

Report of Senior Finance Manager

Report to Director of Environment and Housing

Date: August 2014

Subject: Lease Forfeiture

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s): - Adel & Wharfedale - Hyde Park & Woodhouse		
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?	<input checked="" type="checkbox"/> Yes	No
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.		

Summary of main issues

This report seeks the Director of Environment and Housing approval to proceed with seeking forfeiture of the leases for 2 flats sold by the Council under the Right to Buy. Forfeiture is to be sought in relation to unpaid service charge and ground rent. The flats are within the Leeds 7 and 16 areas of the City. The financial details are shown in the Confidential Appendix 1.

The leaseholders have been given every opportunity to pay or enter into arrangements to pay the outstanding Service Charge and Ground Rent for their properties. However, the outstanding debt continues to increase and the most appropriate option available to the Council is to seek forfeiture of the lease.

In the event forfeiture is obtained through the Courts the Council may retain the properties and have no legal or statutory obligation to recompense the leaseholder, or the mortgagee.

Recommendation

That the Director approves the seeking of forfeiture of the leases in relation to unpaid service charge and ground rent for 2 flats in the City.

1. Purpose of the Report

1.1 This report seeks the Directors approval to proceed with seeking forfeiture of the leases in relation to unpaid service charge and ground rent. Forfeiture may be sought because of non-payment by the leaseholder of service charge and ground rent where specific criteria is met.

2 Background Information

2.1 It has been recognised that some leaseholders of flats purchased under the Right to Buy either refuse to pay their Service Charge and Ground Rent or are unable. The Council makes every effort to assist the leaseholders where possible, through arrangements and referral to the necessary agencies. Every attempt is made by the Council to recover the debt and forfeiture is the last resort.

2.2 In March 2011 a report was submitted to Panel to extend cash collection procedures up to and including forfeiture of leases and the policy to be adopted where forfeiture is sought. The approved process requires that before forfeiture is pursued approval is sought from panel. In addition it requires that the Housing Support Manager (Housing Options) is made aware prior to formally applying to the Courts. If any of the properties are/or become occupied the Housing Support Manager will ensure that any obligations that the Council has in relation to re-housing are met.

2.3 Under the terms of the Leases between the Council and the leaseholders -require that the service charges and ground rent are paid by the leaseholder to the Council. Where payment is not made every attempt is made to contact the leaseholder and make appropriate arrangements to pay the arrears and ongoing charges. Where these courses of action have been exhausted, the Council has the option to seek forfeiture of the lease. This will either generate payment from the mortgagee where one exists, with the debt potentially being added to leaseholder's mortgage or the Council may succeed with its application and recover the property.

2.4 All possible efforts have now been undertaken by the Council in order to recover the debts for these 2 flats, including obtaining judgement at Court. The only remaining avenue is to commence the forfeiture process.

3. Finance

3.1 Following forfeiture of the lease the property would pass back to the Council. The Council could then sell the property on the open market, or retain the property within its own stock.

3.2 In the event of a sale the equity could be retained by the Council in full, because there is no obligation to pass any monies to the leaseholder, or any mortgagee.

3.3 However, on ethical grounds the Council may consider initially settling all debts due to the Council, which will include service charges, legal costs and costs associated with

the sale, security and maintenance of the property and potentially any outstanding Council Tax. Where equity remains after these costs have been deducted it could be passed to the mortgagee in settlement of any outstanding mortgage. Any further charges on the property would be settled subject to monies being available and any balance could then be passed to the leaseholders.

3.4 Alternatively the Council may wish to take the properties back into charge and where considered appropriate allow the leaseholders to remain as tenants.

3.5 The condition of the properties is unknown and decency works may be required which would incur a financial cost for the Council.

4. Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Should it be necessary to pursue the forfeiture through the court (rather than the mortgagee settle the debt), the Service Manager – Lettings and Tenancy will be made aware along with the Area and Housing Managers for the respective areas of the city.

4.2 Equality Diversity / Cohesion Integration

4.2.1 It is considered that there are no equality, diversity, cohesion or integration issues. The action of seeking forfeiture of a lease is the course of last resort. The Council will make every attempt to recover the debt and ongoing charges by alternative arrangements where possible.

4.2.2 Where lease forfeiture is to be pursued each and every case is dealt with on its own merits

4.2.3 An equality screening has been conducted and concluded that there were no equality, diversity, cohesion or integration issues to take into consideration.

4.3 Council Policy and City Priorities

4.3.1 The continued pursuit of these debts with invoking forfeiture action is uneconomic. This course of action is considered to be meeting the Council policy of spending money wisely.

4.4 Resources and Value for Money

4.4.1 The council has exhausted all other courses of action in pursuing this debt. Further court action (excluding forfeiture) is unlikely to generate any payments. And therefore it is considered uneconomic to pursue this course. Seeking forfeiture of the lease is considered likely to be more successful.

4.4.2 The debt refers to services which the Council has provided and from which the leaseholder has received a benefit.

4.5 Legal Implications, Access to Information and Call In

4.5.1 It is not considered that this will have any Legal implications.

4.5.2 This report contains confidential information under Access to Information Procedure Rule 10.4(1 - 3) in that it contains information relating to the financial affairs of individual(s) (Appendix 1). It is considered in these circumstances that the public interest in maintaining the exemption from publication outweighs the public interest in disclosing the information.

4.6 Risk Management

4.6.1 **The** granting of forfeiture of the lease is subject to the courts and is not guaranteed.

5 Conclusion

5.1 All other means of securing the debt has failed it only remains for the Council to proceed with an application to the Court to seek forfeiture of the lease.

6. Recommendation

6.1 The Director of Environment and Housing is requested to approve applications to the Court to have the leases forfeited for two properties in the Leeds 6 and Leeds 17 areas of the City.

7. Background Papers

Panel report March 2011