

Tuesday, 13 August 2024

Report of the Portfolio Holder for Housing, Homelessness and Planning / Executive Director Communities

Update on Strategic Leasehold Review

Exempt Information

Not exempt.

Purpose

This report provides an update on the review of Leaseholder charging undertaken by Campbell Tickell in response to concerns raised about the Council, approach to leaseholder charging.

Recommendations

It is recommended that:

1. Committee endorses the findings of the report produced by Campbell Tickell and formally thanks Campbell Tickell and the Leaseholder Working Group for their input into the overall process. [Appendix 1]
2. Committee endorses the content of the Section 20 notices produced by Campbell Tickell and approves submitting them to Cabinet for consideration for use in future consultations. [Appendix 2]
3. Committee approves recommending to Cabinet that consultation commences in relation to the remedial works identified in the Campbell Tickell report. [Appendix 2]
4. Committee recommends to Cabinet the approach to undertaking remedial works as opposed to full roofing renewals.
5. Committee supports the continuation of the working arrangements with Campbell Tickell to produce a formal "Leaseholder Policy".
6. Committee supports the instruction of legal services to commence amendments to future leases to include for a management charge and to clarify the position in relation to major works and renewals with any amendments to be approved by Cabinet before implementation
7. Committee endorses a recommendation to Cabinet that the Council takes a sample case to the First Tier Tribunal to test once and for all the assumptions around roofing renewals being allowed for under the terms of the lease.
8. Committee endorses the development of a Service Improvement plan for consideration by Cabinet and based on the recommendations set out in the Campbell Tickell report.

Executive Summary

On 21st August 2023 it was agreed at Full Council that the Council would undertake a detailed strategic review of Leaseholder Service Charges; this came about following a number of concerns raised by Leaseholders and Elected Members in relation to some planned roofing renewals predominantly in the Gillway area of Tamworth. Consultation letters had been issued under the Section 20 [s20] process; the scale and cost of the works combined with the sterile, legal nature of the consultation letters raised concerns amongst Leaseholders and Elected Members as such the proposals were suspended and a strategic review ordered.

To assist in delivery of the strategic review the Portfolio Holder for Housing, Homelessness and Planning at the time established a Leaseholder Working Group consisting of Elected Members and Leaseholder representatives. The Group working with Officers commissioned a consultant through a competitive tendering process to undertake a strategic review of the Leaseholder Service charge process, this included a view on the legal aspects of the lease, the procurement process and the consultation process as well as a detailed technical assessment of the roofs that were at the centre of the original challenge by Leaseholders. The report produced by Campbell Tickell can be found at Appendix 1. The draft report has been presented to and considered by the Leaseholder Working Group.

Key Findings from the Campbell Tickell Report

Procurement Process – Leaseholders raised their concerns over the procurement process, the status of the Long-Term Qualifying Agreement [LQTA] and the use of a large primary contractor as opposed to smaller local roofing contractors. It was the view of Campbell Tickell that the procurement process applied by the Council was typical of that required by a public body and was one that met the requirements of the [Public Contract Regulations \[PCR2015\]](#) and at the time the EU procurement regulations. The Council had legitimately entered into Long Term Qualifying Agreements [LTQA] with the two contractors following the procurement process.

Consultation Process – Leaseholders and Elected Members had voiced concerns over the formal consultation process that had taken place prior to works being planned. The tone and legality of letters were questioned. It was the view of Campbell Tickell that the consultation process met the minimum legal requirements set out in legislation. It was recognised that the letters that had been sent out were sterile and written in a very legal manner as opposed to one that was customer friendly, and customer focussed. Campbell Tickell have recommended that these letters be reviewed and made more accessible for customers whilst at the same time remaining legally compliant. Campbell Tickell have drafted a suite of new letters for future use, these can be found at Appendix 2.

Charging – Some Leaseholders have indicated that their interpretation of the lease means that the Council can undertake and charge for repair works but felt that large-scale renewals were not within the scope of the lease. It was the view of Campbell Tickell that the Tamworth standard leases do allow the Council to charge Leaseholders for works that are carried out to the shared parts of the building and in fact the view is that where the Council can charge, they are typically obliged to charge so as not subsidise Leaseholders through the Housing Revenue Account [HRA]. It was however recommended that the Council take a test case to the First Tier Tribunal to clear up concerns raised by Leaseholders in relation to whether or not the 'renewal' of an existing component is considered to be a repair or an improvement; this is important as repairs are recoverable under the lease whereas improvements are not.

Pricing Structure – Leaseholders raised concerns about the pricing of the roofing works; they felt that using a large primary contractor meant that the works would be more expensive than if they had been priced by a local roofing contractor. It was the view of Campbell Tickell that the pricing structure used by the Council i.e. The National Housing Federation Schedule of Rates [NatFed SOR] was commonplace and typical amongst social housing providers. It was acknowledged that pricing works under this type of arrangement may ultimately be more expensive than using a series of smaller local companies to undertake the works but that the approach of disaggregating works to let smaller contracts would not be compliant with PCR2015.

Technical Assessment – Some Leaseholders disagreed with the Council's assessment of the state of repair of the roofs, they felt that the roof did not need replacing at this time. Campbell Tickell appointed a third party RICS surveyor to undertake an inspection of the roofs and provide a view on the current state of repair along with a view on the remedial actions required. Whilst the surveys completed largely agreed with the surveys that had been previously completed in relation to the nature and scale of the defects it was the view of the independent surveyor that with some investment in repairs the roofs could achieve a further

life of circa. 7-10 years and that immediate renewal was not necessary. The scale and nature of repairs varied from block to block but on average the repairs costs were in the region of £5,000 per block (£1,250 per flat).

Payment Options – Leaseholders and Elected Members have voiced concerns about the payment terms applied to Leasehold service charges. There were concerns that vulnerable Leaseholders would not be able to pay for the works being proposed and that there weren't sufficiently flexible payment terms available for Leaseholders. It was the view of Campbell Tickell that the Council should review its policy in relation to the payment terms offered to Leaseholders. The current lease requires Leaseholders to make payment in full within 28 days of the invoice being issued. Where Leaseholders are facing financial hardship consideration is given to other payment terms, these are based on a financial assessment and vary from person to person. It was felt that this approach was not transparent and did not provide Leaseholders with any certainty over the likely payment terms. In their report Campbell Tickell have set out a number of payment options for discussion and consideration, these are set out in the 'options considered' section below.

Repair vs Renew

The technical inspections completed by the surveyors have indicated that for those roofs inspected the life could be extended for between 7 and 10 years with an investment in the region of £5,000 per block (£1,250 per flat). These works would be completed by our existing contractors under the terms of the existing contract with costs being recovered from the Leaseholders.

It is important to recognise that repairs at this stage will only extend the life of the roof and that renewal will still be needed with costs having to be met by Leaseholders. In effect over the next 10-year period of the current HRA Business Plan Leaseholders and the Council could be paying up to £44,000 for each roof renewal rather than the £36,000 that would be payable if the roof were to be renewed immediately. If renewed immediately it is unlikely that the roof would need major works in the next 60 years.

Typically, the Council will increase its income and expenditure budgets in line with CPI; fortunately contract prices are also increased in line with CPI which effectively insulates the Council from the effects of CPI in relation to any works. Leaseholders however need to be mindful that their income and/or savings may not be afforded the same insulation from CPI.

Leaseholders will also need to be aware that the age and general condition of the roof will be noted in any survey carried out when the property is sold. The current age and condition of the roof may make selling the property difficult and it should be noted that the Council will not be in a position to renew roofs on demand just to satisfy the condition of a sale.

Proposed Next Steps

The following areas will form part of a Service Improvement Plan that will be presented to Cabinet for consideration and approval.

Remedial Works – arrangements should commence to start the consultation process with Leaseholders using the newly drafted letters in relation to the remedial works identified by the third-party surveyor. These works have already been costed by the Contractor and could commence as soon as the consultation process is completed. This is based on the assumption that remedial works are the favoured option over renewal.

Letters – the suite of letters produced by Campbell Tickell should be formally adopted and used in all future communications with Leaseholders, commencing with the new Stage 3 notices for the identified remedial roofing works.

Test Case – arrangements should be made to commence a test case through the First Tier Tribunal. This will test the assumption that roofing renewal is permitted under the current lease arrangements. This will need careful consideration as legal notices will be served on those

Leaseholders selected to be part of the test case. There will need to be consultation in advance of the test case commencing and ongoing communication with those impacted throughout.

Leaseholder Policy – a separate Leaseholder Policy is required so that the approach to Leaseholder management is clearly set out in a manner that is accessible to all Leaseholders. The policy will need to set out the approach to dealing with repairs, planned works and other service charges as well as the approach to consultation and collection of service charges.

Lease Review – the legal team, through the Right To Buy team are to be instructed to undertake a review of the current lease with a view to modernising it, making the section on service charges clearer and including new terms relating to the application of management chargers and charging for improvements to properties. Any lease changes would only affect new leases as the Council cannot unilaterally amend existing leases.

Management Structure – a review of the resources allocated to the management of Leaseholders and Leasehold service charges will be needed if the Council is to facilitate greater levels of engagement with Leaseholders in future. It is likely that there will from time to time be a need to 'buy in' some additional consultancy support to review and update policies and procedures as legislation around Leaseholders changes.

Review of payment options - Within their report Campbell Tickell have identified a number of options for payments for consideration by the Council. The table in the 'Options Considered' below sets out the proposals, and the advantages/disadvantages of each. The Council's Corporate Credit Policy was reviewed and approved by Cabinet 31st August 2023, and it is the Council's approach that all monies due are payable on receipt of invoice, with the expectation that payment is made in full unless there are circumstances of financial hardship, in which case the Recovery team will liaise with customers on an individual basis to agree payment terms on the basis of evidence of income and outgoings. No amendment to this approach is recommended at this stage.

Options Considered

Immediate Renewal vs Remedial Works

Option	Advantages	Risks
Complete all works as planned and recover costs in full from Leaseholders	<ul style="list-style-type: none"> • Works are completed in a planned manner making use of the existing contracts. • Avoids the risk of component failure and the associated costs and disruption. • Compliant with legislation and Council satisfies its obligations to collect monies due. • Costs are set at the current market rate and not affected by future inflation. 	<ul style="list-style-type: none"> • Likely to be unpopular with Leaseholders. • Exact remaining life of component won't be fully known until failure occurs. • Likely to be challenged through the First Tier Tribunal and outcome not guaranteed for either party.
Renew roofs and any other component upon Failure	<ul style="list-style-type: none"> • Full life of component achieved. • Unlikely to be challenged by 	<ul style="list-style-type: none"> • Assuming the underlying renewal costs remain the same there will be additional costs

	<p>Leaseholders as failure has already occurred.</p> <ul style="list-style-type: none"> • Council should be able to forego the normal statutory consultation process as work would be completed as a matter of urgency. 	<p>associated with the emergency works to make the property watertight on the report of a failure.</p> <ul style="list-style-type: none"> • Works will need to be planned, statutory notices served, labour and materials put in place which will leave residents in a situation where the roof over their home is not wind and watertight. • There may be consequential damage to the property arising from water ingress and residents may suffer consequential losses. • There may be insurance implications associated with consequential losses as the Council may be seen to have failed to properly maintain the fabric of the building. This is likely to be exacerbated by the fact that the components were known to be at or beyond end-of-life. • Leaseholders may be adversely affected by inflation.
<p>Partial renewal and ongoing repair based on third-party surveys.</p>	<ul style="list-style-type: none"> • Full life of component achieved. • Unlikely to be challenged by Leaseholders as failure has already occurred and remedial works are supported by the third-party surveys. 	<ul style="list-style-type: none"> • There may be consequential damage to the property arising from water ingress and residents may suffer consequential losses. • There may be insurance implications associated with consequential losses as the Council may be seen to have failed to properly maintain the fabric of the building. This

		<p>is likely to be exacerbated by the fact that the components were known to be at or beyond end-of-life.</p> <ul style="list-style-type: none"> • At some point the ongoing cost of repair has the potential to exceed the cost of renewal and given the age of the element's replacement it still the likely end outcome. • Any remedial works done now may end up being replaced when the roof is renewed. • Leaseholders may be adversely affected by inflation.
Renew roof and discount for estimated remaining life.	<ul style="list-style-type: none"> • Works are completed in a planned manner making use of the existing contracts. • Avoids the risk of component failure and the associated costs and disruption. • Costs are set at the current market rate and not affected by future inflation. • Leaseholders benefit from cost reduction linked to remaining life of roof. 	<ul style="list-style-type: none"> • Although the cost to the Leaseholder would be reduced it is still likely to be unpopular. • Risk of challenge at First Tier Tribunal. • Life expectancy of roof already expired so difficult to justify reduction. • When repair costs are factored in the overall cost reduction is likely to be limited.

Test Case

Option	Advantages	Risks
Do nothing	<ul style="list-style-type: none"> • No upfront costs for a project that may not happen for some time. • No wasted costs if legislation changes. 	<ul style="list-style-type: none"> • Lacks certainty for all parties. • More likely to be challenged on a case-by-case basis when notices are served.

		<ul style="list-style-type: none"> • Goes against Campbell Tickell recommendations.
Commence test case now before works are needed.	<ul style="list-style-type: none"> • The position on whether the Council can charge for roof renewals will be clear. Both the Council and Leaseholders will understand the position and can plan for the process when the time comes to carry out renewals. • Can be done in a controlled manner in full consultation with Leaseholders. • Outcome will be known before a roof is in need of full renewal. • Less likely to be challenged on a case-by-case basis. 	<ul style="list-style-type: none"> • Leaseholders could still choose to challenge on a case-by-case basis • Legislation could change between test case and carrying out planned works. • Cost involved in taking test case. Consultation would still be required when actual works are planned.

Staffing Resources

Option	Advantages	Risks
Do nothing – apply collection as we do now.	<ul style="list-style-type: none"> • No additional costs to Leaseholders or the HRA. 	<ul style="list-style-type: none"> • Doesn't address the recommendations around enhanced levels of engagement. • Other than the improved letters engagement with Leaseholders would remain unchanged.
Engage additional resource to support Leaseholder Engagement Activities	<ul style="list-style-type: none"> • Addresses the concerns raised over the level of engagement. • Has the ability to improve the service further through a Leaseholder Forum. • Leaseholders become more 	<ul style="list-style-type: none"> • Costs will have to be met from the HRA budget as leases don't allow for management fees. • Leaseholder forum may not integrate with other engagement forums.

	<p>engaged in the overall process.</p> <ul style="list-style-type: none"> • Customer focussed. • Dedicated resource able to keep up with changing legislation. 	
Engage with Leaseholders through the wider Tenant Engagement Resource	<ul style="list-style-type: none"> • Addresses the concerns raised over the level of engagement. • Has the ability to improve the service further through a Leaseholder Forum. • Leaseholders become more engaged in the overall process. • Customer focussed. • Links with other engagement forums. 	<ul style="list-style-type: none"> • Costs will have to be met from the HRA budget as leases don't allow for management fees. • May not have the expertise to keep up with legislative changes.

Payment options

Option	Advantages	Risks
<p>Do nothing – apply collection as we do now.</p> <p>Leaseholders would have to make payment from personal savings, private borrowing or through an agreed payment plan with the Council based on personal circumstances.</p>	<ul style="list-style-type: none"> • Compliant with current terms of the lease. • Compliant with current financial regulations and Corporate Credit Policy. • Limited amount of administration for either party if paid in full. • Doesn't require Leaseholder to take out loan or security in any way. • Payment plan arrangements made 	<ul style="list-style-type: none"> • Many Leaseholders are on fixed income and have limited/no savings and cannot afford to pay. • With no interest being paid the term of any repayment plan negatively affects its value to the Council.

	to suit individual circumstances as appropriate	
<p>Service Charge Loan – Leaseholders would be encouraged to apply for a loan through Homes England – there are certain criteria surrounding the loan. The loan carries interest and is secured against the leasehold interest.</p>	<ul style="list-style-type: none"> • Compliant with current terms of the lease. • Accessible to all Leaseholders once minimum service charge value is met. • Limited impact on staffing resources. 	<ul style="list-style-type: none"> • May not be affordable to Leaseholders on a fixed income. • Some Leaseholders may not be comfortable taking out a loan. • Not clear if product is Shari’ah Compliant. • May lead to repossession claims if loans are unpaid. • Risk of non-payment and additional financial burden on HRA • Additional interest costs payable by the leaseholder • Minimum contribution required by leaseholder (£4,186)
<p>Deferred payment by way of a discretionary loan provided by the Council. This would operate similar to the current arrangements for payment plans but would be set out in a more formal manner.</p>	<ul style="list-style-type: none"> • Compliant with current terms of the lease. • 	<ul style="list-style-type: none"> • May not be affordable to Leaseholders on a fixed income. • Some Leaseholders may not be comfortable taking out a loan. • Would need a clear process that deals with Leaseholders failing to pay. • Risk of non-payment and additional financial burden on HRA • Risk of significant amount of bad debt which would have to be written off. • May lead to repossession claims if loans are unpaid. • Will have implications on staffing resources involved in setting up and monitoring payment plans.

		<ul style="list-style-type: none"> • Additional interest costs payable by the leaseholder
<p>Voluntary charge on the property. The leaseholder would agree to a charge being placed on the property, this would be repaid when the property is sold.</p>	<ul style="list-style-type: none"> • Compliant with current terms of the lease. • Compliant with current financial regulations, although this is currently only actioned as a last resort and in limited circumstances. • Limits immediate financial risk to Leaseholder. • Limited impact on staffing resources. 	<ul style="list-style-type: none"> • May not be approved by other lenders or those with existing charges on the property. • Leaseholders could end up with multiple charges on the property over a period of time. • The Council may not realise the income for many years, additional financial burden on the HRA. • Leaseholders may be concerned that there is no value in their Lease due to the scale of charges. • Charges may impact on the ability of a Leaseholder to sell and move. • Leaseholders would need to take independent financial advice and there is a cost to implementing a charging order.
<p>Prompt payment discount. A discount (percentage to be agreed) would be applied to any payments in full made within the required 28 days. This would encourage Leaseholders to make use of savings to pay for charges.</p>	<ul style="list-style-type: none"> • May be attractive to Leaseholders who have savings and have the ability to pay immediately. • Council recovers money quickly. • Limited impact on staffing resources. 	<ul style="list-style-type: none"> • Many Leaseholders will be unable to pay larger bills early and will be unable to take advantage. • Not compliant with financial regulations or corporate credit policy. • Sets precedent for other types of income collection which would not be sustainable. • HRA budget would have to make up the difference.

		<ul style="list-style-type: none"> • May be ultra vires as HRA would in effect be subsidising non-HRA costs
--	--	--

Resource Implications

Works – the works element, assuming that costs are recoverable under the lease, should be cost neutral as any monies expended by the Council would be recovered from the Leaseholder. It is important that the correct legal process is followed in order to allow the Council to recover costs. No specific works budget is identified for Leaseholder works because of the full recovery process. There are however risks where recovery is not possible, and debts remain outstanding; in such cases consideration needs to be given to placing a charge on the property which at least allows for deferred recovery.

Staffing – it is anticipated that an increase in the levels of consultation beyond the legal minimum will require the Council to engage additional staffing resources to support. The exact nature of the engagement will be set out in the policy document and will be costed as part of that process. As leases do not allow for a management charge to be applied it is anticipated that any additional staffing resource will have to be funded through the HRA.

Consultancy – It is anticipated that from time-to-time external consultancy support will be required in order to review and update policies and documentation in line with changes to legislation. It is expected that this would be no more than £2,500 per annum (adjusted for inflation) and in the absence of the ability to apply a management charge under the lease would have to be met from the HRA budgets.

HRA Business Plan – It is assumed that the costs associated with works will be fully recoverable from Leaseholders and will have no overall impact on the HRA budgets. It should however be noted that the HRA budget will have assumed that roof replacements will take place on an agreed life cycle basis and that costs will have been allocated based on a roof renewal. Where extensive remedial works are carried out these will be in addition to the renewal costs already built into the HRA Business Plan, the outcome of this will mean an increased cost to the HRA Business Plan. *(i.e. the HRA Business Plan will have assumed a renewal cost of £36,000 in the current 30-year cycle, with remedial works being done immediately and a renewal in 7-10 years this could mean a cost of £44,000 in the current 30-year cycle)*

Recovery of charges - Recovery of charges is managed through the Revenues Team in Finance. Various options have been identified by Campbell Tickell for the recovery of charges, however, deferred payments and loan schemes will increase the risk of non-payment and bad debts and increase the financial burden on the HRA. Offering a prompt payment discount may also be ultra vires as it would mean that the HRA is in effect subsidising non-HRA costs. No change is proposed to the current position, whereby leaseholders who have the means to pay their charges on a timely basis, do so, and for those who are struggling, arrangements for payment are made on an individual basis, which are affordable for the leaseholder but also aim to maximise income collection for the Council.

Inflation – On the assumption that both budgets and costs increase annually in line with CPI the effects of inflation have been ignored. Leaseholders intending on using savings or Leaseholders whose income does not increase in line with inflation may feel the impact of the inflationary increases associated with delaying the renewal works.

Legal/Risk Implications Background

Previous legal advice has set out clearly that where the Council is entitled to collect service charges it must do so.

The new suite of letters produced by Campbell Tickell are both legally compliant and customer friendly.

Campbell Tickell has confirmed that the procurement process and the early stages of Leaseholder consultation were legally compliant.

It is known that changes to legislation relating to Leaseholder is due and that consideration will need to be given to this in any future policy development.

Equalities Implications

See attached draft Equalities Impact Assessment [EIA]. A detailed EIA will be completed once a series of recommendations are available for Cabinet.

Environment and Sustainability Implications (including climate change)

An Environment and Sustainability assessment will be carried out once a series of recommendations are available for a Cabinet decision.

Background Information

23rd February 2023 – Corporate Scrutiny Committee make recommendations to Cabinet around Leasehold Service Charges.

21st August 2023 – Full Council agrees to Strategic Review of Leasehold Service Charges

Report Author

Paul Weston – Assistant Director Assets

Appendices

Appendix 1 – Campbell Tickell Report

Appendix 2 – Suite of letters produced by Cambell Tickell