



Help To Buy: Important issues relating to the current (2013 – 2021) and new (2021 – 2023) Programmes

Current Programme – Up To 31/03/2021

The deadline for new build homes to have been practically completed in order to comply with the Help to Buy: Equity Loan (2013 - 2021) programme has been extended. Under the current programme, 31st December was the 2020 was the cut-off date for practical completion on new build homes to have been certified.

The deadline for practical completion has now been extended to [28 February 2021](#).

The current deadline for legal completion of the sale will however remain the same – [31 March 2021](#), subject to the following:-

- Homes England will work with those who
 - i. had a reservation in place before 30 June 2020 and
 - ii. have **“experienced severe delays as a result of coronavirus”** to assess their situation and look to provide a further extension for legal completion of the sale until [31 May 2021](#) where necessary.

Accordingly, developers selling Help to Buy: Equity Loan plots on current sites with practical completion due over the coming months will need to keep a very close eye on the progress of, and deadlines for, construction.

There is clearly a risk that any significant delay in practical completion of such plots beyond the dates referred to above could mean that (i) the plots no longer qualify for Help to Buy: Equity loan funding under the 2013 – 2021 programme, and as a result (ii) already-exchanged contracts could be terminated by the buyers.

Developers will be aware that any exchanged contracts for

the sale of such plots will contain the prescribed form “Help to Buy Conditions”, which include provisions that:-

- If the seller (or its nominated agent) is not at the contractual completion date eligible to receive Help to Buy: Equity Loan funding for the plot (for whatever reason and irrespective of whether such ineligibility has arisen prior to, on or after the date of the contract), then either party can terminate the contract by serving written notice on the other. The seller has to return the deposit to the buyer immediately together with interest accrued. This means that contracts that the parties had exchanged in good faith can be terminated as a result of external factors.

If such contracts are terminated, the developer will have to go back out to market to find a new buyer at the prevailing market price. Developers who foresee such problems should speak to Homes England and their buyers at the earliest opportunity in order to try and head off problems and/ or agree workarounds to help manage expectations.

New Programme – 2021 - 2023

The government’s new Help to Buy programme that was announced in February 2020 will replace the current programme and comes into effect as from 1 April 2021, running until 31 March 2023.

Developers will therefore be:-

- Required to enter into a new 2021 – 2023 Funding Administration Agreement with Homes England; and will be unable to participate in the new programme, market, or offer it to customers until they are fully in contract with Homes England under the new Help to Buy 2021-23 Funding Administration Agreement.

[The Help to Buy: Equity Loan 2021 - 2023 programme is an entirely new scheme subject to new:](#)

- [terms and conditions;](#)
- [operating procedures;](#)
- [regulations; and](#)
- [legal documentation for purchasers and developers to enter into with Homes England.](#)

Contracts and agreements for lease will also need to be updated to incorporate the new terms as required by the new form of Help to Buy 2021-23 Funding Administration Agreement. Please talk to our [Development Sales Team](#) for further details.

NB: This is not a mere continuation of the 2013 – 2021 Help to Buy programme. It is much more restrictive and the ‘pool’ of buyers and eligible properties will be significantly smaller.

The most important restrictive changes are as follows:-

- A purchaser must be a **“First Time Buyer”** meaning purchaser(s) who have not (either alone or with others):
 - i. previously acquired via purchase, gift, trust or inheritance a major interest in a dwelling or an equivalent interest in land situated anywhere in the world; and/or
 - ii. benefited from any form of sharia mortgage finance. If the property is being bought by more than one individual **all purchasers must be First Time Buyers**. The full purchase price must not exceed the specified **“Regional Full Purchase Price Caps”** – the figures for sites outside of London vary and are significantly lower than £600,000.

All pre-commencement and pre-occupation planning conditions set out within any planning permission or planning agreement must have been complied with prior to the plot having reached practical completion. Developers must ensure that the evidence of discharge is supplied to the buyer’s conveyancers prior to legal completion.

Leasehold houses will *not* qualify for the Help to Buy: Equity Loan 2021 - 2023 programme unless:

- The house was constructed on inalienable freehold land only (being inalienable land owned by and registered to the National Trust or Crown Estate); **and** the house has been disposed of to the developer on a long leasehold basis from either the Crown Estate or the National Trust.
- **NB: The previous exemptions for leasehold houses available under the 2013 – 2021 programme will no longer apply!**

Additional Changes

1. The use of estate rent charge enforcement powers under Section 121 Law of Property Act 1925 or any other express means of enforcement of the estate rent charge enabling forfeiture, the granting of a lease or repossession of a plot will not be permitted under the Help to Buy: Equity Loan 2021 – 2023 programme under any circumstances.
2. Developers must be the registered proprietor of the title to the plot at HM Land Registry at the time of legal completion of the plot sale.
3. Any developers intending to develop plots forming part of a building above either 18 metres or 6 floors in height, (whichever is the lower) are required to become a registered signatory to the Building a Safer Future Charter prior to commencing development.

The foregoing is not an exhaustive list and developers must familiarise themselves fully with the detailed requirements set out in Homes England’s “Builder participation and registration guidance” for the Help to Buy: Equity Loan 2021 - 2023 Programme.

Ground Rents

One further significant change is that the ground rent charged on any leasehold plot (whether a flat or a house) must not exceed a peppercorn per annum.

This change means that private developers in particular will need to make some tough decisions. Previously they may have retained the development because of the income stream generated or decided to sell the freehold to an investor in order to generate a slightly better return on their overall investment.

However, in the absence of any income stream from the units, it is difficult to see why investors would want to acquire the development with all of the associated risks. There may be a development play on the site that attracts some investors e.g. infill development or to build additional units above the existing units but otherwise there is a real risk that the land actually has a negative value and that developers have to pay someone to take that risk off their hands!

We anticipate that developers will in such instances, seek to pass on such potential liability as the land has no residual value. The obvious way to close this out is to set up a management company with each of the tenants acquiring a share and on the last unit disposal, the freehold is sold onto the management company controlled by the tenants.

Depending on the delivery date for the scheme, developers will need to assess their exit strategy as well as updating their documentation.

Options

Developers have the stark choice of either:-

- Changing the site/plots (if possible) to fit the new requirements if it is essential for it to be able to sell to buyers relying on Help to Buy funding; or
- Leaving things as they are and simply accepting that it will not be able to sell to buyers who would otherwise have relied on Help to Buy funding.

If you want to discuss the impact of the changes on your scheme and potential solutions, please do not hesitate to contact Dan Moan or Dominic Bauers.



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