



## **POLICY AND RESOURCES SCRUTINY COMMITTEE – 17TH JANUARY 2017**

**SUBJECT: LEASEHOLDER CHARGES**

**REPORT BY: CORPORATE DIRECTOR - COMMUNITIES**

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### **1. PURPOSE OF REPORT**

- 1.1 This Report responds to a request by members of the Policy and Resources Scrutiny Committee for further information on leaseholder legislation, process and good practice.

### **2. SUMMARY**

- 2.1 This report covers leaseholder legislation, associated processes including consultation and procurement financial obligations of leaseholders, including charges and payment options, and good practice guidance.

### **3. LINKS TO STRATEGY**

- a. This report links to the Single Integrated Plan 2013-2017 priority to “*improve standards of housing and communities giving appropriate access to services across the county borough*”.
- b. This report links to the Local Housing Strategy aim of “*providing good quality, well managed homes in communities where people want to live and offer people housing choices which meet their needs and aspirations*”.
- c. This report would link most closely to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2016:
  - *A prosperous Wales*
  - *A resilient Wales*
  - *A healthier Wales*
  - *A more equal Wales*
  - *A Wales of cohesive communities*.

### **4. THE REPORT**

- 4.1 There are currently 417 flats within the Council’s housing stock now owned by leaseholders, following their sale under the Right to Buy (RTB) scheme. Many of these flats would have been sold on to others since the original purchase from the Council. There are currently at least four different leases in use depending on when the RTB was exercised and their landlord at the time of sale. Approximately 50% of leasehold properties are sub-let bringing in rental income for the leaseholder. The Council has continuing responsibilities to maintain the external structure and communal areas of the blocks of flats.

## 4.2 Legislation

Leasehold matters are mostly covered in the Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002). This sets out the formal process Section 20 Notice procedure for consulting with leaseholders about service charges. This process includes a Notice of Intention which gives leaseholders information on the proposed works, allows them to nominate a contractor and gives a period of 30 days to return any comments or observations. This is followed by a Notice of Estimates which advises on the proposed contractor and the estimated cost of works. Again leaseholders have 30 days to return any comments or queries. A further notice may be required depending on whether the lowest tenderer has been awarded the contract. If the contract is not awarded to the lowest tenderer, this additional notice (Notice of Award) would outline the reasons for awarding the contract elsewhere.

The lease determines the leaseholder's contribution towards costs and is usually determined by the number of flats in the block for example a leaseholder in a block of four would contribute one quarter, in a block of six, one sixth. The lease also determines the types of costs that can be charged for, there are different types of lease in use but the main difference is between leases which allow charges for repairs only or leases which allow charges for repairs and improvements. If the consultation process cannot be followed or is not followed correctly, the leaseholder's contribution towards completed works is capped at £250, irrespective of the actual cost of the work. Any costs not recovered from leaseholders has to be covered by the Housing Revenue Account (HRA), in which case tenants' rents are subsidising work carried out for private owners.

The leasehold procedures currently being used are in line with legislation and national guidance; they are currently being reviewed with our Legal Section to ensure they are as up to date as possible.

## 4.3 Charges

The main charges for leaseholders are:

### 4.3.1 Service charges, billed annually, usually in September and made up of:-

**Ground rent;** an amount fixed by the lease that varies between 10 pence and 10 pounds.

**Buildings Insurance;** arranged via the Council on an annual basis. The contract has been competitively tendered in the last year and runs for three years.

**Management and administration fee;** currently £10 per year. This only brings in an income of £4,170. The minimum annual cost of administering the leaseholder properties is currently £53,034. This includes preparing and serving all the required notices, responding to queries on charges, responding to solicitors enquiries for buyers and sellers of leasehold flats, preparing completion statements for solicitors in respect of outstanding charges, site visits to determine responsibility for works or to explain the nature of works/charges, visits to advise potential buyers of leasehold responsibilities, responding to comments and observations made on legal notices, liaising with surveyors and contract managers, responding to complaints, preparing Tribunal documents. It does not include any costs for any support services such as those received from finance and legal services. A more realistic cost for the management and administration charge has been calculated to be £127 per leasehold property per year and other public sector landlords in this region have charges in this range.

Whether the charge can be levied at all will depend on the terms of the lease. It is intended that more work is carried out to assess a realistic management and administration charge, at which time consideration will be given as to how this will be applied.

Currently no charges are levied for solicitors' enquires for sale or purchase of leasehold flats, other landlords charge for these services so it is also intended to assess charges for those types of enquires. Charges would be due from the solicitor making the enquiries.

**Response Repairs:** this charge covers any repairs reported by a tenant or leaseholder that are required to the exterior of the block/communal areas. Response repairs are recharged at the schedule of rates costs. Records are provided from our repairs database and include descriptions of the repair carried out, when it was completed and which work team carried out the repair. The majority of response repairs are carried out by our in-house team but where external contractors are used, competitive quotations or tenders are sought.

Programmed repairs such as chimney stack removals, that are likely to cost more than £250 per leaseholder or £1,000 for the block, are tendered either on a competitive tender basis or a framework arrangement in line with current procurement procedures.

- 4.3.2 Major Works billed on completion of the contract. This includes the works costs and an administration charge.

#### Procurement for Major Works

All work is procured in line with UK and EU procurement legislation and our own internal standing orders for contracts. The procurement process depends on the value of works being tendered. Contracts are established from predetermined frameworks where these have been procured in line with the leaseholder consultation process or by undertaking individual tender processes for leaseholders in consultation with procurement which will result in the award of formal contracts. Depending on the most appropriate route the procurement process is supported by third party due diligence such as "Construction Line" and SSIP - Safe Systems in Procurement Registration. Again the level and type of accreditation is determined once the value of contracts is established.

All contractors undertaking works for the authority must have appropriate levels of Public Liability and Employer Liability insurance. All contractors must agree to the Authority's terms and conditions (industry standards) and agree to work in line with our Tenants Charter. As part of the procurement process and to ensure the authority obtains best value it is a requirement of standing orders to complete a due diligence if the Authority receives less than 50% return. Any officer wishing to proceed with award with limited response must obtain approval as per standing orders.

Leaseholders have an opportunity at the Notice of Intention Stage to nominate a suitable contractor that the Council must consider. Any nominated contractor would, however, have to meet the same criteria as those invited to tender by the Council, including passing the same checks, and being able to undertake the package of work as specified. It is not acceptable for a nominated contractor to only undertake work to the leasehold property, as work is issued as a contract package covering a number of properties which should achieve economies of scale.

#### 4.4 Billing

- 4.4.1 Leaseholders receive an estimate of costs before work starts and have an opportunity to comment on those costs. The invoice is not sent out until the contract is completed and all final costs from the contractor have been received. There are a number of different payment options available as outlined in Section 4.5. Charges are based on the records available to the Leasehold Services Officers and would include a breakdown of the final costs provided by the Contract Manager's team taking into account any variations made during the works.
- 4.4.2 Leaseholders are charged in accordance with their lease, some leases allow the Council to charge for repairs and improvements, some only allow the Council to charge for repairs. There could therefore be 2 leaseholders in the same contract who are charged differently for the same package of works. Also, as there is more than one contract running in some areas, leaseholders in a local area may be charged differently because different contractors will have participated in separate tender exercises.

- 4.4.3 In addition to the actual cost of works, a 10% administration charge is currently added to invoices for major works. This contributes to the costs of the time surveyors, contract managers, quantity surveyors, clerk of works spend on leasehold properties.
- 4.4.4 The Welsh Housing Quality Standard (WHQS) means that more works are currently being undertaken for leaseholders in one contract than might normally be the case, resulting in higher bills. Adding a 10% administration charge can significantly increase the cost, it is therefore intended that the administration charges for WHQS works be capped pending further investigation of possible alternative charging mechanisms.
- 4.4.5 If leaseholders are dissatisfied with costs, initially they raise their query with the Leasehold Services Officers who try, with assistance from appropriate Technical Officers, to resolve the query. This can sometimes result in charges being upheld, reduced or withdrawn. If leaseholders are dissatisfied with the response at this point, they are able to utilise the corporate complaints policy and they can also request a determination of charges by the Leasehold Valuation Tribunal (LVT). There is a cost to the leaseholder to submit an application to the LVT.
- 4.4.6 Disputes are inevitable and nationally, Welsh Government (WG) has recently suggested introducing Early Neutral Evaluation, a process in which the parties appoint an independent person to provide a non-binding opinion on the case in dispute. Progress by WG on introducing such a process will be welcomed.
- 4.5 Payment Options
- 4.5.1 The financial circumstances of each leaseholder varies, so there needs to be the opportunity to tailor a payment solution from a range of options. Leaseholders can arrange their own finance but there are several options available from the Council. If leaseholders are unable to meet the cost of works there are currently options to pay by interest free instalments over 24 months or 36 months depending on whether or not the leaseholder is in employment. Payment periods could also depend on whether the leaseholder is resident in the property or is sub-letting and receiving a rental income.
- 4.5.2 The Council can also offer loans. Depending on the leaseholder's circumstances and when the property was bought this could be a mandatory loan over a maximum of 10 years or a discretionary loan over a maximum of 25 years. Interest would be chargeable on the mandatory loan. The interest is set at a government set rate and this could be higher than the interest rate charged by banks and building societies. For the discretionary loan, interest does not have to be charged. The Private Sector Housing Section also administers the national Home Improvement Loan scheme that may also be available to leaseholders depending on whether the proposed works meet the loan criteria. No interest is charged but currently there is an administrative fee of 8% (or £395 minimum) which includes an £80 fee to cover the affordability test undertaken by a partner Credit Union which establishes an applicant's ability to repay the loan. Repayment periods vary from 2-10 years for a leasehold owner occupier or 2-5 years where a leaseholder sub-lets the property.
- 4.5.3 Another option is a discretionary voluntary charge. This involves a legal charge being secured against the value of the property which would be redeemed when the property is sold or assigned. The charge is noted at the Land Registry and therefore the property should not be sold without the debt being cleared. This option would be a last resort where a leaseholder is unable to sustain loan repayments or obtain alternative finance. There must be sufficient equity in the property to cover the loan.
- 4.5.4 In some circumstances the Department of Work and Pensions may consider assistance to repay service charge bills.

## 4.6 Best Practice

- 4.6.1 In September 2016 Welsh Government launched a Major Works Good Practice Guide for social landlords. The main areas subsequently identified for further development in Caerphilly would be around leaseholder involvement prior to issue of the legal consultative notices, specifically an input into discussions about proposed works (See Appendix 1) and providing feedback on works completed before invoices are issued. Allowing leaseholders to have a say and be involved in the process may help to reduce disputes.
- 4.6.2 At present the leaseholder service offers many of the suggested internal good practice points such as a breakdown of costs, face to face meetings, different payment options but what is currently lacking is the involvement and engagement of leaseholders in the overall process. Some attempts have been made to establish a leaseholder forum, most recently during the stock transfer ballot process, but with little success.
- 4.6.3 With the WHQS programme under way the Leaseholder Services Officers have limited capacity to operate over and above the legal consultation process and day to day administration, partly due to this administration being very labour intensive. A suitable software system is being investigated to improve efficiency as leaseholder information is currently held in several places on systems which do not interact. However, potentially the Tenant Participation Officers within the wider team (one of whom has extensive leasehold experience) could be utilised to develop a framework for future leaseholder engagement, based on the principles outlined in the good practice guide.
- 4.6.4 The process for dealing with leaseholders is covered by legislation and the service provided by Caerphilly Homes to support and assist leaseholders already goes beyond our legal requirements, however, it is acknowledged that there is scope for further improvements to be made.

## 5. **WELL-BEING OF FUTURE GENERATIONS**

- 5.1 This report contributes to the Well-being Goals as set out in Links to Strategy above. It is consistent with the five ways of working as defined within the sustainable development principle in the Act in that:-
- it aims to make the leasehold service more efficient and fair in terms of individual charges and in terms of the impact on the Housing Revenue Account
  - the service is sustainable in terms of cost and
  - service users become involved in decisions about the level and quality of service they receive.

## 6. **EQUALITIES IMPLICATIONS**

- 6.1 There are no equalities implications arising from this report.

## 7. **FINANCIAL IMPLICATIONS**

- 7.1 There would be financial implications for leaseholders from raising the management charge. There would be benefits to some leaseholders from capping the administration charge. The range of payment options available to leaseholders allows for consideration of their individual circumstances.
- 7.2 There are implications for the HRA by not recovering the costs of response repairs and major works to leasehold properties, and for not recovering the actual costs of administering the leasehold service. Any non recovery increases the amount that has to be covered by tenants' rents.

## **8. PERSONNEL IMPLICATIONS**

8.1 There are no personnel implications arising from this report.

## **9. CONSULTATIONS**

9.1 The report reflects the views of the consultees.

## **10. RECOMMENDATIONS**

10.1 This is an information report, Members are asked to note the contents.

## **11. REASONS FOR THE RECOMMENDATIONS**

11.1 To ensure that the leasehold service is fit for purpose and sustainable, takes into consideration the increased costs to leaseholders of WHQS works and allows leaseholders the opportunity to become involved in the future decision-making process.

## **12. STATUTORY POWER**

12.1 Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002).

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Background Papers:

Policy and Resources Scrutiny Committee Report 19th January 2016

Appendices:

Appendix 1 Extract from Major Works Good Practice Guide for Social Landlords 2016

**Extract from Major Works**

**Good Practice Guide for Social Landlords**

**Developed by LEASE and funded by Welsh Government**

Leaseholders should be able to comment on:-

- Contractor selection
- Component selection
- Customer care specifications when drafting contracts
- Tender specifications
- Quality assurance contract awards

Leaseholder services should:-

- Feed comments into the programme of works
- Offer or direct leaseholders to benefits advice, loans or grants (landlords should check they have appropriate licences)
- Publicise any repayment option offered by the landlord
- Explain the consequences of non-payment of a service charge
- Identify any leaseholders who may be in exceptional hardship and, possibly, offer them extended repayment plans

Landlords should create a feedback framework for leaseholders using:-

- Formal observations
- Satisfaction surveys
- Meetings
- Letters
- Online /portal

Individual leaseholder consultation meetings should:-

- Highlight major works
- Identify the costs
- Check whether the leaseholder is able to manage the cost
- Offer help and advice on payment options
- Clarify whether the leaseholder has any health issues
- Identify any preferred methods of communication
- Offer the leaseholder the opportunity to question the process

Leaseholders should be encouraged to set up recognised tenants associations (RTA's) RTA's allow people to work together to represent the views of all the residents in their area. Landlords can help those groups with training needs. Leaseholders should be involved when developing organisational policies and strategies. A number of landlords have leaseholder forums to help with this.

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