

Thursday, 10 October 2024

Corporate Scrutiny Committee – Wednesday, 9 October 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 work done by Campbell Tickell in relation to Leasehold Service Charges and sets out a series of recommendations in relation to that report.

Recommendations

It is recommended that:

1. Cabinet notes the recommendations set out in the Campbell Tickell report at Appendix 1 and specifically endorses the recommendations from that report for implementation. Details on the specific recommendations contained within the report are set out in the Executive Summary. (see report at Appendix 1)
2. Cabinet endorses and reaffirms the recovery of sums related to Leasehold Service charge invoices in accordance with the Corporate Credit Policy (previously approved by Cabinet on 31st August 2023)
3. Cabinet approves the development of a service improvement plan that considers the timing and resources required to implement the recommendations set out at point 1 above. (see draft at Appendix 2)
4. Cabinet approves the commencement of remedial works in line with the surveys that have been completed, this would include commencement of consultations and the issuing of invoices upon completion.
5. Cabinet approves the use of Campbell Tickell to assist in the development of the Leaseholder Policy [recommendation (d) in Campbell Tickell report]
6. Cabinet approves the updated s20 notices produced by Campbell Tickell [recommendation (a) in Campbell Tickell report] (see Appendix 3)
7. Cabinet approves the responses to matters referred to Cabinet as set out in the table below.
8. Cabinet approves taking a test case through the First Tier Tribunal to test assumptions in relation to component renewal. This will be subject to identifying one or more Leaseholders who are willing to participate in such a test case and is likely to take place once further engagement mechanisms are in place with Leaseholders..

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.

During discussions with Leaseholders and Campbell Tickell the question was raised as to whether the current leases allowed for major works. This question appears to centre on whether or not renewal at the end of a component's life falls under the definition of a repair and, whilst a previous First Tier Tribunal case appears to support the fact that current leases do allow for renewal of major components at end of life it is felt that there may be benefit in taking a test case through the First Tier Tribunal to confirm the position.

Contained within the report from Campbell Tickell are a number of specific recommendations:

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Report Item	Recommendation -	Action Required	Progress to Date
a	Revise Section 20 notices so they are more customer friendly, and the explanation of works goes beyond statutory requirements.	S.20 Notices drafted by Cambell Tickell and included at Appendix 3	Documents drafted and included in report for approval.
b	Ensure Section 20 notices are supported by additional information that explains the Section 20 process and answers questions commonly asked by leaseholders	S.20 Notices drafted by Cambell Tickell and included at Appendix 3	Documents drafted and included in report for approval.
c	Update website to provide leaseholders with more detail on the Section 20 procedure.	Develop Leaseholder policy and share via website.	To be actioned
d	Draft Section 20 policy and procedures to ensure Section 20 notices are completed and administered correctly and that officer responsibilities are defined for each stage of the process. Procedures should include some informal consultation with leaseholders before entering the formal Section 20 process.	Appoint Campbell Tickell to work with the Council to develop policy.	To be actioned.
e	The Council should clearly save the original, dated Section 20 consultation notices to ensure no ambiguity when subsequent queries are raised.	New notices will be properly recorded upon issue.	To be actioned once new notices are issued.

f	Notices should be addressed to the leaseholder at the correspondence address.	Where Leaseholders have given an alternative address for correspondence this is already being used.	To be actioned once new notices are issued.
g	Develop a Repayment Options policy that gives leaseholders repayment options for the cost of major works	AD Finance, s151 Officer, ED Communities and Portfolio Holder to consider options.	To be considered See table below
h	Review all lease agreements to ensure officers understand the terms of each, in particular the extent of the demise of the property.	In-house team to be developed, training and support to be provided.	To be actioned
i	Improve knowledge of leasehold legislation and practice across TBC by engaging a retained leasehold consultant to advise on leasehold matters.	The services of an external Leasehold specialist to be procured. Policy to be regularly reviewed and updated.	To be actioned.
j	<p>Modernise lease agreements terms in order that leases issued moving forwards:</p> <p>Review RTB lease for new RTB sales to include renewal and improvement clauses and the ability to collect a management fee to deliver the leasehold service.</p> <p>Review approach to lease extensions for existing leaseholders. Consider offering leaseholders a non-statutory route to lease extensions with incentives such as reduced premium costs, legal costs etc. if renewal, improvement and management fee clauses are included in the new lease.</p> <p>Explore whether legally it would be possible to introduce a management fee to existing leaseholders to pay for the delivery</p>	<p>Right to buy team to work with external legal support to review lease documents.</p> <p>Leasehold Policy to include provisions for lease extensions and lease amendments.</p> <p>External legal support to be commissioned to advise on the inclusion of management charges and the possible routes to achieving this. Further approvals for this to be sought from Cabinet once legal advice is available.</p>	To be actioned

	of the leasehold service. There is case law (Brent v Hamilton 2006) that suggests that this may be possible.		
k	Update the stock condition survey information with the outcomes of the roof inspections to provide a current data base to inform investment.	Carry out stock condition survey and update records.	Stock condition survey is underway and due to be complete before the current financial year-end.
l	Use repairs, void and other recent feedback information to update the stock condition data base with regular operational information.	Carry out stock condition survey and update records.	Stock condition survey is underway and due to be complete before year-end.
m	Undertake on site sample inspections to validate the life cycle projections to inform the investment programme for imminent planned or major works	Carry out stock condition survey and update records.	Stock condition survey is underway and due to be complete before year-end.
n	Identify the specific blocks that are likely to be in the following year's programme and identify the number of leaseholders likely to be affected to assist with both consultation and cost and income analysis	Carry out stock condition survey and update records. Condition survey will identify future programmes. Condition survey will drive MTFs and HRA business plan	Stock condition survey is underway and due to be complete before year-end. Information to be used to develop programmes.
o	Prepare 5 year and 30 year investment plans to clarify potential investment decisions and financial impact.	Carry out stock condition survey and update records. Condition survey will identify future programmes. Condition survey will drive MTFs and HRA business plan	Stock condition survey is underway and due to be complete before year-end. Information to be used to develop programmes.
p	Publish indicative 5 year investment plans annually and ensure leaseholders are aware when works are planned for their building.	Indicative programmes to be published based on condition survey data, HRA Business plan and MTFs budget setting.	To be actioned
q	Following the recommendations in the roof report, assess the costs for each block for the remedial works to prolong the life of the roof for approximately 10 years and ensure this provides value in delaying roof works.	Costings for works identified from survey to be costed by the planned works contractor using the SOR and existing contracts.	Costs obtained from Wates

r	On an 'asset by asset' basis, either undertake the remedial works or replace the roof.	Conduct options appraisal to compare repair against renewal.	See table below
s	If remedial works are progressed, TBC should consider if other works can be undertaken while the access equipment is in place.	Work with contractor and condition data to identify additional works.	To be actioned
t	Advise residents of the proposed remedial works programme and likely timescale for roof renewal.	Commence s20 stage 3 consultation process once approved by Cabinet.	To be actioned upon approval by Cabinet to re-commence consultation process.
u	Review the condition of the roofs in five to seven years to assess the point renewal will be needed.	Future surveys to be diarised but also expected to be inspected as part of the Councils ongoing stock condition updates.	To be actioned

The items marked as 'To be actioned' in the table above will form the basis of the 'Service Improvement Plan'. The draft 'Service Improvement Plan' is attached at Appendix 2 and sets out proposed timescales for implementation.

Matters referred to Cabinet by Scrutiny Committee

The following recommendations were made to Cabinet by the Corporate scrutiny Committee.

Recommendation	Comment/Action
1. Strongly recommended that Cabinet adopt the recommendations of the report produced by Campbell Tickell.	This is addressed in the body of the report and tables above.
2. This Council further develops a Service Improvement Plan, and this comes back to the Corporate Scrutiny Committee.	An initial draft of the outline actions is included at Appendix 2.
3. The Portfolio Holder and Officers devise an appropriate goodwill payment using industry standards as a small gesture from this Council to these residents in light of the inconvenience and worry caused during this period and seek approval from this Scrutiny Committee for this.	There doesn't appear to be any specific basis for the payment of any sort of compensatory or 'goodwill' payment to Leaseholders in respect of this matter. With this in mind compensation should not be given. Should any Leaseholder be able to demonstrate actual losses arising from the consultation process consideration can be given to compensation in line with the Housing Compensation Policy.
4. That Cabinet consider the adoption of a plain English crystal mark or similar alternative across the board for all Tamworth Borough Council communications.	This item has not been considered as part of this report as it relates to a corporate approach to communications and is not specific to the Leaseholder review.

Options Considered

Immediate Renewal vs Remedial Works [recommendation (r) from Campbell Tickell report]

The options considered in response to recommendation (r) are set out below, the recommendation being taken forwards is the partial renewal based on the survey work completed by Cambell Tickell [item 3 in table]

Option	Advantages	Risks
<p>1. Complete all works as planned and recover costs in full from Leaseholders</p>	<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.
<p>2. Renew roofs and any other component upon Failure</p>	<ul style="list-style-type: none"> • Full life of component achieved. • Unlikely to be challenged by Leaseholders as failure has already occurred. • Council should be able to forego the normal statutory consultation process as work would be completed as a matter of urgency. 	<ul style="list-style-type: none"> • Assuming the underlying renewal costs remain the same there will be additional costs associated with the emergency works to make the property watertight on the report of a failure. • 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.

		<ul style="list-style-type: none"> • 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>3. 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 is likely to be exacerbated by the fact that the components were known to be at or beyond end-of-life. • 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.

		<ul style="list-style-type: none"> Leaseholders may be adversely affected by inflation.
4. 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

The preferred option is to take a test case through the First Tier Tribunal (option 2 from the table below) subject to being able to identify one or more Leaseholders willing to participate in the process. It is anticipated that this process will only take place once there is a more developed approach to engagement with Leaseholders as a group. This engagement work will form part of the overall Service Improvement Plan.

Option	Advantages	Risks
1. 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. Goes against Campbell Tickell recommendations.
2. 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 	<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

	<p>the time comes to carry out renewals.</p> <ul style="list-style-type: none"> • 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. 	when actual works are planned.
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Staffing Resources

The resources required to deliver services to Leaseholders will be considered and developed further as part of the overall Service Improvement Plan development.

Option	Advantages	Risks
1. 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.
2. 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 engaged in the overall process. • Customer focussed. • Dedicated resource able to keep up with changing legislation. 	<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.
3. Engage with Leaseholders through the wider	<ul style="list-style-type: none"> • Addresses the concerns raised over 	<ul style="list-style-type: none"> • Costs will have to be met from the HRA budget as

Tenant Engagement Resource	<p>the level of engagement.</p> <ul style="list-style-type: none"> • 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. 	<p>leases don't allow for management fees.</p> <ul style="list-style-type: none"> • May not have the expertise to keep up with legislative changes.
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Payment options [recommendation (g) from Campbell Tickell report]

It is the view of the s151 Officer that option 1 from the table is the only option that complies with the current Corporate Credit Policy and as such is the option that should be adopted. This option still allows for consideration to be given to individual circumstances and for payment plans to be implemented where appropriate.

Option	Advantages	Risks
<p>1. 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. • Limited amount of administration for either party if paid in full. • Doesn't require Leaseholder to take out loan or security in any way. • Compliant with existing Corporate Credit Policy. 	<ul style="list-style-type: none"> • Many Leaseholders are on fixed income and have limited/no savings and cannot afford to pay. • Invasive and administratively onerous process when setting up payment plans. • Leaseholders may end up with multiple payment plans. • With no interest being paid the term of any repayment plan negatively affects its value to the Council.
<p>2. Service Charge Loan – Leaseholders would be encouraged to apply for a loan through Homes England – there are certain criteria</p>	<ul style="list-style-type: none"> • Compliant with current terms of the lease. • Compliant with current financial regulations. • Accessible to all Leaseholders once 	<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.

<p>surrounding the loan. The loan carries interest and is secured against the leasehold interest.</p>	<p>minimum service charge value is met.</p> <ul style="list-style-type: none"> • Limited impact on staffing resources. • Likely to be compliant with current Corporate Credit Policy 	<ul style="list-style-type: none"> • 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
<p>3. 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. • Compliant with current financial regulations. 	<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. • Additional interest costs payable by the leaseholder • May lead to repossession claims if loans are unpaid. • Will have implications on staffing resources involved in setting up and monitoring payment plans. • Not compliant with current Corporate Credit Policy. • Risk of non-payment and additional financial burden on HRA • Risk of significant amount of bad debt which would have to be written off.
<p>4. Voluntary charge on the property. The leaseholder would agree to a charge being placed on the property, this would</p>	<ul style="list-style-type: none"> • Compliant with current terms of the lease. • Compliant with current financial regulations although this is currently only 	<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

<p>be repaid when the property is sold.</p>	<p>actioned as a last resort and in limited circumstances.</p> <ul style="list-style-type: none"> • Limits immediate financial risk to Leaseholder. • Limited impact on staffing resources. 	<p>on the property over a period of time.</p> <ul style="list-style-type: none"> • 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>5. 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. • HRA budget would have to make up the difference. • Not compliant with current Corporate Credit Policy. • Sets precedent for other types of income collection which would not be sustainable.

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 General Fund 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 some options have more impact on the resources needed than others. Typically, those options where some sort of deferred payment and/or loan scheme is suggested will have a greater impact on staffing resources. The prompt discount option would have a detrimental effect on the HRA budget and those options with some sort of deferred payment without interest would reduce the value of the charges collected due to the effects of inflation.

Deferred payments and loan schemes will increase the risk of non-payment and bad debts and increase the financial burden on the HRA. It is the view of the s151 Officer that offering a prompt payment discount may also be ultra vires as it would mean that the HRA is in effect subsidising non-HRA costs. The current position of the Council remains that, 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

There are no new Equalities impacts arising from this report. A Community Impact Assessment can be found at Appendix 4.

Environment and Sustainability Implications (including climate change)

None specifically arising from this report. Impact Assessments would apply to specific programmes of work which due to the varied nature will have varying degrees of impact.

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

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Appendices

Appendix 1 – Campbell Tickell Report

Appendix 2 – Draft Improvement Plan

Appendix 3 – Suite of letters produced by Campbell Tickell

Appendix 4 – Impact Assessment