BUY TO LEAVE - LINES OF ENQUIRY AND POLICY OPTIONS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

- This report presents the findings of a study of housing occupancy in Kensington and Chelsea in relation to ‘buy to leave’ which the Housing and Property Scrutiny Committee was requested to research following a motion to Full Council.

- For the purposes of this study, buy to leave is defined as the purchase of a property with no intention on the purchaser’s part of using it for full time occupation (either personally or by renting it to a third party). It would also include properties purchased solely for capital investment not occupation.

- The study set out to establish the extent to which buy to leave is occurring in the borough. An evidence based approach was developed based on using official data sources to establish patterns of occupation and population trends. These data sources were complemented by some specifically commissioned research. The study has also attempted to identify the powers available to the Council should it wish to deter this practice.

- The key findings of the study are summarised below and set out in greater detail in the following sections of this report.
  
  - There is no official recorded data set of buy to leave properties and so it is not possible to produce a definitive list for the borough.
  
  - Analysis of the Council Tax register reveals a number of empty properties. However, this is a stark definition. Analysis of second home ownership and population gives a more nuanced and finely graded understanding of patterns of occupation in the borough.
  
  - Compared to regional and national averages, there are high numbers of second home owners and empty homes in the borough. Second home owners include residents who own a
second home in the borough and residents who have their primary residence in the borough and own a second home elsewhere.

- There has been a small decrease in the population of the borough. The composition of households is changing with a net-inflow of single households and to a lesser extent multi-adult (no children) households. There has also been an increase in the number of households migrating to the borough from abroad.

- The data sets analysed for the study all show a geographical concentration of low housing occupancy in the south and east of the borough, particularly in the old Brompton and Hans Town wards.

- The existing planning policy options available to the Council are limited. Planning can only influence new homes granted planning permission. Setting a new planning policy would have to be based on a robust evidence base and be subject to public consultation and an independent examination hearing overseen by an inspector appointed by the Secretary of State.

- There is an option to lobby with other local authorities to use the London Local Authorities Act. This would require demonstrating that buy to leave is a London issue that requires a London response.

- The Scrutiny Committee will have a further opportunity to consider this study at its meeting on 15 September 2015 before the report to Full Council on 14 October 2015.

**RECOMMENDATIONS**

The Housing and Property Scrutiny Committee are recommended to:

- Scrutinise and offer comment on the data set analysis into housing occupancy and population.

- Consider whether mechanisms should be put in place to produce regular recording of under occupied homes so that a picture can be developed over a period of time.

- Consider the powers available to the Council and to make recommendations to Cabinet Members on developing housing and planning policy options and further empirical research.
REPORT INTO BUY TO LEAVE IN THE ROYAL BOROUGH OF
KENSINGTON AND CHELSEA

The report is structured as follows:

Part One  Background information
Part Two  Definitions and to what extent is buy to leave occurring in the borough?
Part Three The powers available to the Council

1  BACKGROUND INFORMATION

1.1  There have been a number of reports and studies into property in London which touch on buy to leave, including as a subsidiary topic, relating to the prime market. A summary of some of the reports is listed below as this gives the context for the study.

1.2  The Department of Communities and Local Government (CLG) published in 2006 a report *Housing Markets and Planning Expert Panel, What is the extent of Buy to Leave Empty in England*. The report concluded that this was a feature of housing markets in large northern cities and did not find evidence of it as an issue in London with the exception of some isolated incidents. However, over the intervening years, buy to leave has been referenced increasingly as an issue for some central London boroughs including Islington, Camden and Kensington and Chelsea.

1.3  In 2014 the British Property Federation launched a report, *Who buys new homes in London and why*, by Molior London Limited. The report stated that overseas buyers accounted for 15% of new homes purchases in London in 2013. The report made the following observations:

- Very few, if any, major developments are marketed exclusively overseas.
- Overseas sales drives tend to focus on the earlier launches, often to secure the release of project finance. The best funded developers can be selective with overseas marketing and sell some schemes exclusively in the UK, but this is often not an option for smaller builders.
• The proportion of overseas buyers in any particular development is highly location dependent - it can be higher than 80% in Prime Central London but lower than 10% for much of outer London.

1.4 Savills produced a report in 2014, *The World In London, Dynamics of a Global City*. In summary, the report focuses on London’s prime residential market which have developed as London has become a centre of global commerce. The report states that 7% of Greater London properties for sale were bought by purchases from overseas in 2013-14.

1.5 Analysis of the data relating to Kensington and Chelsea within the report revealed some interesting key facts and these are summarised below.

• Reasons for purchase:
  o 37% as a main residence
  o 31% as a second home
  o 30% as investment / redevelopment
  o 2% other

• Chelsea had a ‘Price Forecast: 3% (2014) and 23.1% (5 years) within international buyers making 38% of sales’.
• Kensington and Notting Hill had a ‘Price Forecast: 3% (2014) and 23.1% (5 years) within international buyers making 53% of sales’.
• Although the data does show that international buyers make up an increasing part of the market, it **cannot be inferred from the data that these are buy to leave purchases**.

1.6 In July 2014, Westminster City Council published an independent report by Ramidus Consulting, *The Prime Residential Market in Westminster*. The focus of the report is the impact of the prime residential market in Westminster and not buy to leave. However, it does touch on the issue and states the study found there was “little tangible evidence” of homes being left vacant all year despite research showing there are hundreds of “ghost mansions” lying unused.

1.7 The topic has featured in articles in the Evening Standard (11 July 2013, 21 March 2014 and 14 May 2015). The article of 11 July 2013, highlighted the issue of buy to leave from an Islington Council perspective where concerns were expressed about the impact of the phenomenon. The article of 21 March 2014 suggested that the Royal Borough had one of the highest rates of empty homes in the country and that foreign buyers were purchasing properties as an investment. The article of 14 May 2015 claimed that in one street
in Kensington seven in ten properties were second homes (although it cannot be assumed these were buy to leave properties).

2 DEFINITIONS AND TO WHAT EXTENT IS BUY TO LEAVE OCCURRING IN THE BOROUGH?

Definitions

2.1 The first stage was to develop a workable definition of buy to leave. For the purposes of this study, buy to leave is defined as the purchase of a property with no intention on the purchaser’s part of using it for full time occupation (either personally or by renting it to a third party). It would also include properties purchased solely for capital investment not occupation.

2.2 This is distinct from a second home which does have an official definition. A second home is defined by the Office of National Statistics (ONS) as ‘a property that isn’t the main residence for a usual resident but is occupied for at least 30 days a year’.

Methodology

2.1 The primary lines of enquiry for the study were developed in order to determine the structure of the work and these are summarised below:

- To what extent is buy to leave occurring within the borough?
- What powers, if any, has the Council to deter this practice and what other consequences would there be if we were to use any powers that we might have? This would include consideration of the borough’s Planning powers and policies.

2.2 There is no official recording mechanism for buy to leave (neither the Office of National Statistics nor the Department for Communities and Local Government keep statistics). For this reason, it was necessary to determine the data sources which the potential to provide insights into housing occupancy.

2.3 The data sources below were analysed:

- The Census
- The Electoral Roll
- The Council Tax Register
- The Tax Base
- Land Registry deeds
- Planning information
• Commissioned research in relation to utility usage

2.4 These data sets illustrate the borough’s housing trends and may go some way into providing a greater understanding of the borough’s housing occupancy patterns. However, if the Council decided to develop a policy response to buy to leave, then more detailed evidence would most likely be required, particularly in relation to planning policy.

The Census

2.5 The returns for 2001 and 2011 were analysed although it should be noted that they are not directly comparable due to changes in methodology. The results reflect residents and households rather than properties so that if a household does not respond then no data is collected for that property.

Second Homes

2.6 Kensington and Chelsea is an area which attracts second homes owners and a very high proportion of our residents own a second home elsewhere. Analysis of the 2011 Census reveals information in relation to people who own a second home in the borough as well as residents of the borough who own a second home in another location.

• In total 9,303 residents of England and Wales own a second home in Kensington and Chelsea. Expressed as a rate, Kensington and Chelsea has 59 domestic second home owners per thousand residents. This ranks Kensington and Chelsea third in London behind Westminster (61 per thousand) and City of London (185 per thousand).

• Around 18 per cent of residents of Kensington and Chelsea have a second home elsewhere, with a higher proportion of these owning a second home outside the United Kingdom. Seven per cent (11,773 residents) of the borough’s residents have a second home elsewhere in the United Kingdom. This is the second highest proportion of any London borough after the City of London (15 per cent). Eleven per cent (17,794 residents) of the borough’s residents own a second home outside of the United Kingdom. This equates to a rate of 112 people per thousand residents, the highest rate in England and Wales.
Empty Homes

2.7 The 2011 Census includes a category for ‘Household Spaces’ in which an estimate of the number of vacant properties is made. A vacant household is defined as where “a household space with no usual residents may still be used by short-term residents, visitors who were present on census night or a combination of short-term residents and visitors. Vacant household spaces, and household spaces that are used as second addresses, are also classified in census results as ‘household spaces with no usual residents’.” In Kensington and Chelsea, it is reported that there are 9,169 vacant homes according to the Census (2011) which shows that 10.9 per cent of the total housing stock is left vacant for most of the year. Particularly high levels of vacant housing can be found in Hans Town and Brompton (24.7 and 19.5 per cent respectively). The London average is 3.6 per cent with the City of London showing the highest rates at 20.7 per cent and Westminster at 11.9 per cent.

2.8 Empty Homes information from the Census was compared to Council Tax information from the same period in order to ascertain whether there was any correlation. The Table below shows a correlation between the data sets and a geographical concentration of vacant homes in the Hans Town and Brompton Wards.

<table>
<thead>
<tr>
<th></th>
<th>Council 2012</th>
<th>Tax Data</th>
<th>2011 Census Data</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Housing Stock</strong></td>
<td>87,361</td>
<td></td>
<td>87,705</td>
</tr>
<tr>
<td><strong>Vacant Households</strong></td>
<td>10,564 (12.1%)</td>
<td></td>
<td>9,169 (10.5%)</td>
</tr>
<tr>
<td><strong>Brompton</strong></td>
<td>1,207 (11.4%)</td>
<td>1,137 (12.4%)</td>
<td></td>
</tr>
<tr>
<td><strong>Hans Town</strong></td>
<td>1,463 (13.8%)</td>
<td>1,621 (17.7%)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Census returns 2011

Population

2.9 Overall over the 10 years between the two Census returns, the population of the borough decreased by 0.1 per cent and the ONS estimates that there are 610 households fewer households than in 2001. This does not mean a reduction in the number of properties, rather a reduction in the number of households normally resident in the borough. Properties becoming vacant or used as second homes are not counted as ‘households’ in the census.

2.10 The Electoral Roll was also used to determine population trends. Previous Electoral Registration data before the 2015 General Election identified 31,716 properties with no registered voter
attached to it. This data was updated during the single voter registration process.

2.11 The Electoral Register was compared against the 2011 Census data to ensure that the data was valid and to give an estimation of the likely number of residents that have not registered per ward as a percentage.

2.12 As the data from the Census falls in 2011, midyear estimates were used to see if the population had changed. It is estimated that there is a declining population and a reduction of -1.9% should be applied to any Census estimates of population in the Borough. However, at ward level, there are no midyear estimates so adjustments to the data in this analysis will not be made but a note of caution should be made to the accuracy of the percentages produced.

<table>
<thead>
<tr>
<th>Year</th>
<th>RBKC est. Population</th>
<th>% of Census 2011</th>
<th>% difference</th>
</tr>
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<tr>
<td>2010</td>
<td>160,500</td>
<td>101.2%</td>
<td>1.2%</td>
</tr>
<tr>
<td>2011</td>
<td>158,300</td>
<td>99.8%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>2012</td>
<td>155,900</td>
<td>98.3%</td>
<td>-1.7%</td>
</tr>
<tr>
<td>2013</td>
<td>155,600</td>
<td>98.1%</td>
<td>-1.9%</td>
</tr>
</tbody>
</table>

Midyear estimates compared to Census 2011 estimate

2.13 The diagram below aims to show a spatial correlation between the number of registered voters and their respective ward. Smaller percentages suggest a lower number of voters that have registered and there is a slight continuation of lower numbers found in the central and eastern sides of the borough.
Tenure

2.14 In terms of housing tenure, 36 per cent of the population own their home, 37 per cent rent privately and 24 per cent of homes are socially rented. This means that between the 2001 and 2011 Census, owner occupation has decreased by 7 per cent from 44 per cent, private renting has increased by 6 per cent and social renting has decreased by 2 per cent.

2.15 This change is reflective of a national trend. There has been a decrease nationally in levels of owner occupation and the private
rented sector has increased. Nationally, sixty four per cent (14.9 million) of households owned their own home in 2011, either with a mortgage or loan, or outright. Home ownership decreased four percentage points since 2001. The group that rented from a private landlord or letting agency increased by six percentage points from nine per cent in 2001 to 15 per cent in 2011 (ONS 2012).

Overseas Buyers and Second Homes

2.16 In February 2014, Savills produced a report entitled *The World in London*. In this report, sales in prime central London were analysed and the diagram below summarises the key findings. The diagram shows the importance of overseas buyers for second homes and investment in the prime central London area (which includes most of the borough).

Overseas Buyers in Prime Central London

2.17 Records of new build properties held by Planning and Borough Development show there has been a net gain in residential properties since the financial year 2003 of 2,945 new properties. Whilst it would be expected that a new property would lead to an additional new household forming, the Census data shows that this is not the case, with a reduction in the overall number of households over the last 10 years. There has been on average of 222 new net residential units in the Royal Borough per year.
Crudely applying Savills findings to sales volumes in the Royal Borough since 2009 shows that the increase in sales to overseas investors could be a contributing factor to the reduction in the number of households in the Royal Borough. Using Land Registry data for property sales per month from 2009, there is on average 2,157 property sales per year in the Royal Borough (which gives an annual average of around 180 per year). Assuming 59 per cent of these properties are sold to overseas investors and of these 17 per cent are used for investment purposes and not lived in (which translates as 366 properties per year), there would be a net loss of households each year despite the net gain in properties granted planning permission and completed.

Impact on the Housing Market

The possible impact of the continuing trend of second home ownership and increasing investment properties in the borough can most clearly be seen in the increase in the private rented sector and the reduction of the owner occupied sector. Coupled with this is the high rents within the private rented sector. Areas of London, particularly inner London, are simply out of reach of those on median incomes who live locally. To rent a two bedroom property in the lower quartile of rent in Kensington and Chelsea would take 65 per cent of the median income of a resident of Kensington and Chelsea (Heywood 2012).
2.20 House prices have continued to rise in the borough despite the economic downturn and lack of mortgage lending. There has been a particular increase in price of properties valued over £1 million. In 2011, 38 per cent of properties were sold for over £1 million and nearly 20 per cent for over £2 million (Land Registry January 2013). As overseas buyers seek out homes for investment purposes they risk pushing prices up and reducing the availability of homes to buy for local people. (Heywood 2012).

2.21 The combined effect of overseas investment into property within the Royal Borough is to increase prices whilst decreasing the number of households who reside here.

2.22 The analysis of the Census and the Electoral Roll does not provide direct evidence of de-population, however the market trends outlined below in this report may go some way to explaining the current levels of housing occupancy.

The Council Tax Register

2.23 Council Tax records relating to long term empty properties on the Council Tax Register were reviewed and updated during 2014. These empty properties are referred to as ‘Class C’ properties and are defined within the The Council Tax (Exempt Dwellings Order) 1992, Article 3 as ‘a dwelling which is unoccupied and has been so for a period of less than 6 months since the last occupation day and which is substantially unfurnished and has been so throughout that period’.

2.24 It should be noted that this definition of an empty home is a very stark definition and does not provide the nuances of occupation. However, the analysis does give an insight into the geographic areas where a concentration of empty homes are situated.

2.25 Upon mapping the locations of the properties that were found to be empty, a trend towards the south east was found with small clusters of properties. High numbers of empty properties can be found in the Brompton and Hans Town Ward and Courtfield. There is no spatial trend for the length of time the property has known to be empty.
2.26 The total number of properties according to Council Tax is 87,361. According to the Empty Homes Review 941 properties were confirmed as long term empty, 51 properties used as second homes and a further 237 properties that could potentially be empty. The total number of long term empty could be as high as 1,137 which is a much lower estimate than that of the Census. However, this figure does correlate with the Tax Base information which is set out below.

**Tax Base**

2.27 Tax base data spanning 2011 to 2015, focusing only on the month of January, was used to analyse the entire housing stock and the Councils ‘best’ knowledge of empty homes.
2.28 Analysis of housing stock levels in each year and shows a steady increase year on year of 1,074 an increase from 86,858 in 2011 to 87,932 in 2015.

2.29 Tax base exemptions can be used to estimate the number of second homes and empty homes within the borough. Analysis shows an increasing number of properties being used as second homes in the borough, from 6,406 in 2011 to 8,069 in 2015. The number of homes declared as empty has seen an increase from 2011 to 2013 (1,087 to 1,293) with a large increase in 2014 (2,208), ending in a decline in the 2015 figures (1,906). This represents an increase in second homes of 26.0 per cent and 75.3 per cent increase in empty homes from 2011 to 2015.

2.30 Percentages of each year by the relevant exemption shows that there is an increasing share of the total housing stock being used as second homes and homes classified as empty, with the exception of 2015 where the proportion of empty homes reduced (most likely due to the work to update the Council Tax Register during 2014).

2.31 The increase in second homes year on year is consistent throughout the property bands and that band G contains the highest proportion of second homes with band H being the second highest, the two top tier tax brackets. Further analysis reveals a similar situation with the number of empty homes split by tax bracket. However, there is a much larger increase in empty homes for 2014 and 2015 across all bands in comparison to second home exemptions. As before,
higher numbers of empty homes can be found in the G and H bands.

Council Tax

2.32 Ward level data from Council Tax records is stored in the pre 2014 ward boundary format. Below reveals the spread of long term empty properties through the wards with the borough average in purple. The lowest numbers can be found in Earl’s Court (below 1.0 per cent) and the highest can be seen in Hans Town, over twice the borough average (4.1 per cent).

![Council Tax - Long Term Empty (%)](image)

Council tax data split by Ward showing long term empty properties (pre 2014 ward boundaries)

2.33 Mapping the data at ward level as shown in the diagram below reveals that areas with relatively high numbers of empty homes reside typically towards the south of the borough, with Hans Town showing the highest level which is also surrounded with wards that have levels over 2.0 per cent.
2.34 The results were also mapped at post code level. The post codes that contain high numbers of properties as well as high numbers of empty properties are in SW3, SW10 and W8.

2.35 Postcodes with over 40% of the properties empty are spread throughout the borough, indicating no spatial pattern. However, there are an above average number of properties within the 15-40 per cent category within the Hans Town area as well as Campden and Courtfield wards that are clustered together, indicating a spatial pattern.

2.36 Focusing in on the Brompton and Hans Town region of postcodes shows large areas where empty properties are much higher than
the borough average, particularly clustered around the far eastern side of the ward. Certain areas within the ward contain a collection of streets that could have a high percentage of empty properties but further research would be required to validate these results and to determine if they are being used for investment services.

**Land Registry**

2.37 Land registry data has been aggregated to ward level which is in the latest 2014 boundary format. The chart below indicates that Brompton and Hans Town together with Redcliffe wards have the highest number of property transactions over the 2008 to 2014 time period. Notting Dale has the lowest number of transactions (254), whereas Brompton and Hans Town and Redcliffe have the highest (1,452 and 1,434 respectively).

![Land Registry Deeds by Year (sorted by Ward)](chart)

Chart showing the number of transactions (deeds) per ward and split by year

2.38 There is a clear trend towards higher levels of property transactions in the south of the borough where levels can be over four times higher than the north of the borough. Analysis of Land Registry deeds data by the number of property transactions per year was also used. Holland ward has seen a large increase since 2008 whereas Courtfield has seen a decrease since 2010 levels. Dalgarno and other northern wards have seen consistently lower transaction levels compared to Redcliffe, Brompton and Royal Hospital etc.
Areas within the central part of the borough have seen fairly consistent transaction numbers throughout the study period.

2.39 The table below shows the Land Registry deeds data by year and ward concerning ‘new build’ properties only which totals 338 over the seven year period. The highest activity can be seen in 2014 which is likely due to the Charles House development outside Holland Park. Dalgarno and Golborne wards feature the second and third highest number of new builds after Holland ward.

![Number of New Builds per Ward per Year](image)

<table>
<thead>
<tr>
<th>Year</th>
<th>Abingdon</th>
<th>Brompton &amp; Hans Town</th>
<th>Campden</th>
<th>Chelsea Riverside</th>
<th>Colville</th>
<th>Courtfield</th>
<th>Dalgarno</th>
<th>Earl’s Court</th>
<th>Golborne</th>
<th>Holland</th>
<th>Notting Dale</th>
<th>Queen’s Gate</th>
<th>Redcliffe</th>
<th>Royal Hospital</th>
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</tr>
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</table>

Land Registry deeds data by year and ward concerning ‘new build’ properties only

Planning Data

2.40 The map below shows a visualisation concerning new build property in the borough from the past year and their location. This 3D visualisation aims to highlight the areas with higher numbers of units being built and also highlight any reduction in the number of residential units in a property.
The Charles House development dwarfs the map with only smaller notable developments taking place in Chelsea Riverside and Brompton and Hans Town. It should be noted that the smaller developments fall within the areas already shown to contain empty properties.
Utilities Data

2.42 To complement the existing data sets by providing a more nuanced view of patterns of occupation, research was commissioned from Experian. This included length of residency analysis and also utility consumption.

Length of Residency Analysis

2.43 At person level, length of residency identifies the length of time that an individual has been at the same address. At household level, length of residency identifies the length of time that the longest that the longest residing head of household has been at the same address. The information contains data for both renting and owned properties (data count was provided based on the head of the household) at ward level across the borough.

2.44 In increments of one year, individuals are counted when they appear at the same address. When an individual appears at another address from other Experian data sources, their counter is reset to zero. If an individual does not appear in Experian’s data sources, they will not be counted in this analysis.

2.45 Data from Experian is divided into eleven years (up to one year, one year, two years and so on). The first three groups were joined in an attempt to visualise short term property ownership/renting (0-2 years) and wards in the south eastern side of the borough (Courtfield and Queen’s Gate featured the highest). Notting Dale and Dalgarno feature lowest.

2.46 The last three groups were joined in an attempt to visualise longer term property ownership/renting (0-2 years) and wards in the North Western side of the borough (Notting Dale, Dalgarno and Golborne) featured the highest with the exception of Chelsea Riverside which lies in the south. Queen’s Gate and Courtfield feature lowest.
Short term residency in RBKC (source: Experian 2015)
2.47 There is a trend for shorter term occupancy within the borough in the south eastern and central wards and longer term residency in the North (with the exception of Chelsea Riverside). This data could be influenced by the higher number of students who live in temporary accommodation in the Brompton vicinity (however, this information cannot be confirmed).

Consumption Data Analysis

2.48 Electricity and gas consumption are household level variables which measure the household’s likely annual energy consumption. These utilities are measured in KW/h and water is measured in cubic meters. The data is also split into deciles which are outlined below and it should be noted that this is modelled data.

2.49 Consumption figures are split into equal record counts (i.e. each ward will add up to 100% across each of the ten bands and higher percentages in a particular band equal a higher likelihood that properties are characteristic of that band.)

2.50 Electricity consumption in the graph below shows high numbers of households that consume smaller amounts of electricity to the left (in blue), Campden to Queens Gate (excluding Holland as this ward also contains high numbers of high consumption users).

Electricity consumption showing the highest/lowest three bandings at ward level, sorted by lowest user (source: Experian 2015)
2.51 Mapping the consumption figures indicates a slight north/south split. Band 10 (lowest electricity consumption banding) features more prominently in central and eastern wards across the borough whereas band one (highest electricity consumption banding) features more prominently in the north (and Earls Court).

Electricity consumption showing the lowest band and highest band at ward level (source: Experian 2015)

2.52 The chart below illustrates the range of consumption across the wards identified as being the three highest (Dalgarno, Colville and St Helen’s) consumers and the three lowest consumers (Campden, Brompton & Hans Town and Royal Hospital). The ward lines indicate a steady increase towards low usage bands for Campden, Brompton & Hans Town and Royal Hospital and the reverse for the highest consumers.
Electricity consumption showing the three highest and three lowest consumers of electricity (source: Experian 2015)

2.53 Water consumption is a household level variable which measures the household’s Water consumption demonstrates a similar trend to electricity consumption as shown by the graph below.

Water consumption showing the highest/lowest three bandings at ward level, sorted by lowest user (source: Experian 2015)

2.54 The diagrams below demonstrate this trend geographically showing a mixed spread of consumption across the borough. Small correlations appear to show a concentration of low users in the
central area and eastern side of the borough and high users in Golborne, Notting Dale, Queen’s Gate and Earls Court wards.

Water consumption showing the lowest band and highest band at ward level (source: Experian 2015)

2.55 Gas consumption indicated that there is a large variance across the borough and did not produce trends similar to electricity and water consumption. This could also be due to factors such as the irregularity of insulation, heating systems and nature of the property.

2.56 Band 8 shows the beginning of the consumption figure banding (as 9 and 10 show “no consumption”) and this could reveal the best indication of usage for this research. The diagram below illustrates a trend in the central and eastern wards of lower usage. In conjunction with the other bands, usage appears to be very low/non-existent in Abingdon, Brompton & Hans Town, Campden, Royal Hospital, St. Helen's and Stanley. Notting Dale, Colville and Golbourne all show higher than average consumption.
Gas consumption showing band 8 at ward level (source: Experian 2015)
3 THE POWERS AVAILABLE TO THE COUNCIL

3.1 This section of the report summarises policy options relating to existing stock and also new build properties. It covers:

- Council Tax
- Empty Dwellings Orders
- Planning Policy
- The Mayoral Concordat
- The London Local Authorities Bills

**Council Tax**

3.2 In 2013, the Council ended the discount for second home owners so that all eligible properties are charged the full Council Tax rate. This is in accordance with Section 11B of the Local Government and Finance Act 2012.

3.3 Further changes were proposed and agreed as part of the Budget Proposals for 2015/16 relating to the Council Tax base. As a consequence of the changes, owners of properties which have been empty for more than two years will be charged Council Tax of 150%.

3.4 This change provides a small financial incentive on owners to bring an empty property back into use and discourages property owners from leaving properties unoccupied for a significant length of time.

3.5 This is a policy which has been adopted by other local authorities including by July 2014 a total of eighteen London boroughs.

3.6 Camden Council adopted this policy and in August 2013, claimed that empty homes had been reduced by 34% since applying the premium. In 2013, Camden called on the government to give councils greater powers. In summary, this included suggesting raising the rate from 50% to 100%, applied after one year and extending it to cover residences claimed by international investors as second homes.

3.7 Scottish local authorities have the power under the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013/44 to charge additional Council Tax on dwellings vacant for more than 12 months. There are certain conditions that apply. In summary, councils can at their discretion, impose an increase of up to 100% of the relevant council tax rate for homes that have been empty for one year or longer.
3.8 The Council may wish to consider lobbying government for changes to enable it to charge higher council tax rates on empty homes.

**Empty Dwellings Orders**

3.9 Empty Dwellings Management Orders (EDMOs) were introduced by the Housing Act 2004 and in summary enable a local authority to bring a property which has been empty for more than two years back into use. Unlike Compulsory Purchase orders and Enforced Sale, EDMOs do not involve an enforceable change of ownership.

3.10 Any local authorities wishing to use an EDMO must apply to a Residential Property Tribunal and demonstrate that certain conditions have been met. Under Regulations introduced in 2012, the local authority must be able to demonstrate to the Tribunal that the property has been empty for two years, is heavily vandalised, used for ‘anti-social purposes’, is ‘causing a nuisance to the community’ and that there is local support for an EDMO. The Tribunal is not compelled to grant Orders even when conditions have been met and owners have the right of appeal.

3.11 If a local authority is successful in obtaining an EDMO, this lasts for twelve months during which time the local authority and the owner are expected to work together to bring the property back into use. If no agreement is reached, the local authority may apply to the Tribunal again.

3.12 EDMOs are generally used by local authorities as a last resort to tackle problems associated with derelict houses. Since the policy was introduced 108 properties have been the subject of an EDMO. EDMOs were used only 17 times in 2014 (15 times were in the North, once in the East and once in London).

3.13 It is unlikely that even if the Council wished to pursue a buy to leave strategy based on using EDMOs that it would find many properties that fitted all of the prescribed criteria.

3.14 The Council may wish to consider lobbying for changes to the criteria for obtaining an EDMO. For example, it could be argued that the prevalence of buy to leave properties is a ‘nuisance’ that interferes with the Council’s objectives in relation to providing new homes. This would require lobbying for amendments to the Regulations of The Housing Act 2004.
Planning Options

3.15 Another strand of the policy options work has been to establish whether occupancy of a residential property can be enforced under the Planning regime, for instance using ‘section 106 planning obligations’ (s106s) that require that a property must be occupied for a minimum period each year.

3.16 The planning system cannot have any influence on established existing uses but can influence new build properties and changes of use.

Legal context

3.17 Since the introduction of the Town and Country Planning Act in 1947 it has been a widely held view that the pattern of occupancy, or indeed occupancy itself, is not an aspect that can be controlled under the Planning Acts and a local authority would be acting *ultra vires* if they sought to do so. However, as is the nature of such matters, interpretation of what may have been a generally accepted truth can evolve.

3.18 As such the Council has sought legal advice in this matter. Counsel is of the view that, while it will still be necessary to consider the reasonableness and enforceability of the precise mechanism chosen to control buy to leave, it is not considered there is any in principle reason why such controls cannot be introduced. A policy is then appropriate when it serves a legitimate planning purpose. The legal opinion concludes that subject to there being evidence which demonstrates that buy to leave is a genuine issue in the Borough, a policy seeking to restrict the incidence of the phenomenon in RBKC would be *intra vires* (or lawful).

Evidence

3.19 The legal opinion offers some useful advice on how much evidence will be required were the Council to choose to develop a buy to leave planning policy. Whist the Council will not have to prove conclusively that buy to leave takes place at any particular rate it must produce such evidence as might reasonably be expected.

3.20 In essence before the Council attempts to use the planning system to control the buy to leave market it must, produce evidence to demonstrate that buy to leave is a real (as opposed to merely perceived) phenomenon, and that it is occurring with sufficient frequency to justify the introduction of new controls.

3.21 To support a formal development plan ‘policy’, such evidence would have to go through several formal stages of public consultation and
an independent examination overseen by an inspector appointed by the Secretary of State.

3.22 Evidence-gathering to support a robust policy may prove challenging. However, initial research is included in section 2 of this report, above.

Reasonableness
3.23 Some thought will have to be given to the nature of the s106s used to resist the excesses of buy to leave. The Council will want to reach a position by which it can ensure that a property is in “permanent occupation”, yet which offers sufficient flexibility to reflect particular personal circumstances. This challenge cannot be taken lightly. The Council must be fair and consistent, yet not unduly impact upon the lives of those who have chosen to live within the borough.

Planning monitoring and planning enforcement
3.24 The planning system is only as effective as the ability of the local planning authority to monitor what is being built, how it is being used, and where necessary the ability to enforce the rules that it has set. Given the complexity of the issue of buy to leave, the Council’s normal powers of investigation are likely to require significant additional recourses if the policy is to be policed effectively.

3.25 For enforcement to be effective proof may have to be provided that a property is occupied. As well as costly, this has the potential to be intrusive, and is likely to attract opposition.

Impact on the nature and the quantum of the borough’s housing supply
3.26 Regard must be had to the impact that a restriction of the buy to leave sector may have upon housing provision within the borough. Evidence may suggest that this sector provides a premium on the values that can be achieved by developers. Conversely the reduction in this market may have the potential to reduce margins with knock on effects on viability. The quantum of housing is unlikely to be reduced, but the surplus available for, for example, affordable housing may be reduced. A proper understanding of these implications will be necessary.

Islington’s Supplementary Planning Document (SPD)
3.27 In December 2014 Islington Council began a public consultation on a draft Supplementary Planning Document (SPD), Preventing Wasted Housing Supply¹. A second consultation draft of the SPD

¹http://www.islington.gov.uk/services/planning/planningpol/pol_supplement/Pages/prevent-wasted-housing.aspx
was published on 15 May for consultation until 15 June 2015. In summary, Islington is seeking to prohibit properties being left empty for more than a given period. It is Islington’s view that new properties in the borough are being purchased by investors whose intention is to benefit from capital appreciation and who have no intention of either living in or renting out the property.

3.28 The SPD is only in draft form and has not yet been formally adopted by Islington Council. If and when adopted, the SPD will only be ‘guidance’ and not ‘policy’ - formal development plan ‘policy’ would have to go through several formal stages of public consultation and an independent examination overseen by an inspector appointed by the Secretary of State. Such a policy may not survive such an examination. The SPD will only apply to developments ‘creating 20 or more residential units’. The results of the consultation have not yet been made public. If the SPD is adopted, its adoption and/or implementation could be open to legal challenges, for example, judicial review and would likely require significant resources for it to be enforced.

**Mayoral Concordat**

3.29 In March 2014, the Mayor of London, launched the Mayoral Concordat on new homes for Londoners. This is a voluntary commitment by developers to market new homes in London to Londoners.

3.30 At the launch, 50 signatories committed to market the homes in their developments to Londoners before or at the same time as they are available to buyers from other countries.

3.31 To date the main signatories to the Concordat are developers, including registered providers of housing. The Council could consider signing the Concordat and it would then apply to any new homes that it develops.

**The London Local Authorities Bills**

3.32 Another policy option for the Council would be to use the London Local authorities Bills which are deposited in Parliament in November of any given year. These can be promoted for a multitude of purposes and the promoters are required to demonstrate to Parliament that there is a London issue which needs to be addressed by local legislation. London Councils take the lead and promote on behalf of the London Boroughs. Local Bills are deposited in Parliament in November of any year.
CLLR QUENTIN MARSHALL
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Background Papers

Census 2001 and 2011
Royal Borough of Kensington and Chelsea Core Strategy
CLG Housing Markets and Planning Expert Panel, What is the extent of Buy to Leave Empty in England
British Property Federation Who buys new homes in London and why, by Molior London Limited
Heywood London for Sale
Islington Council, Preventing Wasted Housing Supply, Discussion Paper and Questionnaire
Ipsos Mori, Survey of Empty Properties, Research Study Conducted for North London Sub-Region
Ramidus Consulting, The Prime Residential Market in Westminster
Savills, Spotlight the World in London
Public Finance CIPFA Update 30 August 2013
Guardian 11 February 2015