Public Sector

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Community ownership models for sustainable communities

Housing professionals have long sought to find models for achieving community ownership for sustainable communities. There are many models already in existence which, to a greater or less degree, involve residents and other local stakeholders in housing and related projects. There is, however, insistent pressure to develop those existing models and find new ones. The Department for Communities and Local Government (DCLG) has put community ownership at the heart of its new initiative to move "from decent homes to sustainable communities". The Housing Corporation has recently declared its hand as well. It is looking for existing Housing Associations to involve residents on each board and to put tenants' empowerment at the heart of Housing Associations' business. There are pressures from other directions too, not least from residents themselves. They too are looking to landlords and others with land, money or simply power to respond to their needs and aspirations. This bulletin explores ways in which all this might be achieved. As the chart makes clear, there are many choices to be made and many considerations to take into account. The bulletin therefore aims to assist with the selection of the right option by first considering the different issues, legal or otherwise, which need to be taken into account. It then looks at the factors which apply to individual scenarios. Finally it suggests which models might be best suited for key areas of housing activity, viz new build, public realm, estate regeneration and stock transfer. There are a bewildering number of alternatives, often obscured with acronyms, and so this bulletin takes the form of an alphabetical guide to the terms used in the chart.

An alphabetical guide

Accountable bodies – the government looks to local authorities (in particular) to be responsible for grant-funding and local authorities therefore manage that expenditure through grant conditions. For example, they play a key role in "supervising" the work of New Deal for Communities organisations.

ALMOs – the last bidding round for arms length management organisations (ALMOs) (the sixth) is almost here. Whilst there is nothing in the latest guidance which represents a new approach to community ownership, and whilst it is true that ALMOs manage rather than "own", ALMOs are expected to be as, if not more, responsive to tenant and resident requirements than local authorities. ALMOs, if they have three stars, will play a significant part in new build work in the future. How significant depends in part on their own appetite and in part on the appetite of their "parent" local authority. Structures are being developed which would take the homes thus developed outside the right to buy and (if felt appropriate) rent re-structuring. There are parallel structures being developed for local authorities.

Appetite – to what extent are residents (in particular) prepared to devote unpaid time and effort to developing and implementing a community ownership model for their community? In the past the question may not even have been asked and professionals may unthinkingly have assumed that they were to "be in charge". Now perhaps the reverse is dangerously true – ie an assumption that residents are prepared to devote the same energy and commitment as the professionals do.

Audit Commission – the housing inspectorate is responsible for ALMOs and the Audit Commission is playing an increasingly powerful role in the housing agenda. In particular it has successfully called for a review of the housing subsidy system.

Board membership – board members or directors determine the strategic direction of their organisation. They employ full time officers for operational purposes.

Bodies – this is a generic term for the various entities which might be used as community ownership models. They might be legal entities (such as companies or industrial and provident societies). They might be loose partnerships or loose groupings of individuals. They may be aggregations of some kind (for example group structures).

Charitable status – there are benefits and also restrictions attached to charitable status. The benefits are not only in relation to taxation (chiefly

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an exemption from corporation tax) but also reputational – charities provide reassurance and can raise funds more easily than non-charitable bodies. The restrictions are significant but can sometimes be circumvented by the use of non-charitable "arms".

Commonhold – this new system of land ownership has been devised to overcome the difficulties created by freehold/leasehold structures and it permits individual owners to have the equivalent of a freehold interest in not only their own home but also the common parts. Mechanisms are being devised to apply the new regime to the public realm, shared ownership and other contexts of importance for affordable housing.

Commonhold associations – it is yet to be established whether and to what extent new commonhold regime will play a major part in new build developments. The concepts are certainly being reviewed for high profile developments, in order to overcome the difficulties created by the conventional freehold and leasehold divide and where Sustainable Community principles are important.

Community – the difficulty is in defining what the community in any particular context involves. It is certainly likely to include tenants and it may extend to leaseholders and other owner-occupiers. But does it extend to citizens as a whole? And does the "community" simply comprise individuals or does it recognise associations of some kind, whether resident or otherwise? And what about statutory bodies, particularly local authorities and indeed wider groupings (particularly local strategic partnerships)?

Community associations – these are informal club-like groupings of residents and other local stakeholders. Formally they are unincorporated associations.

Community-Based Housing Organisations – these are not (yet) well-established terms of art but they are understood to mean responsive, tenant-led or influenced bodies, whether landlords or management organisations. The term was used in Birmingham for the organisations which were expected to be created as a result of the Power Commission findings in the wake of the 'failed' stock transfer.

Community Development Trusts – these do not, as CDTs, own any homes but rather community assets (drop-in centres and the like). They provide safe havens for public assets and act as catalysts for community cohesion and improvement. A CDT can, however, transmogrify into an RSL which could take an estate transfer.

Community Gateway Association – this form of tenant-led landlord has been pioneered by the English co-operative housing movement. Its essence is the concept that local residents will define their own community areas and work up proposals for local decision-making, whether on a management or ownership basis. The (initial) landlord is therefore set up as a body which is duty-bound to respond to those requests for devolution. It will be tenant-led (with tenants as the largest group or in an absolute majority) and its members will only be tenants. There are variants on this model, which do not warrant the appellation of Community Gateway Association, but which work on similar principles. Some stock transfer landlords have committed themselves to devolution but without having tenant-majority boards or tenant-only membership.

Community housing mutuals – this is the form of stock transfer landlord encouraged in Wales. The model was developed with support from the Welsh Assembly Government. Like the CGA, it is also based, but somewhat more explicitly, on co-operative principles; and it shares many of the same characteristics.

Community interest companies – these are new corporate vehicles, with their own regulator. Their principal feature is an "asset lock" which will provide reassurance to donors and other stakeholders. They are currently envisaged to be most useful in the context of social enterprise activities but may, in turn, prove to be useful in wider context.

Community Property Trusts – these are safe and long-term havens for community assets and certainly, as freeholders, they have a part to play in either or both of preserving those assets for public use and making valuations "work", by taking the capital value out of the "equation". They are another term for community land trusts.

Community Renewal Trusts – this is not yet a term of art nor have CRTs been widely adopted. The term was proposed by Trowers & Hamlins to suggest how local re-generation-focus RSLs could operate at a subsidiary or local level.

Companies limited by guarantee – here the "shareholders" are in fact guarantors (usually for £1). They have become the common choice of corporate entity for social housing ventures. They have a good deal of constitutional flexibility though if they have charitable status they are regulated by the Charity Commission.

Companies limited by shares – these are the conventional vehicles for commercial activities. They are used when profit is to be derived for the benefit of shareholders.

Context – the obvious context is the recent DCLG announcements, principally an important discussion paper "From Decent Homes to Sustainable Communities" but also extending to revised stock transfer guidance, ideas for the next phase of ALMOs and revised ALMO guidance.

Co-operatives – there is a long tradition for the use of co-operatives in social endeavours; and in a housing context they usually involve smallish-scale developments or projects in which tenants and members are one and the same. This has the advantage of informality but the disadvantage of exclusivity.

Enforceability of covenants – the general legal principle is that negative covenants are enforceable against successors in title but positive ones are not. This is one of the attractions of leases which enable a "common" landlord to impose **and** enforce common covenants against each and every lessee and subsequent lessees. There are devices (for example, rent charges) which offer ways round this difficulty; but ensuring that covenants designed to achieve common standards are enforceable against all owners, from time to time, is a major challenge.

Enfranchisement – this refers to the right of leaseholders to "enfranchise" ie secure the freehold interest in their property. In one sense therefore this is a force **for** community ownership but in practice it presents a problem for community land trusts and related vehicles to overcome. The risk is that assets held in common or otherwise under the control of the community can be acquired by individuals.

English Partnerships – with an increasing role in house building and housing generally, EPs represents a powerful 'regulator' and that position may be further enhanced by the possible merger with the Housing Corporation.

Estate regeneration – whether or not estate regeneration arises as a consequence of stock transfer or whether it simply derives from a more conventional redevelopment by an existing social landlord, there are many sensitivities which need to be addressed, not least the need to provide residents with confidence that the current problems will not be simply replaced with new ones. Giving those residents some control over the new or refurbished homes and common areas is crucial. There are two challenges. On the one hand, estate communities can be resentful of outside interference and cynical about 'initiatives', which have so often failed them (even when large sums of money have been expended). On the other hand, when convinced that the proposal offers a way forward communities can be inspired to take the initiative themselves and can drive proposals through to a successful conclusion, notwithstanding any diffidence on the part of local authorities or technical barriers erected by other stakeholders. Models for this context need, therefore, to be responsive to community needs. Standard existing RSL models will not work. Hence the potential for HARCAs, CBHUs, TMUs (provided they can allay concerns about subsequent involuntary delegation), CDTs and NDC organisations. RSLs have a part to play but usually only on the basis that there is real power devolved to a subsidiary or community.

Experience – in selecting the right model experience will be key. It is not however true to say that "inexperience" requires the adoption of tried and tested models and vice versa. Indeed, "inexperienced" stakeholders may question conventions and demand a radical, bottom-up approach. Contrariwise, "experienced" stakeholders may decide that on the basis of past practice convention is best.

Factors – in selecting the right Community Ownership model the context is crucial. Much will turn on the scale of the project, the way it is funded, the experience of those participating (at all levels and in various ways) and the appetite stakeholders (particularly residents) have for involvement.

From Decent Homes to Sustainable Communities – this is the discussion paper issued by DCLG. It sets out the government's ideas for taking the current Decent Homes agenda (due for finalisation in 2010) to the next stage - ie beyond refurbishment in a narrow sense to the creation of a wider housing "environment".

Funding – funders are surrogate 'regulators'. They have very specific requirements to satisfy their own commercial and in particular their credit needs. Anticipating their needs is crucial and, in simple terms, the larger the funding requirement more the robust the model needs to be.

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Community Ownership Models for Sustainable Communities

Context

- From Decent Homes to Sustainable Communities
- Stock Transfer guidance
- ALMOs – the next phase
- Retention authorities – (double) devolution

Scenarios

- New houses – including equity sharing/saving
- Public realm
- Stock transfers
- Estate regeneration
- Housing market renewal?

Law

- Membership
- Board membership
- Right to manage
- Enfranchisement
- Commonhold
- Enforceability of covenants

Bodies

- CLSs
- CLGs
- IPSs
- Charitable?
- Co-ops??
- CICs?
- Unincorporated associations
- Partnerships/groups

'Community'

- Tenants
- Leaseholders
- Owner-occupiers
- 'Citizens'
- Residents associations etc
- LAs, LSPs and ?

'Ownership'

- Board members
- Members/shareholders
- Elections – direct/indirect
- Influence or control?

'Regulators'

- DCLG
- Housing Corporation
- Audit Commission
- Accountable bodies
- EPs

Factors

- Scale
- Funding
- Experience
- Appetite

Models – for new build

- RSLs
- ALMOs (and LAs)
- Commonhold associations
- CPTs

Models – for public realm

- CLTs
- SMOs
- New Town Foundation Trusts
- CAs
- Management Companies (Plus)

Models – for estate regeneration

- HARCAs
- RSL subsidiaries/ committees
- CBHOs
- TMOs?
- CDTs
- NDCs

Models – for stock transfer

- CGAs
- 'CGA' variants
- CHMs
- Open membership RSLs
- TMOs?
- Ownership Trusts? CRTs? And?

ALMO - Arms Length Management Organisation
CA - Community Association
CBHO - Community – based Housing Organisation
CDT - Community Development Trust
CGA - Community Gateway Association
CHM - Community Housing Mutual
CIC - Community Interest Company
CLG - Company Limited by Guarantee

CLS - Company Limited by Shares
CLT - Community Land Trust
CPT - Community Property Trust
CRT - Community Renewal Trust
DCLG - Department for Communities & Local Government
EPs - English Partnerships
HARCA - Housing and Regeneration Community Association
IPS - Industrial & Provident Society

LA - Local Authority
LSP - Local Strategic Partnership
NDC - New Deal for Communities
RSL - Registered Social Landlord
SMO - Sustainable Management Organisation
TMO - Tenant Management Organisation

Housing market renewal – the pathfinders and indeed the so-called sub-pathfinders have not found their work easy to accomplish, despite very substantial sums of government money available to them.

Housing and Regeneration Community Associations – this could be a generic name for a RSL working "beyond housing" in urban regeneration. It is now, however, associated with the Poplar stock transfer landlord. Poplar HARCA has been pioneering estate-based regeneration in Tower Hamlets.

Industrial & Provident societies – these have been the traditional corporate form used for registered social landlords. They remain popular where charitable status is important, since they are "exempt" from registration with the Charity Commission. There has also been some enhanced constitutional flexibility in recent years, circumventing the restrictions of the "one member, one vote" arrangement.

Law – there are technical areas of law to address in the development of community ownership models. Some turn on a simple distinction between membership and board membership and, as a corollary of this, decisions need to be taken about the best "home" for influence/ control. Should it be at the membership (shareholding or whatever) level or should it be at the board member (aka director) level? Then there are the Right to Manage Regulations which underpin tenant management organisations. There are enfranchisement issues to overcome if community land trusts and derivatives are to be put in place. There is also scope for the commonhold system to play its part. Finally, there is a need to ensure, if possible, that covenants or undertakings by individual residents are enforceable, even if they are "positive" rather than "negative".

Local authorities – after years of not constructing new homes local authorities, at least "top performing" ones, can look forward to a significant role in this regard in the future. One or two enterprising local authorities have already embarked on this route. Others will follow, encouraged by the recent DCLG announcements. Structures are being developed which would take the new homes outside the Housing Revenue Account and thus outside the right to buy (and if felt appropriate) rent re-structuring. The schemes are similar to those being devised for ALMOs.

Management companies – there is scope, in a Sustainable Communities context, to build upon the commercial management company structure to devise a pro-active and community-run manager of public realm assets.

Membership – membership in its pure sense refers to shareholders, guarantors or equivalent 'owners' of a landlord or other entity. In simple terms and subject to specific constraints, they have at least negative control and may have positive control over the nature of the organisation of which they are a part. It is in order to secure at least negative control that tenants are given a third of the voting rights in some landlord constitutions.

New build – for new build developments the most effective community ownership models may prove to be the tried and tested RSLs. But ALMOs and indeed local authorities are now exploring (with DCLG encouragement) new build options and, though they are unlikely to rival RSLs in the scale of their new build work, they will undoubtedly be significant players in the future. Depending on the "take up" of the commonhold regime, commonhold associations may be new build "players" in the future. So too may CPTs, though experience to date suggests that their role may be particularly important in rural contexts and on a relatively small scale.

New Deal for Communities – this is a government-funded initiative designed to channel substantial investment into defined areas of deprivation. The local authority will be the accountable body but decisions about expenditure tend to be made by a community-based organisation. The programme has been beset by a few well publicised cases of wrangling and worse but the model offers scope for channelling funds to where local people most need support.

New houses – including equity sharing/saving – this is top of the government's agenda, following the projections set out in the Barker report. For the purposes of creating sustainable communities these need to be more than simply fashionable inner city apartments. They also need to include equity sharing/ saving–based affordable homes.

Ownership – formally legal entities are owned by their members or shareholders but ownership in an informal sense can extend to the role of board members (with "real" power, at least at a strategic level) and then there is the way in which those board members are elected (whether directly or indirectly). At base, a decision needs to be taken whether an ownership amounts to control alone or whether it can extend to influence and if so on what basis.

Open membership – most RSLs now adopt 'open membership'. This involves admitting to shareholding or equivalent membership all those who apply and meet basic criteria. They are then allocated to "classes". Usually transferee RSLs give equal (one third) voting rights to resident (ie tenant and leaseholder) members, one third to independent or community members (ie neither residents nor council-connected persons) and one third to the council itself. Previously RSLs either wished or were forced to adopt closed membership structures because of the 'one member, one vote' characteristic of the IPS constitution. Open membership can now mean resident-only membership (especially in CGAs and CHMs).

Ownership trusts – this has not yet been adopted as a term of art but it refers to the possibility that, in a stock transfer context or elsewhere, the freehold interest could be held by a council-controlled or influenced, or indeed a community-controlled or influenced, organisation. The principal is of general application, but it was proposed by Trowers & Hamlins in the context of a 'split' between a 'retained' freehold interest and a transferred long leasehold interest. This has not yet found favour with the government.

Partnerships/groups – legal entities can work informally and formally with one another. If they work informally as 'partnerships' there is the merit of flexibility but the disadvantage of uncertainty and (particularly) of a VAT cost. Formal groups can usually avoid VAT charges but particularly in a community context parent/subsidiary controls can be unattractive.

Public realm – this term describes the common parts or community assets in a "conventional" large scale housing development. It is crucial for sustainability that these public assets are securely owned and constructively used. The vehicle for such ownership might be a CLT established by local stakeholders. It might be an SMO established by the developing RSL. It might be or build upon the principles of New Town Foundation Trusts, such as the well-known one at Letchworth. More straightforwardly, it could be a Community Association, which is usually an unincorporated association governed by simple club-like rules and which manages rather than owns the assets.

Registered Social Landlords – social landlords regulated by the housing corporation have been the principal developers of new affordable homes since 1988 when legislation led to massive injection of private sector funding. RSLs will undoubtedly continue to be a, probably the, most important source of social rented property.

Regulators – the term needs to be understood in a general sense. It does not simply extend to those, like the Housing Corporation and the Audit Commission, which have powers of supervision and inspection. It should also extend to government departments which make and enforce policy, particularly the DCLG. There needs also to be recognised the power of individual grant-making bodies, particularly local authorities (in their role as accountable bodies) and EPs. Their grant conditions can be powerful mechanisms.

Retention authorities – (double) devolution – this agenda began during David Millband's time at (then) the Office of the Deputy Prime Minister. It remains part of the DCLG agenda for Ruth Kelly. It is obviously the case that community ownership models could help local authorities convince DCLG that in return for wider freedoms they were indeed delivering onward devolution.

Right to Manage – the Right to Manage Regulations formed the basis of powers available to TMOs which, at least (so far) on a small scale, have provided tenants with a significant amount of power over estate management.

Scale – the simple scale of a project will influence the choice of Community Ownership model. In simple terms, the larger the project the more robust the model needs to be, not least because the funders will require maximum reassurance.

Scenarios – there are various scenarios in which community ownership models will be important. New homes are at the top of the government's agenda and these are likely, at least for social housing purposes, to be often sold on an equity sharing or equity saving basis. It also needs to be a way of putting community assets (and indeed liabilities) in safe hands. Stock transfers clearly should involve community ownership ideas, not least to encourage tenants to believe that this is a proposal worth voting for. Estate regeneration needs to be treated in the same way, whether or not it involves a stock transfer. There might also be some scope for community ownership in a HMR context, not least to overcome some of the current discontent at (evidently) hasty redevelopment interventions.

Stock transfers – the last major stock transfer programme is imminent. There will be a large number of transfers in the final programme, many of them dowry-funded. There will be challenges in delivering them and those challenges will be made all the more acute if tenants are not convinced that community ownership cannot be delivered as a result. Models for stock transfers have until recently taken two forms. Transfers of all of a local authority's stock have generally been to a newly formed (sponsored) RSL, with one-third representation for tenants, council and 'the community'. For partial stock transfers and for smaller whole-stock transfers the practice has been to transfer the stock to RSLs which are subsidiaries within existing or newly created groups. Again the one-third principle applies. More recently, innovative tenant-led models have been developed and, after pioneering work in Preston, the CGA model is attracting attention and there have been a number of variants which do not deserve the CGA appellation but which follow similar principles. In Wales, the CHM model promises to be the basis for most constitutions. Recent stock transferee RSLs have looked carefully at open membership of one kind or another. None has explicitly been based upon TMO arrangements, but some have acknowledged the importance of existing TMO Management Agreements or have agreed to respond positively to future requests to set them up. Further innovation is in prospect. Whether this will extend to a freehold/leasehold structure in which an ownership trust plays a part or indeed whether there are any other models (CRT or otherwise) remains to be seen. The latest stock transfer guidance from DCLG makes it clear that community ownership models must be at the heart of the consideration of constitutional alternatives by tenants and leaseholders affected by a proposed stock transfer. There is, for example, a new section on the CGA. Community ownership models were always available for stock transfer but now they must be expressly addressed.

Subsidiaries/committees – the distinction is an important one. A subsidiary is a formal legal entity which has a defined relationship with its controlling body or 'parent'. This relationship is usually set out in a Procedure Agreement or equivalent. There are rules laid down by the Housing Corporation which establish, on the one hand, the right for a parent RSL to intervene when necessary in the affairs of its subsidiary or subsidiaries and, on the other hand, the autonomy available to a separately registered subsidiary RSL. Committees are not separate legal entities and operate on the basis of revocable delegated power from the main board. They can, in practice, have as much autonomy as a subsidiary but there is inevitably less legal certainty that their powers will not be revoked.

Sustainable Management Organisation – an innovative vehicle, designed by an RSL, to manage major new builds, mixed community developments.

Tenant management organisations – these are established, formally or informally, in accordance with the Right to Manage Regulations. The Regulations anticipate the creation of TMOs even in circumstances were the local authority is resistant; but in practice consensual arrangements have been the norm. They usually operate on the basis of the model modular Management Agreement and there is a spectrum of responsibilities (always falling short of ownership) which the TMO and its authority can select. They are usually estate-based and relatively small scale; but there is a whole-borough TMO in Kensington & Chelsea which is now an ALMO.

Unincorporated associations – These are best envisaged as 'clubs' in which members voluntarily associate with one another for voluntary, often leisure, purposes. They have the flexibility but the disadvantage of informality. They are unlikely to be appropriate where large-scale funders require reassurance and recourse.

Conclusion

The alphabetical guide will have made clear that there is also almost an embarrassment of choice for those who want to explore Community Ownership arrangements for delivering Sustainable Communities. Given the encouragement and pressure from DCLG, the time has come to examine the models and refine the choices so that before too long it is clear what works and what does not. On the one hand, residents need to be confident that the boundaries for community ownership have been fully explored. On the other hand, expectations must be managed and false hopes must not be raised. It will be interesting to see how the debate unfolds. Trowers & Hamlins are ready to play their full part in it.

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