

Report of Housing Senior Finance Manager

Report to Environment and Housing Panel

Date: July 2014

Subject: Provision of Licences to Assign – Flat Weetwood Area - Right to Buy

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Weetwood	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: This report, at Appendix 1, contains confidential information under Access to Information Procedure Rule 10.4(3) in that it contains information relating to the financial affairs of individual(s). It is considered in these circumstances that the public interest in maintaining the exemption from publication outweighs the public interest in disclosing the information.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

This report seeks the Director's approval to the granting of Licences to assign the lease of a property sold under the provisions of the Right to Buy. The property in question was sold as a single leasehold flat in a block of 4. The flat in question comprised of a single storey flat with a basement area immediately below which was for the sole use of the tenant of this property.

The property was originally sold under the Right to Buy in November 1995. The current leaseholder acquired the property in 1999 on the open market. Shortly afterwards the leaseholder converted the basement area into separate flat with its own entrances, front and rear.

The leaseholder now sublets both the upper and lower flats and is seeking to assign the lease for both properties on the open market. However, at present the flats are let under the provisions of a single lease and cannot be assigned without granting of Licences to Assign the flat(s), or surrender of the existing and the issuing two new leases.

It is also unclear from existing records whether formal approval was given by the Housing Directorate to the conversion works in 1999/2000. Although records do show that the necessary Planning and Building Regulations approval were obtained.

Recommendation

The Director of Environment and Housing is requested to approve that the Council grants Licences to Assign when the exiting or future leaseholder(s) seek to assign the lease of one or both of flats.

1 Purpose of this report

1.1 To seek the Director's approval to the granting of Licences to Assign. This will provide the means for the leaseholders of the flats at 3a Stone Villas to assign one or both of flats which are currently held under a single lease agreement.

2. Main Issues

2.1 The flat in question was originally sold under the provision of the Right to Buy in 1995 to the then tenant. The property comprised of a 1 bed ground floor flat with basement. In 1999 the property was acquired by the current leaseholder on the open market.

2.2 Immediately prior to the purchase and also subsequent to the purchase there is evidence that the current leaseholder made enquires with the Local Housing Office to convert the basement into a separate flat. However, there is no evidence that formal approval was provided. There is however, evidence that the office was aware of the removal/reinstatement of a wall to facilitate the works and in addition it is apparent that following completion of the conversion works the Leasehold Flats Buildings Insurance was increased.

2.3 Covenants within the lease provide:-

a) that the leaseholder should not make any structural alterations or additions without the written consent of the Council in advance of the works. In this regard the leaseholder is unable to provide any evidence that they received written consent.

b) that the property is not to be used for any other purpose than as a Private Dwellinghouse only. In this respect the dwelling has been converted into 2 dwellings.

c) not to assign part only of the property

d) within 1 month after any transfer, mortgage or charge of this lease or any under lease of the property or any partto produce the same to the Council for registration

2.4 Whilst the Council could potentially challenge the leaseholder in respect of the matters discussed above it is considered unlikely that it would be successful with any challenge in seeking to have the property restored to its original condition. Furthermore the property now provides an additional unit of accommodation in the city.

2.5 It is also recognised that the leaseholder is likely to benefit quite substantially from a financial aspect from the conversion works. The Council is not entitled to benefit from the conversion works by demanding payment from the leaseholder to be released from the covenants ((R v Braintree) (2000)) appears to prevent the Council from securing any financial benefit from agreeing to the release from the

covenants in the lease. However, it is not unreasonable to expect the leaseholder to meet all the Council's legal and administrative costs in resolution of this matter.

2.6 From a practical aspect it is not considered that there are any housing management issues which will arise from the conversion of the property. However, the property is leasehold with the Council holding freehold title. Under the terms of the existing lease the Council remains responsible for repair/maintenance and improvement of the building structure. The leaseholder(s) have responsibility for contributing towards the reasonable costs which the Council may incur in carrying out its responsibilities as described immediately above.

2.7 The main issue arises with the lease itself. The options are:-

i) Surrender of Existing: The current leaseholder could surrender the existing lease issued under the Right to Buy in 1995. The Council could then issue two new leases for the individual flats.

This would provide the long term resolution to the issue and would require a single exercise, providing the existing and/or future leaseholders with a separate lease. However, the legal implications of this course of action would need further investigation.

It should also be recognised that this course of action has not been taken before, and would therefore set a precedent. However, this is the first instance in the 34 years of the Right to Buy scheme and it is envisaged that future cases would be minimal. It is also anticipated that due to the requirement to investigate the legal complexities of pursuing this option the costs could be high. However, the Council would seek to secure agreement from the leaseholder that they would meet all the Council's reasonable costs.

ii) Licence to Assign: The Council can grant a Licence to Assign. This would allow the leaseholder(s) to assign one or both of the flats to separate or the same individual(s). The assignees/new leaseholders would then be required to comply with the terms of the Head Lease.

This would provide a solution in that a Licence to Assign could be issued by the Council whenever the lease is to be assigned to a new person. This would obviously provide a solution although not a permanent single solution.

Again this course of action has not been taken before and would set precedent, although the incidence is likely to be minimal and each case would be dealt with in its own merits. Legal costs incurred would be sought from the leaseholder. The issue with this course of action is that the Council will be required to grant a "licence to assign" on each occasion the lease is assigned (flat is sold) and this will continue during the period of operation of the current lease Head Lease.

iii) Deed of Variation: It is considered that the Council could approve a Deed of Variation to the current lease. This would allow the existing leaseholder to assign part of the lease.

2.8 The more permanent solution to the issue would be Option (i) above, the surrender of the existing lease and issuing of a new lease for each flat. However, without further detailed investigation by Legal Services to ascertain the powers held by the

Council to do this, the change required to the lease and the process required means this is not a short term solution, which is being sought.

2.9 The preferred short term solution would be Option (ii). To grant Licences of Assignment to any subsequent leaseholder(s). This would require that the licence is reissued upon any subsequent assignment of the properties.

2.10 In addition to the above, covenants contained within the lease agreement require that:

- structural alterations are not made to the property without the prior consent in writing from the Council.
- that the leaseholder does not use or permit the use of the flat for any other purpose than as a single dwelling house.

In order to regulate this for the future, it is proposed that retrospective consent is provided.

3 Corporate Considerations

3.1 Consultation and Engagement

3.1.1 The Housing Manager with responsibility for the property has been made aware of the proposal and there have been no issues/concerns raised regarding Housing Management.

3.2 Equality and Diversity / Cohesion and Integration

3.2.1 It is considered that there are no equality, diversity, cohesion or integration issues. All matters relating to the lease amendments for properties sold under the Right to Buy will be dealt with on their own merits.

3.3 Council Policies and City Priorities

3.3.1 This matter does not impact on Council Policies or City Priorities

3.4 Resources and Value for money

3.4.1 Legal Services will be required to undertake the work to resolve the matter and it is intended that the leaseholder will meet all the Councils Legal and Administrative costs.

3.5 Legal Implications, Access to Information and Call In

3.5.1 There are considered to be no legal implications in granting of the Licences to Assign.

3.5.2 The decision is a delegated decision under the Officer Delegated Decisions (Exec Functions) and is one which is not considered to be subject to call-in.

3.6 Risk Management

3.6.1 This conversion of a single flat into two flats is the first time this has occurred in respect of a former Council flat sold under the Right to Buy. Consequently whilst this will set a precedent all future cases will be dealt with on their own merits.

4. Conclusion

- 4.1 The leasehold property has been converted from a one bedroom flat into 2 separate flats, with their own access and egress. The leaseholder has obtained the necessary Planning and Building Regulations approval to the works.
- 4.3 Whilst there is no evidence of the leaseholder obtaining approval to the works from the Environment and Housing Directorate at the time of the works (2002), there is evidence to indicate the local office were aware of the works.
- 4.4 Under the circumstances of this particular case the Council is considered unlikely to be successful should it pursue an action to have the property reinstated. Therefore the ideal course of action would be to regulate the matter through amendment to the lease, however, due to the potential legal complexities and need for further investigation this option is considered to be a longer term solution.
- 4.5 The most appropriate option in the short term is to issue a Licence to Assign when one or both of the flats leases are assigned.
- 4.6 The Council will require that the leaseholder(s) meets all its reasonable legal and administrative costs incurred in dealing with this case.

5. Recommendation

- 5.1 The Director is requested to approve, subject to any approval required by Asset Management Panel:-
- i) That Licences to Assign are provided to the relevant leaseholders where one or both of the flats are to be assigned in future instances.
 - ii) That retrospective written approval is given to the leaseholder providing approval to the works of conversion effected to the basement
 - iii) That all reasonable Legal and Administrative Fees are met by the leaseholder in dealing with this matter

6 Background documents¹

- 6.1 None

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

