

REPORT OF THE STRATEGIC DIRECTOR PLACE

TO THE PROPERTY AND REGENERATION BRIEFING

14th December 2020

TITLE: Review of Disposal Practices under the Leasehold Reform Act 1967 (LRA)

RECOMMENDATIONS:

The City Mayor is recommended to;

Approve the proposal to cap the professional fees payable by individual purchasers who wish to acquire the freehold interest in their properties from the City Council under the provisions of the Leasehold Reform Act 1967 to the sum of £250 on the basis set out in Option 2 (paragraph 4.4) of this report.

EXECUTIVE SUMMARY:

Members will be aware of the Government review that has been undertaken to tackle exploitative practices in the leasehold sector. In anticipation of legislation to deal with such practices, the City Council has already adopted the Government's recommendations and has implemented a policy for land disposals which restricts developers from creating subleases with onerous terms (including the reservation of a ground rent) and ensuring the full residue of the term granted to the developer, less a nominal reversion, is passed onto the sub-tenant (individual homeowner). The Council has not gone so far as to implement freehold sales to developers in substitution of the current practice of long leasehold sales as this has the potential to undermine delivery of development arising from lack of effective contractual enforcement of development obligations, although this position may need to be re-considered when the new legislation comes into effect.

Whilst future individual homeowners on residential development sites which the City Council now disposes of are protected, it is not possible for the Council to unilaterally amend the contractual lease terms for historic disposals, and even if such changes were possible with the agreement of the current long leaseholder, there would likely be a substantial cost.

One pathway individual homeowners are able to utilise to obtain the freehold interest of their home is to exercise their rights under the Leasehold Reform Act 1967 ("**LRA**"). Due to greater public awareness and concerns around leasehold issues, in part

prompted by coverage in the national media, we have seen an increase in homeowners proactively seeking to purchase the freehold interest in their properties from the Council both to insulate themselves from onerous leasehold terms and/or obtain the “comfort” of owning the freehold of their property.

The report considers the City Council’s disposal strategy with regards to LRA transactions along with recommending future arrangements for freehold transfers to homeowners where the City Council had previously granted a long lease to a developer but retained the freehold reversion.

BACKGROUND DOCUMENTS:

None.

KEY DECISION: Yes

1.0 Background

- 1.1 This report seeks approval to change the City Council’s policy with regards to disposals under the LRA. The LRA allows applicants (a tenant or individual homeowner) to either acquire the freehold interest or extend their existing lease to secure a longer leasehold interest of their residential property.
- 1.2 The current practice is for the City Council to transfer its freehold interest, via the LRA, through negotiations with individual applicants and in the process look to recover the Council’s full professional (surveyor’s and legal) fees. This process has the potential to become costly where there is another superior leasehold interest(s) (e.g. the developer’s head leasehold interest) to be acquired (and associated costs) before the homeowner can look to purchase the freehold interest in the property.
- 1.3 The City Council’s standard professional fees for sales under the LRA have typically been £800 (comprising £150 surveyor’s fees and £650 Legal fees). In the majority of cases, in comparison to the cost of the interest being acquired, the level of professional fees are often perceived to be disproportionate or even excessive.

2.0 Leasehold Reform Act 1967 Provisions

- 2.1 Currently homeowners can purchase the freehold interest in their property (enfranchisement) under the LRA. This includes individual homeowners having the right to acquire all intermediate leases up to and including the freehold, provided that certain criteria which are set out in the LRA are met. The valuation methodology for each of the interests is also laid out in the LRA and is relatively straightforward. An amendment to the LRA which was made in 1993 entitles

the owner of the freehold and/ or any intermediate leasehold interest to recover its reasonable professional fees associated with the transfer.

3.0 Review of Current Approach

3.1 Due to the relatively small number of applications previously received by the City Council, a case by case approach was adopted on a straightforward private treaty basis. In view of the proposals in this report cases have not progressed to completion have been put on hold in order to not disadvantage those purchasers.

3.2 The Council's portfolio includes circa 482 freehold interests where the Council has granted a lease to either a developer to construct multiple properties or directly to individual residential properties. This represents 338 individual property transactions and 144 leases to developers. Where a lease has been granted to the developer there will be multiple subleases thereafter to individual homeowners, all of whom could exercise the right to enfranchise (subject to qualification requirement). Details of the portfolio are as follows:-

- Of the 482, 94% are at rent between £nil and £20 per annum with unexpired terms exceeding 200 years.
- The total rental income per annum from the portfolio is £4,705.55, averaging at £9.78 per transaction.
- Using the valuation criteria from the LRA, applied to the value of the ground rent average (£9.78pa) the City Council's interest equates to an average capital value of £205.89 per property.
- The current total fee payment of £800 is invariably disproportionate to the value of the interest being sold. The transactional legal work is currently part of a contract between the City Council and the Shared Legal Service.
- The fee of £650 received by the City Council is offset against the cost of the time charged to the City Council under the contract with the Shared Legal Service.

3.3 In considering our approach to freehold sales it should also be noted that the City Council will have already benefitted from the receipt of full market value when it disposed of the land. On residential land sales our adopted approach to transfer leasehold interests is primarily to ensure development is actually delivered and end use restricted as opposed to creating the parameters to secure future windfall payment from individual owner occupiers.

4.0 Options to change the current policy

4.1 Whilst there are various potential permutations, we have focused on the following two options when reviewing the approach to disposing of Council interests under the LRA.

4.2 **Option 1: Continue with the current approach**

Under this option the disposal of the Council's interest would continue to be assessed in accordance with the valuation methodology set out in the LRA and professional fees would continue to be recovered at the current rate (£800 per transaction).

4.3 Financial Impact Assessment:

Based on the assumption of receiving circa 20 applications a year, at the average rent, the City Council could expect to receive an income of circa £16,000 per annum, comprising solely of professional fees.

4.4 Option 2: Reduced Fee Contribution of £250

Under this option we would continue to value the Council's interest in accordance with the valuation methodology as set out in the LRA however professional fees would be capped at a more modest contribution of £250 to reduce the overall cost to the homeowner. This would significantly reduce the costs to homeowners and bring fees more in line with the nil capital value of the interest. However, this charge will not cover the Council's professional costs incurred in dealing with the transaction and would reduce the legal costs contract offset and surveyor's fee income, dependent on how the £250 was allocated. If this option were approved then it would be intended that the charge would be reviewed annually and periodically with the minimum increase being based on the annual CPI increase.

4.5 Financial Impact Assessment

Based on the assumption of receiving circa 20 applications a year, at the average rent, under this scenario the City Council could expect to receive a total income of £5,000 per annum, comprising £5,000 of professional fees. Compared to Option 1 there would be a reduction to the Council's income of £11,000 per annum.

5.0 **Conclusion**

5.1 Having reviewed the portfolio, considered the national drivers for change in the residential leasehold sector and the Council's own objectives to support our communities, we would recommend that Option 2 is adopted.

5.2 The annual financial impact will be relatively modest but the approach will signpost the council's clear intention to share some of the burden arising from historic leasehold disposals that, through the actions of a limited number of developers, may have inadvertently disadvantaged some of our residents.

Ward Councillor Consultation:

Not applicable.

KEY COUNCIL POLICIES:

Great 8 Priorities - Housing

EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS:

There are no specific equality impact matters following from the proposals contained in this report.

ASSESSMENT OF RISK: Low

LEGAL IMPLICATIONS Supplied by: David Green – Head of Regeneration

The recommendation proposed in this report is a financial decision for the Council as to the foregoing of professional fees which they are legally entitled to charge and, as such, there are no legal comments.

FINANCIAL IMPLICATIONS Supplied by: Paul Hutchings – Strategic Finance Manager x2574

There are no costs associated with the implementation of the change in policy. In terms of operating the policy, any costs associated will be covered within existing resources/contracts. Any income received will be additional income to the council and will be used offset costs within the legal SLA. It must be noted that there is an opportunity cost of approx. £11k per annum when compared to potential income the council could receive but option 2 avoids a fairer, disproportionate charge to residents for the service in comparison to the value of the freehold interest. This would also mean a potential reduction in income for those applications currently in the system.

PROCUREMENT IMPLICATIONS Supplied by: Not applicable

HR IMPLICATIONS Supplied by: Not applicable

CLIMATE CHANGE IMPLICATIONS Supplied by: Not applicable

OTHER DIRECTORATES CONSULTED:

Place

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WARDS TO WHICH REPORT RELATES: All Wards