

Secretary of State consents for new build – a Note for the NFA

1 Introduction

There have been a number of recent changes – or proposed changes – to the general consents, both to the Section 32 Housing Act 1985 General Consents (for the disposal of HRA land) and to the Section 25 Local Government Act 1988 General Consents (relating to the provision of financial assistance, including disposals of land at an undervalue).

2 A reminder

Section 32 consents will be relevant if a Council is to dispose of vacant HRA land either at full value or for a purpose other than the provision by the ALMO of rental accommodation (e.g. if the ALMO is to provide shared ownership or outright sale). On the other hand, if the intention is to dispose of land to the ALMO at an undervalue and the ALMO is to provide rental accommodation on that land, Section 25 Consent will be required and the need to obtain Section 32 Consent is disapplied. The changes to both the Section 32 and the Section 25 General Consent regimes could therefore potentially be relevant.

3 Recent changes

3.1 Section 32 General Consents

3.1.1 The latest version of the Section 32 General Consents is "The General Housing Consents 2013", issued in March 2013. CLG's intention in revising these consents from the 2012 version was "to remove some perceived ambiguities while extending local authority freedom regarding the granting of leases and the disposal of reversionary interests."

3.1.2 General Consent A3.1.1 provides a local authority with consent to dispose of land for a consideration equal to its market value. There is a definition of "disposal" set out at A2.2 and this has been broadened so that it now includes the grant of a lease of any duration (it used to only cover leases for a term of at least 99 years or, where the interest held by the local authority is leasehold, the grant of a lease for a term equal to the unexpired term of the lease less not more than one year). This consent, however, is subject to paragraph A3.1.2 which provides that General Consent A3.1.1 does not apply to a disposal of land to a body in which the local authority owns an interest (such as an ALMO) except (where – as will be the case – the local authority has an HRA) in relation to the first five disposals in a financial year. There used to be a provision which followed paragraph A3.1.2 which said that for the purposes of A3.1.2 a disposal "means the disposal of the freehold of a house". This clearly limited the application of A3.1.2. However, this sentence has been removed in the 2013 version of the general consents.

3.1.3 There is a further general consent under paragraph A4.2 which permits a local authority to grant a lease for a term not exceeding seven years but again this does not apply to disposals to a body in which the local authority owns an interest except (again in the case of a local authority with an HRA) the first five disposals in a financial year.

- 3.1.4 A useful consent to note for an ALMO is General Consent A3.2, which provides that "a local authority may dispose of vacant land." There are no restrictions on the type of transferee attaching to this General Consent so it will apply to disposals by the Council to an ALMO or indeed any other body in which the Council has an interest. "Vacant" for the purposes of this General Consent means land on which (a) no dwelling-houses have been built or (b) where dwelling-houses have been built, such dwelling-houses have been demolished or are no longer capable of human habitation and are due to be demolished.
- 3.1.5 In conclusion, under the current Section 32 General Consents the restriction on disposals to a body in which the local authority owns an interest, such as an ALMO, is only likely to be an issue if the Council wants to dispose of existing dwellings. Otherwise, General Consent A3.2 is likely to assist. Further, even if the Council is to dispose of existing dwellings, if the dwellings are to be disposed of at an undervalue and they are to be used by an ALMO for rental accommodation it will be the Section 25 General Consents which are relevant rather than the Section 32 General Consents.

3.2 Section 25 General Consents

- 3.2.1 The current Section 25 General Consents are set out in "The General Consents under Section 25 of the Local Government Act 1988 (Local Authority assistance for privately let housing) 2010", issued in July 2011.
- 3.2.2 None of these general consents is applicable to the disposal of land, whether HRA or General Fund land, to an ALMO at an undervalue as they only either apply to disposals to registered providers (see **section 4** below) or where the property is to be used as a care home or to house people with special needs.
- 3.2.3 However, CLG has recently issued a consultation on the Section 25 General Consents under which it is proposed that a new General Consent will permit local authorities to disposal of vacant HRA (but not General Fund) land at less than market value to any body (whether or not a registered provider) provided that the land is to be used as privately let accommodation and certain other conditions are met. The consultation ran from 5 August to 13 September 2013 with a view to publishing revised consents before 2014.

4 ALMOs which are or become RPs

ALMOs which are or which become registered providers (**RPs**) can potentially take advantage of the Section 25 General Consents referred to in **paragraph 3.2.2**, provided that the new build scheme satisfies number of detailed requirements. The requirement to become an RP to benefit from these General Consents will however have no relevance for HRA land disposals if the proposal described in **paragraph 3.2.3** is adopted.

5 Conclusion

As ever, the Secretary of State consents regime would need to be reviewed in light of the details of any particular transaction but, subject to the outcome of the Section 25 General

Consent consultation, there may be some helpful amendments to the consent regime coming shortly.

Gemma Jackson/Ian Doolittle
020 7243 8340/020 7243 8415
gjackson@towers.com/idoolittle@towers.com
Towers & Hamlin LLP
September 2013

***Note:** this Note has been prepared for NFA officers only. It is not to be used more widely without our prior consent. The Note provides general guidance only and formal professional advice must be obtained for any specific decisions or schemes.*