

Report to Housing Scrutiny Panel

Date of meeting: 22 October 2013

Portfolio: Housing – Cllr D. Stallan

**Subject: Request For Scrutiny Panel Review –
Leaseholder Contributions for
Improvements to Common Parts of Flat
Blocks**



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Recommendations:

- (1) That the Scrutiny Panel notes the contents of the report;**
- (2) That further consideration be given to the benefits of operating a “sinking fund” for new leaseholders in new or existing flat blocks where there are currently no leaseholders, and a further report be brought back to a future Scrutiny Panel meeting;**
- (3) That the Scrutiny Panel consider offering leaseholders alternative loan terms;**
- (4) That a recommendation be made to the Finance & Performance Management Cabinet Committee to make provision in the General Fund for the proportion of costs attributed to shops and other associated premises that were transferred from the HRA to the General Fund; and**
- (5) That the Scrutiny Panel consider whether or not a response should be submitted to the consultation paper issued by the DCLG on Protecting Local Authority Leaseholders from Unreasonable Charges, and if so to provide Officers with any comments for inclusion.**

Background

1. A request for a Scrutiny Panel Review has been received from Cllr Mrs J Hart and Cllr K Angold-Stephens, which is summarised as follows:

“The difficulty this council encounters when improvements to communal areas of flat blocks are required and when there are tenants and lease-holders sharing the same building and therefore sharing the same communal areas. This issue has been brought to my attention because of specific problems encountered when an attempt was made to request essential improvements to the communal areas of some large flat blocks. I have come across similar problems in communal areas of small flat blocks.”

A full copy of the request can be found At appendix A.

2. Following the introduction of self-financing and subsequently the Council's new "Modern Homes Standard", more and more work is being planned to be undertaken to the Council's housing stock, and at more regular frequencies, for which leaseholders are required to pay their proportion of the "charges" if that work affects components in and around their flat blocks. Some of this work is essential repairs where elements are at the end of their useful life and are being replaced on a like for like basis; some could be classified as an improvement, such as door entry, cavity, loft or external wall insulation.
3. "Essential Repairs" and "Improvements" are the fundamental issues of this request for Scrutiny Review. To understand the problems the Council encounters when considering what works are to be undertaken, what category it fits and when it should be carried out, we need to consider a number of factors.

The Lease

4. The lease is always the first thing that needs to be taken into account when planning works to flat blocks. In the past, when the Council has sold flatted accommodation under the Right to Buy, it has provided one of two types of lease, which can be categorised as either pre or post 1991 leases. There is one clear difference between the two leases; under those leases completed prior to 1991, the Council cannot charge for improvements without the agreement of the leaseholder. However, for any leases completed after 1991, the Council can charge for improvements where the improvements were identified in the 5-year estimates within the lease. If they were not identified, then the Council cannot charge for the improvements without the agreement of the leaseholder. Where more than 5 years has elapsed, they can be charged, so long as the Council undertakes a full consultation exercise in line with legislation.
5. To set some statistical context in relation to Council owned flat blocks and leaseholders:
 - The Council owns 444 blocks of flats and maisonettes across the district.
 - Currently there are 959 leaseholders.
 - There are 314 blocks where there is at least one leaseholder in the block.
 - There are currently 130 blocks that do not have any leaseholders.
 - There are 384 leaseholders with pre-1991 leases where improvements cannot be charged.
 - There are 184 flat blocks with at least 1 leaseholder with a pre-1991 lease where improvements cannot be charged
 - There are 575 leaseholders with post-1991 leases.

Improvements

6. In terms of "improvements", other than major improvement schemes such as at Limes Farm, and more recently Springfields in Waltham Abbey, the only type of improvement work that the Council has undertaken in the past is door entry security installations. This type of work is classed as an improvement as it is a new installation as opposed to a repair or replacement of an existing installation. When these improvements were first introduced, Members considered a policy, which took account of leaseholders, which led to the decision where prior to 1997, only flat blocks without leaseholders were considered for door entry security. However, in March 1997 the former Executive Committee agreed a door entry policy that allowed the installation of door entry security systems in blocks containing leaseholders subject to:

- installations being undertaken only in blocks of flats having 25% leaseholders or less and the Council paying the full cost of the works; and
 - priority being given, generally to blocks with the lowest percentage of leaseholders present.
7. This policy was determined after receiving the informal advice of the District Auditor at the time on the circumstances when it would be reasonable for the Council to fund improvements (in this instance, door entry works) in properties containing leaseholders. The Council, as a general rule, cannot spend Housing Revenue Account (HRA) funds on homeowners' properties. However, where the proportion of leaseholders occupying a block of flats was small the District Auditor at the time expressed a view that it seemed unfair to prevent tenants from benefiting from improvements to their properties in the same way as other tenants, and that any leaseholders consisting less than 25% of the total number in a block could be considered de-minimus. The Committee therefore agreed that 25% was a reasonable cut off point and since March 1997 door entry work has not been undertaken in any blocks where more than 25% of flats belong to leaseholders.
 8. Where there are more than 25% leaseholders, then they are consulted and their views are taken into consideration. If any leaseholder objects then works are deferred until the circumstances change. Despite consulting all leaseholders in the blocks that do not have door entry each year, the Council has not installed any systems for the last 4-years due to a lack of support or willingness to pay by those with pre-1991 leases where improvements cannot be recharged.

Leasehold Legislation & Consultation

9. In 2002, the Commonhold and Leasehold Reform Act came into effect, which put more onus on landlords to consult with leaseholders on all aspects of repairs, maintenance and improvements where the leaseholder would have to contribute more than £250. The consultation process now must seek leaseholders' views on the proposed works, advise on the reasons why the work is considered necessary, make provision for leaseholders to view all relevant technical documentation and invite leaseholders to nominate a Contractor from whom the Council should try to obtain an estimate.
10. The Council must obtain no fewer than two estimates for the work, including at least one contractor nominated by the leaseholders (if the leaseholders should nominate a contractor). At all times, the Council must "have regard to" any observations received from leaseholders, which must be recorded, and the Council must be able to demonstrate that they have paid regard to any such observations.

Planning the Works

11. With the increase in major works now being undertaken as a result of the increased resources available to spend on the housing stock, or being planned for the future, the management of leaseholder issues from initial consultations to issuing service charges and reclaiming debts is becoming more difficult, especially in these times of austerity where some leaseholders are struggling to pay. The Council's Housing Assets Section hold a detailed stock condition database, which highlights when building components will reach the end of their useful life. The list of components includes roofs, balconies, windows, front entrance doors, mains cold water storage tanks, heating systems, electrical installations.
12. Other regular routine programmes of work such as external repairs and redecorations take place on 5 or 6 yearly cycles, where Officers assess the condition of the buildings

and arrange for any necessary works to be undertaken. Amongst other things, this includes external finishes such as painted surfaces, rendered walls, roof tiles, ridges, verges, valleys and flashings, fascias, soffits and gutters, as well as internal finishes to common parts of flat blocks.

13. In order to obtain best value for both the Council and leaseholders, the Council tries to package works together; such as roof replacements with fascias and gutters and also loft insulation, and timed to coincide with the external repairs and redecorations programme. This way only one scaffold is erected and used by all the different trades for example, resulting in a lower cost to the Council and leaseholders.
14. Whilst the Council has always undertaken much of this work in the past, the scale and frequency has increased significantly since the Modern Homes Standard was introduced, which has had an effect on leaseholders' ability and willingness to pay.
15. A Leaseholder Association for Council leaseholders was established in around 2001, which helps the Council better understand the issues that leaseholders face and gives a forum by which to consult more generally, particularly on things such as the quality of information provided as part of any consultation, the quality of the work and the reasonableness of the charges.

Financial Obligations

16. The Council has a financial obligation to recover all charges relating to works in flat blocks where a lease exists. According to the Director of Finance and ICT, in financial terms, the definition of a charge that can be made to the Housing Revenue Account (HRA) is that it must be 'directly related to or in support of the management and maintenance of HRA property'. CIPFA guidance says that the management and maintenance costs relating to leaseholders needs to be recovered from them. The rationale behind this being that in strict accounting terms the property occupied does not constitute an HRA asset as it has been sold under the Right to Buy.
17. However, other guidance in the CIPFA HRA Manual refers to leaseholders as 'tenants' in that they do not own the freehold to the property they occupy. Although there is a conflict here between the two, a charge relating to a leasehold property that is for any reason irrecoverable can only reasonably be charged to the HRA as there is no basis for a charge to the General Fund and that would be the only other option. That said, recently the Council's shop leases were transferred to the General Fund, therefore any repairs attributed to these shop leases must now be recharged to the General Fund. The Scrutiny Panel may therefore want to recommend to the Finance & Performance Management Cabinet Committee that provision be made in the General Fund for the proportion of repair and maintenance costs to the block where there are Council leased shops and other associated premises.

Financial Assistance

18. To help leaseholders to pay for their proportion of the charges, the Council has in place a Sundry Income and Debt Policy (See Appendix B), which allows the cost to be spread over a period of up to 12-months interest free, depending on the value of the debt. However, in the past, when the Council has undertaken major works on flat blocks, such as at Springfields in Waltham Abbey, it has considered a number of other ways of assisting leaseholders. These are as follows:
 - Offering the leaseholders a loan to spread the payments over a number of years – This is a statutory requirement
 - Capping the contribution from leaseholders.
 - Not charging leaseholders for the works initially and putting a legal charge on the

- property to recover the costs when the property is sold.
- Buying back the properties.

Each of these options are explained in more detail below

Loans

19. The Council is required by the Housing (Service Charges Loans) Regulations 1992 to give loans for the major repairs part of any service charge, in any one year, which is more than £2,740. The loan is for the part of the demand in excess of that amount. The minimum loan is £920 and the maximum is £36,270. The interest rate applicable is the same as the Council's borrowing rate at the time of the loan (currently 3.13%) and is subject to a loan arrangement fee of up to £100. However, the Regulations state that the loan is only available within the first 10 years of the lease being granted by the Council, and any loan taken out must be repaid over a maximum 10-year period (See Appendix C).
20. Members may wish to consider offering leaseholders alternative loan terms, and if so, a report would need to come back to the Scrutiny Panel at a future meeting.

Capping the Contribution for Leaseholders

21. The Council has a duty to recover the cost of the works. However, the Council has the option to cap the leaseholders' contribution for major improvements. Some other local authorities have in the past capped leaseholder contributions, but have received criticism for doing so.
22. Some Authorities have applied a means test, similar to that used for the Disabled Facilities Grant. This takes into account the individual leaseholders' circumstances and their ability to pay. However, such an approach could be discriminatory.
23. The Secretary of State for Communities and Local Government, the Rt Hon Eric Pickles MP has recently announced (8 October 2013) the intention to impose a cap on how much landlords can charge leaseholders over any 5-year period. For local authorities the proposed level for the cap is £10,000 (or £15,000 for London Authorities). This announcement is subject to consultation (See appendix D)
24. The Scrutiny Panel are asked to consider whether or not a response should be submitted to the consultation paper issued by the DCLG on Protecting Local Authority Leaseholders from Unreasonable Charges, and if so to provide Officers with any comments for inclusion.

Placing a Legal Charge on the Property

25. If leaseholders are not able to pay for their proportion of the works, in order for the Council to secure the costs of the works undertaken to each of the leaseholders' properties, the Council could place a legal charge over the property so that the costs can be recovered when the property is sold in the future. However, this still does not ensure the Council will recover the money in the future, as the difference between the value of the property and the outstanding mortgage may not be sufficient to cover the debt. This option would also place the leaseholder at risk of not being able to obtain credit in the future, as they will have an outstanding debt against their property.

Buy-back Option

26. This option is entirely at the discretion of the Council, and subject to agreement by all parties. However, there is currently no provision within the existing Housing Capital

Programme to buy back any leasehold properties. Therefore, the capital costs of purchasing properties would have to be funded, and a valuation would have to be agreed with the leaseholder. The Springfields Improvement Scheme was the last time that this option was last exercised, where the Council bought back 8 leasehold flats in 2006. It should be noted that at that time, where leaseholders elected not to sell their property back to the Council, then the decision of the Cabinet was that the full cost of their proportion of the works should be recovered in line with leasehold legislation, and the offer of a loan be made, payable over a maximum 10-year period.

27. For the Springfields Improvement Scheme, the Council decided to offer to buy back the leases, and where the leaseholder did not wish to take up this offer, they were expected to pay their proportion of the full cost of the works. Where properties were bought back, leaseholders were given the option to remain in their property as tenants, for a reduced purchase price.

Sinking Fund

28. One other option that the Council could consider would be to operate a "Sinking Fund". Legally, this could not be offered to existing leaseholders, as it would need to be incorporated into the lease, or to any new leaseholders in blocks where there are already leaseholders in the block, as it is a requirement that all leases in a block should be similar. However, it could be considered in any existing blocks where there are no leaseholders or in any future new-build flat blocks built under the new Council House-Building Programme. A sinking fund is where leaseholders pay a regular annual payment each year irrespective of whether work is carried out or not. The payments are set aside in a separate bank account and can only be used to pay for future works to that block. It is recommended that a further report be prepared on the benefits of operating a sinking fund for consideration at a future Scrutiny Panel meeting.

Conclusion

29. In the past, the Council has taken the decision to recover all charges relating to works in flat blocks where a lease exists. It has also taken the decision to contribute towards improvements where leaseholders make up a maximum of 25% of the overall tenure of the block; to buy back leases in exceptional circumstances where charges would be considerable; and assists leaseholders with their Service Charges by allowing leaseholders to spread payments and offers loans at the same Council borrowing rate (currently 3.13%).
30. It is suggested that reports on the issues set out in the recommendations of the report be considered at a future meeting of the Scrutiny Panel

Consultation Undertaken:

None