant challenges when it comes to recruiting and retaining staff.¹ It recognised that it is not a 'one-size-fits-all' approach for Key Worker policies and that it is for Local Authorities to set their own policies. It also highlighted that where evidence suggests a need for suitable housing for Key Workers, Local Housing Strategies should include a policy on this.

The Action Plan noted that while Key Workers can be essential public sector employees, the term can also be used more widely to reflect the employment and retention of people vital to the delivery of and improving essential local services.²

The wider pressures on the housing system, and the relative position of Key Workers to other groups in terms of their household income and the prioritisation for social housing, means it can be difficult for the open market or the affordable housing sector to provide the necessary housing. Given this need, and SFT's remit to support the development and delivery of housing across different types and tenures to meet the economic and social needs of Scotland, SFT commissioned a paper [on Key Worker Housing](#) to set out the basis for, and parameters of existing or possible new mechanisms, which would enable affordable housing providers to target this group.

This paper should be read in conjunction with the [advice note for Scottish Futures Trust on CBRS case studies](#) ("the CBRS paper"), which also considers mechanisms to deliver housing for Key Workers and how these can be retained for such a use.

¹ Set out in the Housing and Local Economies section of the Rural and Islands Housing: Action Plan.

² Set out in the Housing and Local Economies section of the Rural and Islands Housing: Action Plan.

Considerations

The paper commissioned by SFT is a legal note on Key Workers and Key Worker Housing. The paper explores the definition of Key Workers, it looks at Local Authorities and Registered Social Landlords' ability to set allocation policies and considers examples of Key Worker Housing being delivered, alongside new approaches for delivery, in Scotland.

What are the findings?

Definition of Key Worker

Currently there is no legal test or set definition for Key Worker and Local Authorities are given the flexibility to define this in their policies to reflect local need –although it may be the case that the need for homes is not entirely within the affordable housing sector.

The paper identifies various Key Worker definitions that have been used by the Scottish Government and Local Authorities for different purposes.

For example, when the Scottish Government set up the “Affordable Housing for Key Workers” Project Group in 2014/15, they adopted the following definition of Key Worker for their research:-

“A public sector employee who provides an essential service. (As well as workers in the public sector, it was noted that this definition could also apply to low paid employees in the private sector/service industries who are also providing essential services).”

Other examples of Key Worker definitions used by Local Authorities in their supplementary guidance to their local development plans are provided in the paper. From these examples, Local Authority definitions have tended to be restricted to public sector workers but, as highlighted by the Scottish Government example, the definitions could go wider, to include people working in the private sector such as energy suppliers and critical national infrastructure.

Allocation Policies for Key Worker Housing

The paper concluded that policies that deal with the allocation of housing to Key Workers set by Local Authorities, Registered Social Landlords and other housing providers, need to be consistent with the relevant Local Authority's planning policy for the delivery of affordable housing (including housing for Key Workers) and the relevant planning policy needs to be in place prior to implementation. The legal note identifies some Local Authorities who have provided for Key Worker Housing in their planning policy, with links to their supplementary guidance as examples.

NPF4 was adopted in February 2023 and Local Authorities are required to take account of its policies when preparing their local development plans. The paper highlights that NPF4 supports the provision of new homes which improve affordability and address an identified gap. NPF4 mentions "homes for other specialist groups such as service personnel"³ – and although not defined, this could encompass Key Workers. It also states that development within the green belt will be supported where the proposal is for residential accommodation required or designed for a Key Worker in a primary industry within the immediate vicinity of their place of employment where the presence of a worker is essential to the operation of the enterprise.⁴

For social housing the paper noted that Local Authorities and Registered Social Landlords are given reasonable discretion in setting their affordable housing allocation policies. Local Authorities and Registered Social Landlords are able to assess housing need on factors such as housing Key Workers coming into an area, whose presence is essential for economic growth. However, in considering this factor it must be treated as a secondary factor after reasonable preference has been given to people who are homeless, living in unsatisfactory housing or are tenants in underoccupied social housing.⁵

³ NPF4 Policy 16(c)

⁴ NPF4 Policy 8(a)

⁵ Section 20 of the Housing (Scotland) Act 1987 (as amended).

Existing Approaches

To demonstrate ways in which Key Worker Housing has been delivered in Scotland, the paper highlights a series of case studies.

The Cairngorm Business Partnership Model was developed by the Highland Council, Highland Housing Alliance and Cairngorms Business Partnership, who worked together to support the delivery of housing for employees of local businesses. Members of the Cairngorms Business Partnership paid a small fee that allowed their employees to take priority for available mid-market rental properties subject to prospective tenants meeting the allocations criteria.

Blue Light Housing is a mixed affordable tenure development by Highland Council. Six of the mid-market rent homes were leased to the Highland Housing Alliance by Highland Council specifically for the purpose of allocation to blue light workers, teachers and social care workers.

Tied Housing is provided by an employer, either in the form of a service tenancy or a service occupancy agreement. Key Worker Housing developed and leased by an employer to its employees could be tied accommodation.

These case studies are examples of ways that Key Worker Housing shortages are being recognised and addressed in parts of Scotland.

New Approaches

The paper also looks at potential new ways that Key Worker Housing can be delivered.

The paper considers the use of nomination agreements (commonly used for purpose built student accommodation). Many developers of purpose built student accommodation enter into nomination agreements with educational institutions. These provide that while the developer will retain ownership and control of the development the tenant occupiers will be selected by the institution benefiting from the agreement. This model could be adapted to allow for developers (whether a Local Authority, Registered Social Landlord or third-party developer) to enter into nomination agreements with Key Worker employers. Their employees are then granted a tenancy agreement⁶ by the developer.

Separately, the CBRS paper noted earlier, explores Local Authorities ability to build houses using the wellbeing power⁷ and to allocate the homes to Key Workers. It considers burdening the properties in order to control the occupation and sale of these homes, and the different types of burdens that can be used. It also considers the use of section 75 agreements.

⁶ This would most likely be a Scottish Secured Tenancy or a Private Rented Tenancy but will depend on the delivery structures put in place by the Local Authority or Registered Social Landlord.

⁷ Section 20 of the Local Government in Scotland Act 2003- to advance wellbeing.

Terminating Agreements

In both this paper and the CBRS paper the difficulty to regulate for the changing circumstances of occupiers following the completion of a sale or the grant of a tenancy and for an employer to recover the home has been considered and acknowledged.

The ability for a Local Authority or Registered Social Landlord to monitor and recover a Key Worker's home at the end of their employment contract is very limited and will depend on the type of occupancy restriction imposed i.e. whether a burden registered against the properties title, part of the criteria in a tenancy agreement or a tied tenancy.

For Local Authorities and Registered Social Landlords, whether they require to recover the property at the end of the Key Worker's employment contract will be an important factor in their consideration of the different occupancy restrictions when developing a delivery model.

Next Steps

As Local Authorities are preparing Local Development Plans, it is a good point to consider Key Worker Housing and whether to include it in the delivery of housing (or alternatively set it out in supplementary guidance). We believe it would also be good practice to consider homes that can be retained for long term ownership and used by Key Workers. Accordingly, SFT would like to develop new ways to deliver Key Worker Housing in Scotland, and engage with Local Authorities that may be interested in delivering such housing.

Annex

- [Advice in connection with questions arising in respect of Key Worker Housing](#)
- [Advice note for Scottish Futures Trust on CBRS case studies](#)