

Tuesday, 20 June 2023

## Report of the Assistant Director, Assets

### Leasehold Service Charges

#### Exempt Information

Not exempt

#### Purpose

This report provides an update on the current status of Leasehold Service charges following previous discussions at Committee.

#### Recommendations

It is recommended that:

1. Committee notes the content of the report.

#### Executive Summary

The Council owns a number of flatted blocks across Tamworth within the Housing Revenue Account, many of these blocks contain flats that have been sold on a Leasehold basis under the Right To Buy. Under the terms of any lease there is a requirement for the Council in its capacity as the Freeholder to maintain the fabric of the building, also included within the lease is a requirement for the leaseholder to pay service charges to the Council to cover the cost of any repairs or renewals that take place.

There is a legal requirement for the Council in its capacity of the Freeholder to consult with Leaseholders prior to commencing any works that will result in a significant cost to Leaseholders. In order to comply with this requirement the Council carried out a formal procurement exercise that met EU and Public Contract Regulations [PC2015] requirements. Built into the procurement process were the first two stages of the formal consultation with Leaseholders as required by the Leasehold and Commonhold Reform Act.

Contracts were let following the procurement exercise at which point the Council commenced the issue of stage 3 notices to Leaseholders informing them of works that were being planned for their homes that would have a financial impact.

A number of stage 3 notices were issued to Leaseholders in relation to roofing renewal, it does not appear that any formal representations were made in relation to the notices, however after the timeframe for representations had passed a number of Leaseholders made contact with various Elected Members raising their concerns about the proposed works and the associated costs.

In response to these enquiries planned works to these properties were suspended to allow for further discussions to take place. The key issues being raised appear to be: -

<b>Issues</b>	<b>Comment</b>
Wording of notices and information contained within.	<p>All notices were based on a template provided by our external legal advisors. The wording ensures compliance with the Commonhold and Leasehold Reform Act.</p> <p>It was agreed that additional information would be provided but the that the basic legal elements must remain in order for the notices to be valid.</p>
Cost estimate	<p>Some Leaseholders have raised concerns about the cost estimate provided being too high and higher than they could get elsewhere.</p> <p>It is important to recognise that Leaseholders have only been supplied with a cost estimate and not an invoice. At this stage the costs have been estimated using past projects.</p> <p>The costs that will be recharged back to Leaseholders will reflect the actual costs paid. The works are valued using the National Housing Federation Schedule of Rates, which was the basis of the procurement exercise and contract award.</p> <p>It is not known on what basis the “quotations” Leaseholders have been given are based on or what works are included and excluded. It is not known whether the quotation includes statutory notices, project management and resident liaison.</p>
Selection of Contractor	<p>Some of the Leaseholders are under the impression that they are entitled to nominate a contractor to tender for works. Whilst there is a provision for this in the Commonhold and Leasehold Reform Act, the time for Leaseholders to make such nominations was at stage 1 of the consultation process. It should however be noted that as this contract was awarded using an EU and PCR2015 compliant process the procurement was open to all contractors.</p>
Need for work to be completed	<p>Some Leaseholders have questioned the need for the works to be done, others have informed us that they are currently not able to sell their properties because their surveyors have identified a need for the roof to be renewed.</p> <p>The properties were initially identified for inclusion in the roofing programme based on a combination of stock condition data, local knowledge and previous works</p>

	<p>completed to properties of a similar nature in the area.</p> <p>Renewal on a planned basis as close to end of planned life will generally be cheaper than waiting for component failure and having to renew on an emergency basis.</p>
Cost inflation due to delays.	<p>There was a request to delay commencement of works until the issues raised by Leaseholders had been resolved. It was pointed out at the time that any delay would result in an increase in costs due to the inflationary measures built into the contract and the current rate of inflation being significant.</p> <p>It should be noted that contract rates have increased by 10.1% and that if this is not charged back to Leaseholders the costs will have to be met through the Housing Revenue Account.</p>
Lack of understanding about the implications and liabilities of buying a leasehold properties.	<p>It is for the solicitor acting for the buyer to explain how Leasehold property works and what it may mean for buyers.</p> <p>The Council should not do or say anything that could be seen to be an attempt to discourage tenants from exercising the Right To Buy.</p> <p>Representatives of the Council will provide as much detail to solicitors as they are able to, this is generally done by completing an LPE1 form.</p>

It should be noted that a case based on very similar assumptions to the above was brought by another group of Leaseholders. This case was heard by the First Tier Tribunal [FTT] who ruled that the Leaseholders should make payment to the Council for the works completed. The FTT found no issues with the Stage 1 & 2 consultation and was satisfied that the pricing mechanism was acceptable.

### Options Considered

Continue with works as planned and recover costs in full as set out in the lease.	<p>This option would be in line with the Lease, is believed to be legally compliant and costs are believed to be reasonable based on the EU &amp; PCR compliant tender process.</p>
Procure roofing works separately to the current contracts and repeat entire Leaseholder Consultation Process.	<p>This option may put us in breach of contract with our current contractor.</p> <p>The scale and value of the works would mean that the PCR2015 route for procurement would still have to be followed.</p> <p>Additional resource would be needed to procure and project manage the works. These costs would either have to be met from the Housing Revenue Account budgets</p>

	or would have to be recharged back to Leaseholders adding further costs.
Postpone works until components have failed.	If components are allowed to fail it will not be possible or practical to consult on renewals. Renewals will have to proceed but when done on a reactive bases costs are likely to be higher than they are when done on a planned basis.
Limit cost recover from Leaseholders.	The Council could opt to cap the charges back to Leaseholders. This would have to be done by agreement.  This approach would result in the excess costs being met from the Housing Revenue Account.

### **Resource Implications**

Any option that doesn't result in full cost recovery from Leaseholders will mean the Housing Revenue Account having to meet the costs which effectively means tenants subsidising Leaseholders.

Having to carry out a new and separate procurement exercise will require additional resources which incurs additional cost. If these additional costs aren't charged back to Leaseholders they will have to be met from the Housing Revenue Account.

Delaying works have already resulted in additional costs being incurred, further delays are likely to push costs up more. In many cases the Council will be the majority stakeholder in a block which means the Council's contribution to the works increases considerably.

### **Legal/Risk Implications Background**

There is a formal legal route that Leaseholders can use to challenge service charges and whilst the Assets Team are confident that the correct legal process has been followed there remains the possibility that the FTT would find in favour of Leaseholders meaning the Council as Freeholder would be liable for all costs.

Any under-recovery would mean additional costs having to be met from the Housing Revenue Account budget. This in effect means tenants would be subsidising Leaseholders. This could be challenged by tenants and could see the Council falling foul of the Regulator for Social Housing. Further legal advice is required but it is believed that to meet the requirements of the Regulator for Social Housing there would need to be full consultation with tenants on not recovering costs from Leaseholders and using the HRA to subsidise Leaseholders.

Failure to recover costs in full from Leaseholders would have a significant impact on the financial viability of the 30-year HRA business plan and the ability of the Council to meet its statutory obligations to housing tenants.

### **Equalities Implications**

It is recognised that a number of Leaseholders are elderly and on fixed incomes, however the requirement to pay service charges is set out in the conditions of the lease which would have been entered into freely and willingly.

### **Environment and Sustainability Implications (including climate change)**

None identified for the purpose of this report.

### **Background Information**

None.

### **Report Author**

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### **List of Background Papers**

### **Appendices**

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