

Thursday, 26 October 2023

Report of the Portfolio Holder for Housing and Planning

Update on Leasehold Service Charges

Exempt Information

Not exempt

Purpose

This report provides an update on the current position in relation to Leaseholder Service Charges and sets out the details and programme for the Strategic Review of Leasehold Service Charges.

Recommendations

It is recommended that:

1. Cabinet endorses the actions to date.
2. Cabinet endorses the Strategic Review procurement brief, procurement process and project timetable.
3. Cabinet delegates authority to the Portfolio Holder of Housing and Planning, along with the Assistant Director of Assets, to initiate Stage 3 consultations and apply service charges for works that pertain to urgent matters, health and safety, or compliance. This action requires the approval of the Portfolio Holder of Housing and Planning.

Executive Summary

At an extraordinary meeting of Full Council it was agreed that a strategic review of leaseholder charges would be undertaken with external and independent consultancy support. This review will establish Tamworth Borough Council's overall position in respect of leaseholder charging as well as allowing a focussed review of concerns raised in respect of currently programmed roofing works.

A procurement process has been initiated in response to the attached procurement brief provided in Appendix A. We anticipate that the procurement phase for consultancy support will be finalised by November 2023. It is crucial to strike a balance between expediting the process but ensuring a comprehensive and thorough review. With this objective in mind, we aim to complete the review no later than August 2024 while actively seeking opportunities for earlier resolution. As the Portfolio Holder for Housing and Planning emphasised during the Full Council meeting in August 2023, our goal is to complete the process within 6-12 months.

The review will be overseen by the Portfolio Holder for Housing and Planning and each Scrutiny chair will be invited to nominate a representative to support the review through a consultative working group. The consultants will draw on input from Officers, Members,

Tenants, Leaseholders and supported by other specialists in asset management and legal matters; the review will also seek out best practice within the sector.

Stage 3 Section 20 (s20) notices relating to the programmed roofing works have been withdrawn and no further action will be taken in respect of the properties involved unless works of an urgent nature become necessary. During the period of the review no new capital works will be commenced requiring leaseholder charges with exception of works that pertain to urgent matters, health and safety, or compliance.

Background

Following the issue of Stage 3 (s20) consultation notices in respect of roofing works, there have been multiple concerns raised on behalf of leaseholders regarding planned works and resulting charges.

At an extraordinary meeting of Full Council on 21 August 2023 it was agreed that a comprehensive Strategic Review of Leasehold Service Charges would be carried out with the assistance of external consultancy support. This review will take the form of a Corporate Project and delivery will be subject to reporting through the Council's Performance Management Framework. In addition, the three Scrutiny chairs will each be invited to nominate a representative to support the delivery of the review through a consultative working group.

A procurement exercise has commenced to appoint a consultancy firm to undertake this review with input from Officers, Members, Tenants, Leaseholders and supported by other specialists in asset management and legal matters. The review will also seek out best practice within the sector. It is anticipated that a consultant will be appointed during November. Once appointed the consultants will be asked to prepare a detailed workplan with appropriate timescales for the achievement of key elements including-

- A review of the current approach to identification and assessment of necessary works.
- A review of procurement of works and costings.
- A legal review of relevant processes.
- Engagement with key stakeholders including leaseholders and Council tenants.
- A review of communications and engagement approaches.
- A review of best practice nationally in relation to leaseholder charging
- A final report making recommendations and a detailed implementation plan.

The aim of the review will be to establish the Council's overall policy position as it relates to charging leaseholders for major works. In addition, there will be a focussed review of issues relating to currently programmed roofing works. This will address leaseholders concerns regarding costs; queries over the necessity of works and the process followed. The procurement has been commenced in order to avoid delay in delivery. It's important to note that the scope of activity during the review can be varied as the review proceeds while being informed by all various stakeholders.

Once appointed the consultants will be asked to prepare a detailed delivery plan. However, at this stage it is anticipated that the review will be delivered in accordance with the following key milestones.

Action	Timescale
Appointment of consultants	November 2023
Delivery plan agreed including engagement and consultation plan	December 2023
Report of Initial Findings	February/March 2024
Daft Report including draft implementation plan	March/June 2024
Final Report	June/August 2024

As announced during the extraordinary Full Council meeting on August 21, all existing active Stage 3 (s20) notices have been withdrawn. There will be no additional actions taken concerning the affected properties unless there is an urgent requirement for essential work. Furthermore, no new Stage 3 (s20) notices will be generated, and no works will begin on Leasehold properties until the review process is concluded, unless there is an urgent need for work related to health and safety, or compliance. In such cases, the issuance of Stage 3 (s20) notices will be coordinated with the Portfolio Holder for Housing and Planning.

The ceasing of works at these properties will result in some re-profiling of some capital programmes, however there is sufficient forward programme to provide flexibility and to enable planned programmes to proceed without including Leaseholder occupied properties.

Corporate Scrutiny Recommendations

At a Cabinet meeting on 23rd February 2023 a number of recommendations were made by the Corporate Scrutiny committee and the resolutions shown below were made. Whilst the review will supersede and deliver on the majority of these recommendations the table below provides an update on current progress against these recommendations to date.

Cabinet Recommendation	Action –	
1	Agreed to a one-off look for this piece of work, with an independent assessor to assess if the costs are correct	<p>An inspection has been completed by a third-party surveyor, this was a visual inspection for the purpose of confirming the existing condition of the roofs. Access attempts were made at all properties but there were some instances where access was denied this means that some roofs may not have been inspected.</p> <p>It had been agreed that an external consultant would be appointed to carry out a more detailed review of the SOR items and undertake a market comparison, this however has now been superseded by the strategic review.</p> <p>The Strategic Review described in this report will allow the consideration of all issues raised in relation to the programmed roofing works.</p> <p>Roofing works have now been suspended pending the outcome of the strategic review and it is expected that given the period of</p>

		<p>time that will have passed new surveys will need to be completed before any future works are planned.</p>
2	<p>Agreed that the Portfolio Holder would consider the implications of assessing all repairs in advance of leaseholders being asked to contribute and bring the report back to the next available Cabinet meeting.</p>	<p>The Council has amended its processes to include a visual inspection of works prior to the issuing of Stage 3 consultation for all future works. This measure has no financial or programme implications and will support confirmation of the necessity of works prior to the issuing of S20 notices.</p> <p>It has been agreed that no further s20 consultations or works will be carried out until the strategic review has been completed with the exception of works of an urgent nature or those works with Health & Safety or compliance nature.</p>

3	Review the council's communications when residents buy a council house, including what responsibilities and obligations are on the owner occupier.	<p>Amendments have been made the Right To Buy pages on the website making the subject of charging clearer and also urging potential Leaseholders to seek more detailed legal advice in advance of purchasing a Leasehold property.</p> <p>Communications are currently under review in consultation with Customer Services and 'Right to Buy' colleagues, drafts have been made available for review by the Corporate Scrutiny committee. These will also be subject to review by the Council's legal advisors.</p> <p>The draft written communications are aimed to ensure–</p> <p>They are understandable for customers They meet the requirements of the necessary legal notifications</p> <p>A comprehensive review of communications drawing on best practice will form part of the strategic review process.</p>
4	Review communications and include the information from the whole capital programme in the communications.	<p>The Council currently informs solicitors of any known works for the relevant property.</p> <p>However, as part of the above review of communications under 3 above information will be separately provided separately to Right to Buy applicants.</p> <p>It should be noted that although the Council can provide information to Right to Buy applicants it is not possible for the Council to provide information as part of onward sales.</p> <p>It is expected that a review of future programmes and associated communications will form part of the strategic review process.</p>

5	<p>Referred back to Corporate Scrutiny that the Committee look at the process for requesting at least two face to face drop ins with residents before any work commences and Scrutiny should consider whether this is for all works or works over a certain monetary threshold.</p>	<p>No further feedback had been received concerning this item from the Committee prior to the extraordinary meeting of Full Council.</p> <p>Currently the contractor provides day-to-day management of these programmes through a Resident Liaison Officer [RLO]. The role of the RLO is to provide information on the project to residents, make arrangements around access and generally support residents to ensure that the project runs smoothly.</p> <p>It is expected that a review of future programmes and associated communications will form part of the strategic review process. This review is likely to consider the most appropriate methods of interfacing with Leaseholders for specific projects and in general.</p>
6	<p>Agreed that if any of the 44 Leaseholders (21 roofs) haven't been assessed they will be assessed immediately.</p>	<p>This was completed other than those who have not allowed access prior to the meeting of extraordinary Full Council.</p> <p>As works have now been suspended and there is likely to be a significant gap before projects re-commence it is expected the works will need to be reinspected as part of any future programmes.</p>

7	Agreed that the affected 44 leaseholders would not be faced with increased costs as a result of the delay in works being commenced.	Legal advice obtained in relation to this matter specifies that the Council has no power to waive charges that are due and that to subsidise Leaseholders through either the HRA or General Fund accounts would be ultra-vires. However, the review will provide an opportunity to further examine the Council's legal responsibilities in this regard. Works have now been suspended pending the outcome of the strategic review. The review will include legal advice in relation to charging and this item will be included within that review for further consideration.
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Although the majority of stage 3 (s20) notices have now been formally withdrawn there are some that remain in place; these relate to a number of blocks where fire doors have been identified through Fire Risk Assessments as needing renewal. As these works are of a Health & Safety nature the Council must proceed with the works.

In addition, works have now been completed across the six high-rise blocks, these works were on site and largely complete when the decision to withdraw s3 (s20) notices was made as such these works have been subject to the full consultation process meaning the Council is now obliged to issue invoices for the works.

Options Considered

No other options have been considered as this report provides an update on progress to date and sets out the mechanism for achieving the matters resolved at the extraordinary meeting of Full Council on 21 August 2023.

Resource Implications

The project will be delivered through an external consultancy following a procurement exercise. An initial project budget of £50,000 has been identified, this will be met through the Housing Repairs Budget [HS6099].

Legal/Risk Implications Background

Based on the legal advice received in respect of Leasehold Service Charges that where works are undertaken and the relevant consultations have been completed the Council is obliged to raise a charge to the Leaseholder for the works. Although planned works have now been suspended pending the outcome of the review should the need arise to undertake works of an urgent nature or of a Health & Safety/compliance nature it will be necessary to issue (s20) consultations as required. Although the Council will seek to undertake repair rather than replacement wherever possible, if works are of such an urgent nature that there is not time to issue the relevant (s20) notification then the Council is able to apply to the First Tier Tribunal for retrospective approval to charge the leaseholders concerned. This will be subject to agreement from the Portfolio Holder for Housing and Planning and supported by legal advice.

Reliance on retrospective approval and dispensation from the First Tier Tribunal for works of an emergency nature is not guaranteed to be successful, in which case the Council would not be able to recover costs.

Equalities Implications

No specific equalities issues arising from this report, the strategic review however will undertake an impact assessment.

Environment and Sustainability Implications (including climate change)

None arising from this report.

Background Information

This report provides an update following meetings of Cabinet (23/02/23), Full Council (21/08/23) and Corporate Scrutiny meetings.

Report Author

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List of Background Papers

None

Appendices

Appendix A - Strategic Review procurement brief