

North York Moors National Park Authority Planning Committee

14 January 2021

Local Occupancy 'Mortgagee in Possession' Clauses

1.	Purpose of the Report
1.1	To inform Members of options for including a standard 'mortgagee in possession clause' in planning conditions and agreements which restrict occupancy to local people only, and to ask for views.

2. Background

2.1 The Authority operates a policy that places a restriction on the occupancy of some new housing so only those who qualify as in 'local' need (as defined in policy) can live in the dwelling. The policy has been in place since the early 1990s and has been successful in providing housing for local people in housing need and avoiding accommodation being used as second homes.

3. The Issue

3.1 The Authority has on occasion received requests for a 'mortgagee in possession' (MIP) clause to be inserted into planning conditions or agreements which apply a local occupancy restriction. The purpose of such a clause is to ensure that, if a house is repossessed by the mortgage lender, the local occupancy restriction is lifted after a short marketing period so that the house can be sold on the open market.

3.2 In such cases applicants state that, without this clause in place the lending institution is refusing to offer mortgage finance because of the financial risks involved in a more restricted market. The Council for Mortgage Lenders standard advice to lenders is that a MIP should be included, with the intention being that in the event of repossession the lender is not left with a 'difficult to sell' house because of a limited local market.

3.3 At present the inclusion of MIPs is done on an 'ad hoc' basis, and they are inserted where the Authority is approached and provided with evidence that the lack of a clause is denying the prospective occupier of mortgage finance.

3.4 A typical clause would read: *"A mortgagee of the owners exercising its statutory power of sale, a receiver appointed thereby, or a successor in title thereto is not bound by the provisions of this Condition (provided always that any such mortgagee must be a body corporate registered with and regulated by the Prudential Regulation Authority (or any successor body whose function is to regulate mortgages and loans))."*

4. The Proposal

4.1 Officers now consider that such a clause should be included as standard in conditions and legal agreements relating to local occupancy. This is because:

1. There has been an increasing frequency of requests, which is taking up officer time. This is possibly due to tightening requirements on mortgage lending

2. The risk of mortgage default is minimal, and even if it occurs there is every possibility that the home would be purchased not as a second home
3. It is standard practice to include such clauses in conditions amongst all other English National Parks
4. It will replace current 'ad hoc' arrangements with an agreed standard and equal process.

5. **The Options**

5.1 The options available are:

1. **(Preferred Option)** Introduce a standard MIP but set out in conditions/agreements that where it is triggered the occupancy restriction would change from 'local occupancy' to 'principal residence' (i.e. the main home only). The advantage would be that in the event of mortgage default the home would not risk becoming a second home. The disadvantage is that this still applies an occupancy restriction (though less onerous) and may still prevent mortgage finance becoming available, given the risk averse nature of the lending market. It is therefore proposed that if this option is introduced and it becomes apparent that it is still causing difficulties in raising finance Option 2 below would be introduced on an ad hoc basis.
2. Introduce a standard MIP and allow for the local occupancy restriction to 'fall away' in the event of default and a suitable marketing period, allowing the home to be sold without any occupancy restriction. The advantage would be that this would definitely not cause difficulties in the raising of finance. The disadvantage is that there is a very small risk that local occupancy units could be lost to second homes (this would only happen in the event of a default on the loan).
3. Retain current arrangements and continue to agree the insertion of a MIP in response to individual requests. This would have the advantage of avoiding any risk that a mortgage default could deprive the local population of a unit of housing stock. The disadvantages are that there would be a 'case by case' system that takes up officer time and resources.

6. **Conclusions**

- 6.1 Officers conclude that Option 1 above should be implemented, and that if this is still causing issues in raising finance the requirement for the house to be restricted to principal residence only be lifted on a case by case basis. The reason for this is that a house with a principal occupancy restriction should be available to a far wider market than one restricted to local occupation only.

7. **Financial and Staffing Implications**

- 7.1 There are no financial or staffing implications other than a time saving if MIPs are inserted into clauses as standard.

8. **Contribution to National Park Management Plan**

- 8.1 No direct contribution – this is a technical planning matter.

9. **Legal Implications**

- 9.1 There are no legal implications arising from this report.

10. **Recommendation**

10.1 That Members provide views on the Options presented in Section 5

10.2. That Members agree to the insertion of a MIP into conditions and agreements relating to local occupancy in line with Option 1 as presented at Section 5.

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