

Tenant consultation in housing regeneration

This article, the first in a series for public matters looking at housing law issues in a regeneration context, seeks to outline some of the key consultation requirements that should be in a local authorities' contemplation when they are looking to regenerate, and additional considerations in London.

20 May 2019

This article is taken from May's public matters newsletter. [Click here to view more articles from this issue.](#)

One of the great challenges faced by a local authority in carrying out regeneration is to make sure existing tenants are properly consulted. Get this wrong and the consequences are severe, if not fatal.

This article, the first in a series for public matters looking at housing law issues in a regeneration context, seeks to outline some of the key consultation requirements that should be in a local authorities' contemplation when they are looking to regenerate, and additional considerations in London.

There are of course a host of factors under-pinning a successful tenant consultation exercise, the legal requirements being, in some respects, of least importance. Meeting statutory requirements is one thing, but it won't cure a badly conceived consultation process delivering the wrong messages in the wrong way.

Consultation on disposal of properties within Part 2 of the Housing Act 1985 (1985 Act)

Section 32 of the Housing Act 1985 provides that a local housing authority may dispose of land held for housing purposes, but requires the consent (general or specific) of the Secretary of State before doing so. No consent is required for a letting on a secure or introductory tenancy (Section 32(2), 1985 Act). Due to Section 44, a disposal without the requisite consent is void, save as excepted. The Secretary of State has issued a series of general consents for these purposes:

- **General consent A:** save for limited exceptions (e.g. if the disposal would result in a local authority tenant becoming the tenant of a private landlord), consent is given for any disposal of dwellings and vacant land at market value. Consent is also given for disposals at discounts equivalent to those available under the Right to Buy to, for example, key workers.
- **General consent B:** an authority may make a voluntary sale to a sitting tenant who has the Right to Buy and who wishes to purchase the property with someone who is not qualified under s.123, 1985 Act.
- **General consent C:** this applies to dwellings held by police authorities, county councils and housing authorities under powers other than Pt 2, 1985 Act. Such properties may be sold in accordance with General Consent A.
- **General consent D:** authorities may dispose of the reversionary interest in houses and flats. It is recommended that leaseholders be given first refusal. If there are flats let on secure, introductory or demoted tenancies, the authority must secure a 999 year lease-back of those flats.

It is important to note that if, as part of the regeneration project, any disposals are to take place pursuant to Section 32 which result in a secure or introductory tenant of the authority becoming the tenant of a private sector landlord, the consultation requirements in Schedule 3A of the 1985 Act will apply. The Secretary of State will not entertain an application for consent if this schedule applies unless the authority certifies that the consultation requirements have been complied with and copies of the notices issued by the authority are provided. The process for consultation is as follows:

- The local authority shall serve notice in writing on the tenant informing him of:
 - details of the proposal including the identity of the person to whom the disposal is to be made;
 - the likely consequences of the disposal for the tenant; and
 - the effect of the provisions of Schedule 3A and, in the case of a secure tenant of Sections 171A to 171H (preservation of right to buy on disposal to private sector landlord), and informing him that he may, within the reasonable period specified in the notice (this should be at least 28 days), make representations to the authority.
- The authority shall consider any representations made to them within the specified period and shall serve a further written notice on the tenant informing him:
 - of any significant changes in their proposal;
 - that he may within such period as is specified (which must be at least 28 days after the service of the notice) communicate to the Secretary of State his objection to the proposal; and
 - of the effect of paragraph 5 of Schedule 3A (consent to be withheld if majority of tenants are opposed).
- When the second notice has been served the authority shall arrange a ballot of the tenants to establish whether or not the tenants wish the disposal to proceed.
- After the ballot has been held the authority shall serve a notice on each tenant (whether or not he voted in the ballot) informing him of the ballot result; and if the authority intend to proceed with the disposal, that he may within 28 days after the service of the notice make representations to the Secretary of State or (as the case may be) the Welsh Ministers.
- The Secretary of State shall not give his consent if the result of a ballot arranged shows that a majority of the tenants of the dwelling-houses to which the application relates who voted in the ballot do not wish the disposal to proceed.

Consultation when using a joint venture vehicle for regeneration

Joint venture vehicles between local authorities and private sector developers are becoming increasingly popular as a way of pressing ahead with regeneration in light of local authority budget constraints. However, it is worth noting that the use of a joint venture arrangement might itself give rise to a requirement to consult local residents.

It was one of the grounds discussed in the case of **Peters v Haringey [2018] EWHC 192 (Admin)** where the court stated that the duty to consult under Section 3 of the Local Government Act 1999 was not simply confined to cases of outsourcing, but covers 'arrangements' - and a joint venture vehicle was an 'arrangement'. Therefore, before the decision to enter into the joint venture scheme is made, a statutory duty to consult arose. The judgment itself is not clear on when the duty arises but we would suggest it should be considered at a formative stage, being as soon as the high level structure of the proposed joint venture is known, and no later than the beginning of the procurement process for a private sector partner.

London: the good practice guide to estate regeneration

The guide, published in February 2018, outlines specific 'suggestions' in relation to tenant consultation when undertaking regeneration within London. The principle target being large scale estate renewal schemes. Whilst it is not a legal requirement to comply with the guide, it is a requirement if the regeneration scheme is being supported by mayoral funding from City Hall, and generally we would suggest the guidance should be followed within London. The guidance can be read in full [here](#).

It is noteworthy that the first ballot held (by Metropolitan Thames Valley for a scheme in Barnet) was successful; over 75 % voting in favour on a 66% 'turnout'. The general view being that ballots should result in a positive outcome, provided the scheme is well developed, properly explained, and reflects tenant views.

If you are looking into options for regeneration in your local area and would like to chat through any questions or queries, please feel free to contact one of our experts who will be more than happy to help.

Contact



Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

Related expertise

Sectors

Government

Local government

Social housing