

To:
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Strategy Manager, HCA

From:
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By email only

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Dear Gera,

Re Temporary Empty Homes scheme

We welcome the HCA's announcement of the TEH scheme. I'm writing to ask for clarification of some aspects that are not immediately clear from the Capital Funding Guide pages. I am copying this to your Affordable Housing Framework enquiry email too and will work on the basis that any answer received will constitute the formal response of the HCA. Some of the questions relate to the current bidding round and therefore I would request an urgent response.

We also have a concern about the minimum lease length which we discuss separately after the questions.

Q1 - Relationship of TEH to Standard Offer Template/Affordable Homes Programme

The Capital Funding Guide describes TEH as a "programme" and also that the CFG guidance should be read "within the context of...the 2011-15 Affordable Homes Programme Framework".

- a) Do you envisage that TEH schemes could be included within the Agency's Standard Offer Template by 3rd May 2011?
- b) If so what criteria will be used to assess value-for-money given that there is no obvious way of distinguishing on the existing form between a home held on say a 5-year lease and one on a 29-year lease, where the capital costs might be expected to be significantly different?

Q2 - Rent Levels

Your guidance makes it clear that the rents in TEH accommodation are outside the rent-restructuring regime and goes on to state the requirement that "*the rent + Housing Benefit eligible Service Charge is within the Housing Benefit/Local Housing Allowance threshold, in the relevant local authority*"; it goes on to make reference to the rent not being more than the rent in bed & breakfast, indicating that the likely use-class is thought to be homeless accommodation. The documentation does not seem to envisage using Affordable Rent Tenancy criteria.

As you may be aware, from April the DWP introduced new Housing Benefit rules for homes used by either local authorities or housing associations as **temporary accommodation** or for the **prevention of homelessness**. (The best reference, in case you do not have it to hand, can be found via <http://www.ehnetwork.org.uk/library-item/hbctb-circular-s12011-subsidy-changes-applicable-1-april-2011-%E2%80%93hb-subsidy-customers-li>)

These rules for the first time try to bring local authorities and housing associations into a common framework, and particularly where leased properties are concerned. Lines 7 and 9 of Table 2 of the DWP Guidance show the same regime in place for LA's and HA's ie subsidy is payable up to 90% of the LHA plus £40p.w. (in London) and £60p.w. (outside London) for management. These are effectively **the rents and housing benefit levels** (HB levels for people in receipt of full HB, anyway) that one would expect to see in leased homes used either for temporary accommodation for homeless accommodation or for prevention of homelessness, unless special provision were being introduced to reduce rents below this level.

The questions then are as follows:

- c) for homes used for homeless households or for homeless prevention, do you mean by "Housing Benefit/LHA threshold" the rents contemplated by the DWP Circular just cited? (i.e. 90% LHA +£40/£60)?
- d) if so, do you anticipate distinguishing between these homes and ones that are not used for homeless households or homeless prevention eg by stipulating that standard LHA rates should be used as the rent ceiling?
- e) if so, what documentation will need to be provided to demonstrate that the rents charged are appropriate for any given case?

Q3 Length of time empty

The TEH scheme requires homes to have been "*unoccupied for at least two years*". This raises the question about how this should be documented. The VAT Construction Guidance 708 (accessible via <http://www.ehnetwork.org.uk/library-item/vat-construction-guide-notice-708>) indicates that a letter from the local authority Empty Property Officer is sufficient evidence regarding length of time empty (eg see 5.3.3 and elsewhere).

Can you please

- f) indicate the point in the process at which the empty home will need to have been empty for at least two years? (eg, immediately before the home is re-let, when a scheme is submitted on IMS?)
- g) confirm that a letter from the local authority Empty Property Officer is sufficient evidence regarding how long a home has been empty.

Q4 EDMOs

For homes that might be sourced via EDMOs you have stipulated that the RP must be sure that "*the owner has agreed to make the property available to the RP for the duration of the lease*". But this situation would typically only apply, at best, if an Interim EDMO was in force, when any re-occupation of the property must be with the consent of the owner. Your Guidance seems to imply (though it does not state) that the RP would have a lease with the owner. However, para 4 and 5(7)(c) of Schedule 7 of the Housing Act 2004 states that the relevant proprietor "may not create ...any leasehold interest in the dwelling...". The EDMO legislation effectively gives local authorities proprietorial rights*. Moreover, with Final EDMOs it is accepted that the local authority can act without the owner's consent - otherwise no decisive action could be taken and EDMOs would be of no practical use.

The most likely scenarios where grant might be sought in respect of an EDMO property are

- directly by a local authority (if meeting other criteria including being an IP/RP) for an EDMO property that it wants to let directly to a tenant under an assured shorthold (therefore no lease would be involved - the EDMO itself would be the basis for the local authority's control of the property) ; or
- by a housing association where a local authority is offering it an agreement "with the incidents of a leasehold"* on an EDMO property.

Can you therefore

- h) please review your guidance and either change it to reflect the EDMO legislation more closely, giving more attention to the central role of the local authority and the relationship it might have with any RP to which it might seek to pass control of any dwelling subject to an EDMO (and whether the owner has consented or not); or
- i) give an explanation as to why this cannot be done and why the scenarios outlined above should not be grant-funded via TEH.

We would be happy to work with you to develop an appropriate framework for EDMOs, contributing whatever expertise our members may have.

Q5 Indicative Allocations?

The TEH Guidance seems to require IMS submissions for individual properties unless they are under one works contract. It also says funding will only be available even at grant application stage if they have a legally binding "Agreement to Lease". This seems to preclude any block allocation of grant that could be used to develop a programme. Potentially a lot of up-front work could be done to secure agreement with an empty home owner, including all the legal work associated with an Agreement to Lease, without any certainty that grant funding would be forthcoming. This would not be consistent with the position under the Framework Agreement where an indicative programme is agreed even if it is not firm until IMS scheme submission.

We appreciate these may be the kind of issues you will address as the "empty homes programme" takes shape, but we thought it useful to contribute the following questions immediately:

- j) How do you anticipate giving assurance to RPs attempting to pursue a programme of leasing empty homes about the amount of grant that might be available to them?
- k) Alternatively, how do you see offers to produce homes under TEH being integrated into the standard Framework agreements?

Q6 Nature of Tenancy

Section 4 of the CFG guidance stipulates that the home should be let on either assured shorthold or assured periodic tenancies. However these tenancy options are not available to local authorities in normal circumstances (the EDMO property being possibly the only exception). Can you please

- l) confirm that the types of tenancy available to local authorities leasing properties would also be acceptable options[†];

(We also note that the documentation contemplates that the RP might hold a property under a licence in which case we wonder whether it would be able to grant tenancies to occupants as we believe that it is not normally possible to grant greater rights than are available to the grantor?).

Q7 Grant clawback

Many leasing schemes work on the basis of grant clawback whereby the grant provided up front is clawed back from the rental stream once a property is let. It would be very helpful if the TEH scheme incorporated this flexibility, allowing the provider to re-invest the money into additional empty homes and producing better outcomes over the longer term. As far as we can see, the only option under TEH would be to use private borrowings for this up-front-investment. But we think that there will be many providers, particularly smaller ones, that may not have sufficient private loan facilities available to them. Therefore:

- m) Can you consider enhancing the TEH produce to allow for grant clawback to increase its appeal to wider range of providers.

Q8 Mainstream products

You reiterate in the TEH Guidance that mainstream products such as P&R and ESP are still available via the main Affordable Homes Programme. If this is the case it would seem anomalous, and contrary to normal funding arrangements, to make them available under the £100million empty homes programme too.

- n) Can you confirm that the £100million “empty homes programme” will be restricted to specialist empty homes products, like TEH, that are not available via any other route?;

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Concerns about lease length

Our concern about the minimum five-year lease period is that many owners are not willing to lease their homes for that long and perhaps more importantly our members report that many lenders will not allow homes to be leased for as long as five years. If the home meets the criterion of having been empty for two years and meets other criteria including value-for-money, we question why it is necessary to stipulate lease-length and request you to give consideration to removing this criterion.

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We look forward to hearing from you.

Yours sincerely



David Gibbens
Empty Homes Network, Policy Lead

Cc by email

David Ireland, Chief Executive, Empty Homes
Jon Fitzmaurice, self-help-housing.org
Sally Randall, CLG
John Marr, LocalGov Group

* Housing Act 2004, Schedule 7, para 10(3) The authority —

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- (a) Have the right to possession of the dwelling...
 - (b) Have the right to do (and authorise a manager or other person to do) in relation to the dwelling anything which the relevant proprietor of the dwelling would (but for the order) be entitled to do;
 - (c) May create one or more of the following —
 - i. An interest in the dwelling which, as far as possible, has all the incidents of a leasehold...
- † We suggest that the following be added to the list of tenancies: “secure tenancies and non-secure tenancies”. Non-secure tenancies would be appropriate for homes let as homeless accommodation