

## **Residential Development**

The statistics on the Help to Buy Equity Loan Scheme are undeniably impressive, even if the deeper impact of the scheme on the UK housing market has been somewhat controversial. According to statistics [published by the government](#) in July of this year, 272,852 properties were purchased with the help of an equity loan between the launch of the scheme in April 2013 and March 2020. The value of the properties in question amounted to £73.28 billion, with the equity loans themselves totalling £16.05 billion. The fact that the vast majority of these properties were purchased by first time buyers (82%), with a mean purchase price of £268,553, illustrates one of the issues which led to some criticism of the Help to Buy Equity Loan Programme – namely that rather than helping out people who couldn't otherwise have managed to take the first step on the housing ladder, it was enabling buyers who would have purchased a property anyway to spend more than they would otherwise have done, something which also worked to the advantage of the developers involved.

Both of these perspectives on the scheme – that it has been hugely popular success while at the same time having a distorting effect on the housing market as a whole and not being sufficiently targeted – are addressed to a degree in the new version of the scheme which is set to run from 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2023. The new funding administration agreement relating to the Help to Buy scheme was published in August of this year and covers the eligibility and requirements which apply to developers.

The first thing which needs pointing out with regards to the new scheme is that it is completely separate from the current Help to Buy scheme. That scheme ends in March 2021, and contracts can't be carried forward. Builders and developers won't be allowed to take part in the new scheme, or to offer it to customers or include it in marketing, unless they are contracted with Home England under the new agreement.

### **Changes to Help to Buy**

The original Help to Buy Equity Loan Scheme enabled people to purchase new-build homes with a small deposit (as little as 5%) and up to 20% of the sale price of the property covered by a government loan. As an 'equity' loan, the amount to be repaid would rise or fall with the value of the home and would be repaid when the home was finally sold on. The new iteration of the scheme sees more restrictions being placed on the value of the property involved, and the scheme as a whole is currently intended to end entirely in March 2023, although the option of extending further remains 'on the table' according to housing secretary Robert Jenrick.

The major change to be introduced to the scheme from April 2021 is the fact that only first-time buyers will be able to use it, in contrast with the current scheme which is open to existing homeowners as well. The other key change will see the introduction of regional caps to the value of the property involved, in sharp contrast to the current scheme which involves a national price cap of £600,000 with a maximum loan size of £120,000 outside London and £240,000 within Greater London. The regional price caps are as follows:

- North East - £186,100
- North West - £224,400

- Yorkshire and The Humber - £228,100
- East Midlands - £261,900
- West Midlands - £255,600
- East of England - £407,400
- London - £600,000
- South East - £437,600
- South West - £349,000

There are fears that the introduction of regional price caps could have a 'cliff-edge' effect on the desirability of properties in areas which are close to the borders between regions, and that in some regions the average price of the majority of new home sales will exceed the cap being introduced. Another concern is that the gradual limiting of Help to Buy, followed by its planned elimination, will lead to a collapse in demand levels in some parts of the country, while the counter argument (presumably the kind of argument which is behind the government's thinking) runs that the presence of Help to Buy enables developers and builders to inflate prices by as much as 5% and can lead to buyers being 'trapped' in new build homes which don't appreciate in value as quickly as older properties.

From the point of view of builders and developers, the criteria for taking part in the new Help to Buy programme is set out in the [Help to Buy Equity Loan Funding Administration Agreement](#), which sets out a long (71 pages) list of requirements and developer obligations. Amongst the requirements which the government picks out as the most important in their own [published guidance](#) are the following:

- The developer has to be the registered proprietor of the freehold title to the Eligible Dwelling at HM Land Registry. Exceptions to this rule include the property being a flat, and, in specific circumstances, the inclusion of leasehold houses which is set out in more detail in Part 2 of the government guidelines.
- There is no minimum number of units needed for participation in the Help to Buy programme.
- Developers need to be aware the Secretary of State has reserved the right to prescribe further build quality standards for the Help to Buy 2021-2023 programme in addition to those which already apply.
- Any developer planning on developing eligible dwellings which are part of a building which is more than 18 metres or 6 floors high will have to become a registered signatory of the Building a Safer Future Charter before development begins. Details of the charter itself can be found [here](#).
- Developers must seek their own legal advice on the legislative and regulatory requirements dealing with the advertising of financial products of this kind. The requirements published to date by Homes England include the following:
  - Applying the Home England Logo guidelines.

- Including accurate descriptions of the Help to Buy programme in any marketing material including, most importantly, prominent reference to the full purchase price of the property.
- No advertising or communications such as plot price lists and reservation forms to use the terms 'net price' or 'Help to Buy purchase price' as these are considered to be misleading.
- 'Deposit paid' incentives are not permitted, as the purchasers must contribute their own deposit of at least 5%.
- Permissible incentives include the payment of fees or the provision of white goods, but these will have to comply with UK Finance guidance and not be in excess of 5% of the full purchase price. In addition, developers will have to use the latest version of the UK Finance disclosure of incentives form, which can currently be downloaded [here](#).
- Part-exchange and 'assisted move' packages are forbidden under any circumstances.
- Any eligible leasehold dwelling must have a ground rent which is no more than a peppercorn rate per annum.

### **Enforcement Action Against Housing Developers**

The mention of ground rents in the previous section leads on to the news that the Competition and Markets Authority (CMA) has launched enforcement action against four of the UK's leading housing developers. The action was prompted by worries that the developers in question have been treating leasehold homeowners unfairly and misleading prospective purchasers. The developers in question are:

- Barratt Developments.
- Countryside Properties.
- Persimmon Homes.
- Taylor Wimpey.

The focus of the enforcement action – based on evidence described by the CMA as 'troubling' – covers the following areas:

- The mis-selling of ground rent, with potential buyers not being given clarity on issues such as what ground rent is, whether it increases over time, when these increases take place and how much they will be.
- Buyers being misled regarding the availability of freehold homes. Evidence indicated that some were told that all properties on an estate were being sold on a leasehold basis, when other buyers were actually able to purchase some of the homes freehold.

- Buyers being misled with regard to the cost of converting from leasehold to freehold ownership. Evidence indicated that some buyers were initially told the freehold would be a small amount, only for the price to later be increased to thousands of pounds with little or no warning.
- The use of unfair sales tactics, such as artificially tightened deadlines, in order to pressure buyers into completing a purchase which they may have otherwise declined.
- The application of unfair contract terms, involving escalating ground rents which sometime double every 10 years and effectively trap people in homes which they struggle to sell.

The CMA will also be looking at the practice of increasing ground rent on the basis of the Retail Price Index (RPI). Across the board, the outcome of the enforcement action – once the developers involved have responded by providing the information requested – could include the companies providing legal commitments to changing the way they work, or even the CMA instigating legal action through the courts. In all cases, the fact that the CMA has launched enforcement action in this way should in no way be taken as a reason to assume that the companies have indeed been involved in the practices mentioned.