

Meeting of:	Homes and Safe Communities Scrutiny Committee
Date of Meeting:	Wednesday, 03 April 2019
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	Review of services to leaseholder including the potential for introducing a new leaseholder sinking fund
Purpose of Report:	To explore options around the future management of leasehold properties including scope for introducing a sinking fund for future repairs.
Report Owner:	Nick Jones, Housing and Strategic Project Team Leader
Responsible Officer:	Miles Punter - Director of Environment and Housing
Elected Member and Officer Consultation:	This report will affect all residential leaseholders of the Council and therefore no individual ward member consultation has been undertaken. The report has been reviewed by Officers from the Legal and Finance teams.
Policy Framework:	For Executive decision.
<p>Executive Summary:</p> <p>This report highlights some options for the future management of leasehold properties, including a review of the current leasehold management service and options available to recover costs associated with future repair work to buildings where there are leaseholders.</p> <p>As part of the Wales Housing Quality Standard (WHQS) programme, substantial works have been carried out to blocks of flats. This has resulted in leaseholders being asked for significant contributions towards the costs. Typically, individual leaseholders have been liable for sums of £10,000 and sometimes higher, depending on the works required. Whilst some leaseholders have the financial resources to clear the bills, many leaseholders have found it more difficult. In particular, there are a number of leaseholders who tend to be older people, who purchased their flats many years ago under the Right to Buy legislation and do not have the financial means to raise the money required very easily.</p> <p>Whilst a lot of the repair work has now been undertaken, it is an opportune time to review past performance and consider how the leaseholder service can be delivered in future to take account any feedback and lessons learnt, including how the Council consults with leaseholders and how charges are recovered.</p> <p>One option worthy of consideration is to introduce a sinking fund for future repairs work. A sinking fund operates similarly to a savings fund, where leaseholders pay a weekly amount via a service charge and this fund is then used to pay for the cost of 'eligible' works, avoiding the need for leaseholders to pay large sums of money for work at one time.</p>	

Recommendations

1. The Homes and Safe Communities Scrutiny Committee note the update report in relation to a the future management of leasehold properties, including the option of introducing a sinking fund to pay for future repairs works.
2. That the views of the Committee are incorporated into a report to cabinet detailing options for the payment of major repairs work by leaseholders should this matter be progressed.

Reasons for Recommendations

1. To consolidate and improve the way the Council manages leasehold properties and to maximise the Council's income through the recovery of service charges.
2. To ensure that the views of the Committee are considered in any future payment plan arrangements.

1. Background

- 1.1 There are currently 301 leasehold flats which are managed by the Council. These properties have been sold via the Right to Buy legislation and are now owned by a cross section of people from elderly homeowners to professional investors. The Council retains the 'freehold' for the buildings, this includes the responsibility for maintaining the structure and exterior of the main building i.e. the walls, foundations, roof, communal areas, main doors etc. but under the terms of the individual leases, each leaseholder is responsible for paying a proportion towards the cost of any repair work required. For example if there were 3 leaseholders in a block of 6 flats and the total work required cost £60,000, each leaseholder would be required to pay £10,000, with the Council paying for the contributions of the rented flats.
- 1.2 Historically, the Council had not carried out major repair work to blocks of flats containing leaseholders and this meant that under the WHQS programme, significant works were required. This resulted in costly bills for individual leaseholders, to cover the cost of the backlog of repairs and major works required.
- 1.3 Whilst many leaseholders have the financial means to pay for the whole cost of the works, (typically around £10,000), a large number of leaseholders experienced difficulties meeting their financial obligations. There is case law in England, referred to as Florries Law which aims to minimise the potential negative impact of large leaseholder bills. This was introduced following the tragic case of 93 year old Florence Bourne whose family say died in shame as she had never been in debt all her life, but could simply not afford to pay a £50,000 repair bill.

- 1.4** Whilst Florries Law does not apply in Wales, social landlords have tried to adhere to the principle by ensuring that there is clear communication with leaseholders and they are supported and assisted to meet their obligations. To this end, there are several repayment options available including statutory loans and repayment agreements as well as the ability for the Council to take a charge on the property, so that the outstanding debt can be recovered when the property ownership is transferred. Each of these options is subject to a detailed affordability assessment with the individual and will only be agreed if the Council is satisfied the leaseholder has no alternative means of clearing their service charge account.
- 1.5** As well as the potential for emotional distress and anxiety, the way charges are raised and collected at the moment, means there is a delay in the Council receiving the repayments. In the case of a charge being taken against the property, this bill may not then be settled for several years. A leaseholder sinking fund might be a way to address this and ensure that adequate sums are set aside for works in advance. It could also maximise the Council's income and ensure the entire sum (for the works) was recovered at the earliest opportunity.
- 1.6** As well as the way repair work is charged to leaseholders, there is also a need to consider the leasehold management service more broadly. Since the Council had not previously carried out this rechargeable work, there was not a role in the staffing structure and various aspects fell to different staff in different teams. In order to consolidate this service and provide one point of contact for leaseholders, a temporary Leasehold Officer post was created. This role has been carried out by agency members of staff over the last three years so there would be a benefit now to reviewing future staffing requirements and the broader leasehold service, in order to continue to build on the good work undertaken to date and provide a high quality service to leaseholders.

2. Key Issues for Consideration

- 2.1** Under the current WHQS programme, most of the external work has been completed to buildings where there are leaseholders and the work has been recharged via arrangement under section 20 of the Commonhold and Leasehold reform Act. Given the fact that the works carried out have been extensive and the new components have estimated lifespans of 10 years or more, it is opportune timing to review progress to date, including the way the work was carried out i.e. consultation with leaseholders, information sharing; as well as the means of collecting the money.
- 2.2** Whilst some aspects of the leaseholder work has gone well, there is scope for improvements in service delivery including improved communication, greater consistency and more robust processes for dealing with issues. There is also scope to consider different options for recovering the cost for any future works which could mean that leaseholders are not faced with large, unexpected bills.

- 2.3** There are benefits to consolidating the leasehold management service and establishing a permanent Leasehold Officer role within the staff structure. The Officer would continue to act as a key point of contact for all leaseholders, deal with day to day issues and also drive improvements including developing a leaseholder manual, improving the information available on the Council web site, drafting policies and procedures etc.
- 2.4** In terms recovering the charges, one way of addressing the concerns regarding large bills is a sinking fund. This is a way of collecting smaller weekly sums from leaseholders which could be used to fund future works. There is provision in the current lease agreements for the Council to introduce a new sinking fund. This would oblige leaseholder to pay a weekly amount towards the cost of future works. This would be levied by way of a service charge and any leaseholder not paying this sum, would be in breach of their lease. The sum would be calculated using estimates of the current lifespan of key components like roofs, doors, rainwater goods etc.
- 2.5** Many social landlords operate sinking funds and there is a range of good practise available which help landlords operate these fairly and effectively. A separate sinking fund would operate for each individual scheme, this is usually the block in which the leasehold property is located; so that leaseholders only pay for the cost of works to their block. The money in the sinking fund could not be used for works to any other blocks. Sometimes a 'scheme' may refer to several blocks of flats in the same street. In this instance the fund would be ring-fenced to those properties.
- 2.6** In terms of the positives, a sinking fund would ensure that money is set aside in advance for future works and avoids the unwelcome surprise of a very large bill. It would also ensure that all leaseholders contribute equally and regularly towards the cost of the work and that money is available to pay for it when complete (instead of over a period of time following the works). It also means the Council is able to recover the costs for work quickly and easily and tenants are not effectively subsidising the cost of work to privately owned flats.
- 2.7** In terms of negatives, sinking funds increase the amount of money leaseholders pay each week so tend not to be popular with everyone. In terms of the accounting burden there is a need to forecast future expenditure requirements and to collect service charges whilst ensuring they are accounted for separately and that copies of annual accounts are made available to leaseholders. There is also a risk that calculations are incorrect and insufficient funds are available in the sinking fund for unplanned work. In these instances any remaining sums can be recovered from leaseholders under a separate invoice (for the balance between the cost of the work less the sum in the sinking fund), however this can be confusing for leaseholders who may believe they have already paid for the works. The other issue is that money can't be withdrawn from the sinking fund. When a property is sold, the next owner takes over responsibility for contributing

towards the sinking fund and no balance or credit is refunded to the vendor. This makes it vital that prospective purchasers are aware of the balance of the leaseholder sinking fund as well as any future repairs due when they purchase the flat.

- 2.8** Committee is asked to provide their views on the possible setting up of sinking funds as detailed. Should Committee believe the concept has merit then a report to Cabinet would be required to authorise any such change to the leaseholder payment arrangements.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

Long term

- 3.1** An effective, well-resourced leasehold management service would mean leaseholders are engaged and that future works happen in a planned, affordable way. The provision of a sinking fund might also enable leaseholders and the Council to better plan for future repairs.

Prevention

- 3.2** More robust procedures and detailed information for leaseholders would help improve leaseholders understanding of their obligations under the terms of their lease. This would result in fewer issues and complaints. In terms of charges for work, a sinking fund could be used to carry out planned works to ensure that buildings are maintained to a high standard. Planned work is proven to reduce the number of responsive repairs required and will minimise fluctuations in annual charges for leaseholders.

Integration

- 3.3** The Leasehold Officer would work closely with the maintenance team, legal and finance team to coordinate any work and ensure that this was delivered in a streamlined way. The Officer would also act as a single point of contact for leaseholders.

Collaboration

- 3.4** The new way of charging for repairs would ensure there is effective cooperation between the responsive and planned maintenance teams. It would also ensure that there was greater transparency for leaseholders on future repairs required to their homes.

Involvement

- 3.5** The Leasehold Officer would co-ordinate and improve communication with leaseholders ensuring there was an opportunity to feed into plans. Prior to taking forward a proposal there would be an extensive consultation exercise with leaseholders and all observations would be taken into account.

4. Resources and Legal Considerations

Financial

- 4.1** Over the last year around £500,000 of leaseholder recharges were raised to reflect the required contribution towards the repair work carried out. To date around £150,000 has been paid by leaseholders and recovery action is underway to maximise the amount of the remaining balance that is collected. As well as the debt a significant cost is incurred in monitoring service charge accounts and liaising with leaseholders to encourage repayments.
- 4.2** The introduction of a sinking fund would maximise the income collected and ensure funds were available to pay for works when the final bills were agreed. The weekly contribution towards the sinking fund would cover the eligible costs of work and because this would be paid over a longer time span it would mean the weekly charges per person per week should be more affordable to the majority of owners.
- 4.3** There will be a need to create and maintain separate sinking fund accounts for around 200 schemes/ blocks where there are leaseholders and to provide them with annual statements.
- 4.4** Adopting a Leasehold Officer into the staffing structure would be cost neutral as salary and 'on' costs would be recovered via a leasehold management charge.

Employment

- 4.5** The Leasehold Officer position is not currently part of the staffing structure and is filled by an agency member of staff. If this role were to be made permanent, a revised job description would need to be benchmarked in accordance with the Council's job evaluation scheme and a recruitment exercise undertaken in accordance with the usual procedures.

Legal (Including Equalities)

- 4.6** There are various pieces of legislation relevant to leaseholders, including the Landlord and Tenant Acts 1985 and 1987, Commonhold and Leasehold Reform Act 2002 as well as the wording of the individual leases. The legislation and the leases allow for the introduction of a sinking fund and there is no obligation to gain consent from individual leaseholders. Good practise would require the Council to consult with leaseholders by giving them advance notice of any decision and by inviting comments, however the change would not need to be agreed.
- 4.7** In order to recover any costs for works, section 20 of the Commonhold and Leasehold Reform Act must be followed. This is a legal process which requires the Council to consult with leaseholders prior to awarding contracts for any

work; it also entitles leaseholders to make recommendations to nominate a contractor of their own choosing to carry out the works. Provided that section 20 has been followed correctly, any sums for repair works are eligible to be recovered by the landlord.

- 4.8** Leaseholders are required via the terms of their lease to pay their contribution in full towards the cost of any eligible works completed. Failure to meet this obligation would mean that the leaseholder is in breach of the terms of their lease and in the event there are a number of avenues the Council could consider recovering the monies owed. Ultimately, if it is not possible to secure the payments necessary, the Council could apply to forfeit the lease, this is to recover possession of the property from the leaseholder. This action has not been taken to date and would only be considered as a last resort if all other avenues had failed. In addition, statute has imposed strict requirements limiting the circumstances in which a landlord can forfeit a long residential lease. It is highly unlikely that forfeiture would be resorted to.

5. Background Papers

None.