



Homes &
Communities
Agency

Application to the Homes and Communities Agency for the waiver of Designated Protected Area conditions of grant (see attached guidance notes)

Local Authority:	
Registered Provider seeking to develop (if applicable):	
Site details (include site name and address/location):	
Confirm that the site is currently within a 'Designated Protected Area' under legislation. (Please include a plan of the site to be waived alongside this form)	

We have read the attached guidance notes and the criteria below for designating an area as a protected area for the purpose of enfranchisement under the Leasehold Reform Act 1967. In consideration of this guidance we confirm that we would like to request the Homes and Communities Agency lift its specific DPA conditions of grant for grant funded development on this particular site.

The overriding criterion in designating an area as 'protected' is that the location is one in which shared ownership homes would be hard to replace. When considering whether housing in an area would be hard to replace the Secretary of State will consider:

- a) whether it has already been designated as "rural" for the purposes of the Right to Acquire scheme*
- b) availability of land for housing development in the particular location and the existing available stock*
- c) availability of shared ownership housing (and the size and type) in the particular location*
- d) level of need for shared ownership housing e) affordability of housing, i.e. average income vs. lower quartile house price*

Signed:	
Name:	
Position:	
Local Authority:	
Date:	

N.B. Please include with your application a plan of the site to be waived clearly outlined alongside this completed form.

Applicants for waivers should return completed forms to the relevant HCA operating area office details for which can be found [here](#).

Procedure for applying for a waiver

A Local Authority may be approached by a registered provider about a particular site, or potentially a private developer who has an element of affordable housing on their site, which would be developed as shared ownership. The local authority may even wish to approach the Agency directly about a specific site before the site reaches a developer.

Applications for a waiver of Designated Protected Area grant conditions can only be made regarding specific sites within the Designated Protected Area, which will need to be clearly identified. The Agency is unable to remove Designated Protected Area status from an entire area.

The local authority should complete the Agency's application form available on the Agency's website, setting out the details of the site and confirming their assent that retention of shared ownership units in perpetuity is not required for that site and a recommendation that the conditions of grant relating to Designated Protected Area status be waived. This form must be signed by an officer of the Authority, and must be accompanied by a covering letter, on the Authority's headed paper. The application should be sent to the Agency's Operational Area. Details of the appropriate local office can be found at www.homesandcommunities.co.uk/offices.htm.

On receipt of an application, the Agency will check that it meets the prescribed conditions set out in paragraph 12 above, and will respond with its assent. This response should be retained by the local authority, and copied to the developing provider of grant funded shared ownership homes. That provider must keep a copy of the Agency's response for audit purposes. If an audit discovers that grant funded shared ownership homes have been developed in a Designated Protected Area without the required lease terms, and without evidence of the Agency's waiver, then the Agency may require grant to be repaid.

Designated Protected Areas background – guidance for Local Authorities

1. Designated Protected Areas came into being 7 September 2009, with two principle policy objectives, to remove the risk of enfranchisement for shared ownership houses where staircasing is restricted (please [click here](#) to see CFG for further details [section 1.4.19]) and to ensure retention of shared ownership homes in areas where it would be hard to replace if lost to the sector through 100% staircasing.
2. The designation of such areas was aligned with those exempt from the Right to Acquire. In the main these were rural settlements with a population of less than 3,000. The Statutory Instrument at [Housing \(Right to Enfranchisement \(Designated Protected Areas\) \(England\) Order 2009 \(Statutory Instrument 2009/2098\)](#) sets out the areas covered by the legislation.
3. [Housing \(Shared Ownership Leases \(Exclusion from Leasehold Reform Act 1967\) \(England\) Regulations 2009 \(Statutory Instrument 2009/2097\)](#) details the requirements which need to be met for shared ownership housing to be exempt from this previous enfranchisement legislation. These requirements are that the lease contains provisions either i) to restrict staircasing to no more than 80% or that ii) in instances where the leaseholder is permitted to acquire more than 80% (i.e. up to full ownership), then there is an obligation on the landlord (or a designated alternative landlord) specified in the lease to repurchase the property when the leaseholder wishes to sell.
4. It is evident that for some of the areas which are now covered by Designated Protected Area status, the policy aim of retention of stock is not an issue. These include planned urban extensions, new towns and many suburban sites where levels of existing or proposed development indicate that shared ownership homes would not be hard to replace.
5. Registered providers developing grant funded shared ownership housing where staircasing is restricted can sometimes be affected by the limited availability of mortgages for purchasers; also many providers have raised concerns over their financial ability to guarantee to buy back properties as required by the shared ownership lease if the leaseholder wishes to sell.
6. As a response to this issue, the Agency has agreed that under certain conditions, it is able to waive the particular conditions of grant relating to Designated Protected Area status. All other conditions of grant would remain. This would enable providers to develop grant funded shared ownership stock on these sites allowing buyers to staircase to 100% without an obligation on the provider to buy back the property if the leaseholder wished to sell.
7. To consider waiving the DPA lease requirements the Agency requires the support of the relevant Local Authority. It is likely that a provider may approach the Authority asking for its support and to make the application to the Agency. If the Authority considers that a particular site to be developed does not meet the criteria set out in the original classification of why an area should be protected, or indeed has other reasons why they think that grant funded shared ownership stock does not need to be protected in perpetuity, they can approach the Agency to request that the conditions of grant pertaining to Designated Protected Area status be removed.

8. Please note that this relaxation only applies to grant funded shared ownership homes developed in Designated Protected Areas. It does not have any impact on other tenures, including equity loans or market sale. Neither does it change the exemption from Right to Acquire for rented homes where that applies.
9. This relaxation specifically relates to the Agency's conditions of grant for shared ownership homes developed in DPAs. It is not related to rural exception sites or other section 106 agreements. If the Local Authority wishes to impose conditions through a section 106 agreement then those cannot be waived by the Agency. However the Agency would suggest that the Authority carefully consider the merits of such as restriction if it imposes the same barriers to development that the Agency is seeking to overcome in these particular areas.
10. This policy change can equally be applied to existing sites and leases, for example where some shared ownership homes have been sold on shared ownership terms but further sales are proving difficult. In these cases the Local Authority can make a request in the same way as for new sites. However, registered providers must seek their own legal advice as to any implications of making changes to existing leases or to new leases on a development where Designated Protected Area compliant leases already exist.

APPENDIX A