

Report of Housing Senior Finance Manager

Report to Environment and Housing Panel

Date: June 2015

Subject: Right to Buy – Policy (Leasehold Flats) – Consideration to Sell Roof Space

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	City Wide	
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:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

The Council sells flats/maisonettes under the provision of the Right To Buy. Where the flat is an upper flat in the block the standard right to buy lease (“RTB Lease”) between the Council and leaseholders does not provide for transfer of the roof space to them as these are not included in their secure tenancies.

Infrequently the Council is requested to transfer the roof space to a leaseholder where they have direct access. There are potential issues which may arise as a result of agreeing to the acquisition/adaptation of the roof space by leaseholders and it is proposed that each request is referred for consideration by the Head of Strategy and Investment in order that the potential impact on the Council’s future investment in the blocks and the costs can be determined.

In the event that the Council agrees to the sale of the roof space the leaseholders would be required to meet all the Council’s costs which will include, valuation, any survey costs, legal and administrative fees and consideration for the lease of the roof space.

Recommendation

It is recommended that the Director approve

- a) That requests by leaseholders of flats to acquire the roof space under leasehold terms and to either use for storage or convert the area into additional accommodation are considered on their own merits.
- b) That such requests are considered by the Head of Strategy and Development taking into consideration the future impact the sale may have on the Council.
- c) Leaseholders are to meet all the Councils reasonable costs incurred in processing a case.

- d) Fees to be payable by a leaseholder are not refunded where the Council has incurred costs for work/services carried out in relation to such requests, irrespective of whether the request is refused.

1 Purpose of this report

- 1.1 To seek the Directors approval, that the request to acquire/use the roof space directly accessible above a leaseholders flat generally be declined, although each case be considered on their own merit.
- 1.2 To establish that where approval is given that the leaseholders meet all the Council's costs, including survey fees, legal and administrative fees, valuation costs and also pays an appropriate consideration by way of premium for the roof space as determined by the Director of City Development.

2. Main Issues

- 2.1 The Council currently receives a small number of requests from leaseholders in upper flats/maisonettes seeking to acquire the roof space above their property. The leaseholders usually seek acquisition with a view to converting this area into additional accommodation, or in some cases to use it for storage purposes.
- 2.2 There has been a small number of cases in the past where such requests were made by leaseholders seeking approval which have been agreed. These were considered on an individual basis on their own merits before making a decision.
- 2.3 The roof space is not included in the Council's RTB Leases as part of the transaction when a tenant purchases their flat under the Right to Buy. The Council retains the roof space because it retains liability for maintaining, repairing and improving the building structure, which includes the roof.
- 2.4 It is recognised that should the Council dispose of the roof space and allow leaseholders to convert or use the area for additional accommodation, or storage it is likely to result in the Council encountering difficulties and additional costs in the future where:-
- a) the Council wishes to carry out roof replacement, repairs or improvements there is a possibility of damage to items/decorations of the leaseholders
 - b) there is the possibility of access difficulties, which may result in the Council having to delay works and seek legal injunctions to obtain access
 - c) the Council retains responsibility for the building structure and exterior of blocks of flats and there may be a need to undertake repairs, improvements to facilitate the area to be sold, incurring unnecessary costs for an area to be disposed
 - c) there may be services in the roof space (water, electrics and TV aerials) servicing more than 1 property in the block which could result in additional works, or future access difficulties
 - d) there is no business case for selling the roof void, because the value of any receipt to the Council is likely to be minimal compared to the potential additional costs in dealing with the aforementioned issues.
- 2.5 Because of the impact the sale of roof spaces may have on future investment costs in the blocks along with access it is proposed that all requests and decisions regarding the sale of the roof space is referred to the Head of Strategy and Investment for a decision. This along with any reasons to be conveyed to the Home Ownership Team who will then respond to the leaseholder. It is not proposed that there is any appeals process.

- 2.6** In the event that approval is provided that the supplementary lease for the roof space includes such provisions/covenants to be included in the supplementary lease as recommended by the Councils, City Solicitor.
- 2.7** It is possible that existing leaseholders may use/have converted the roof space without the Councils prior permission and without acquisition of roof space. It is similarly proposed that each is considered on its own merits with the options being:-
- a)** refuse permission and require that the area is returned to its original state including reinstatement or replacement of any of the Council's fixtures and fittings removed by leaseholders. Any works required to be undertaken by the Council to the roof/roof space in default to be recharged to the leaseholder.
 - b)** provide the consent subject to leaseholders agreeing to enter in to supplementary leases and require that an appropriate premium is paid reflecting any enhanced value of the area sold whether as additional accommodation or storage purposes only
 - c)** include covenants within the supplementary lease of the roof, to place a requirement on the leaseholder to provide access to the roof area, to meet additional costs incurred by the Council in repairing, maintaining and potentially replacing any skylights, Velux windows or any other structural alterations or additions to the structure and/or external appearance of flats undertaken by the leaseholder, including all associated service, legal and administrative costs subject to any statutory limitations applicable.

The covenants to be included to be determined by the City Solicitor.

3 Corporate Considerations

3.1 Consultation and Engagement

Consultation on this subject has been undertaken with the Head of Strategy and Investment within Housing Leeds and his views and recommendations are incorporated within this report.

Comment has been received from Legal Services on this aspect and is again contained within the report.

3.2 Equality and Diversity / Cohesion and Integration

An EIA screening document has been completed and is attached to this report.

3.3 Council Policies and City Priorities

It is anticipated that due to the potential effects on the Council, the majority of requests may be declined, although each request will be considered on its own merits. This will help the Council to achieve its objectives of becoming a more efficient and enterprising council and spending money wisely.

3.4 Resources and Value for money

It is acknowledged that where the Council refuses the requests it may result in the Council foregoing a small capital receipt in each instance. The number of requests per annum are also low.

It is anticipated that the potential additional costs which could be expended by the Council for works which it may need to carry out immediately, or as a result of

future roof repairs/improvement works or in gaining access would not represent value for money and are likely to result in the Council expending additional monies and resources and time.

3.5 Legal Implications, Access to Information and Call In

It is considered that whilst there are no specific legal implications it is possible that the Council may be challenged. It is not considered that this report is subject to call in.

3.6 Risk Management

Whilst the Council can refuse to agree to sell the roof space the individual leaseholders could proceed with conversion works irrespective. However, upon the first disposal of the property it is likely any prospective purchaser will require a copy of an agreement between the Council and the vendor. Furthermore when works are being carried out to the roof space these matters can be identified and dealt with accordingly. The Council can then determine the appropriate course of action which could include the leaseholder re-instating the roof space, or incurring costs.

4. Conclusion:

4.1 The Council is under no legal obligation to sell the roof space.

4.2 In the event that the Council agrees to sell the roof space or agrees to the area being used for storage, there is the possibility that the a leaseholders goods and/or decorations may be damaged should the Council carry out any future roof works, potentially leaving the Council open to claims for costs. Furthermore where the leaseholder has installed skylights/Velux windows or carried out other additions to the structure the Council is responsible for the repair/maintenance and potential replacement, although it would aim to recharge the full costs to the leaseholder as a fair proportion of the relevant costs and expenses under the standard lease terms.

4.3 The Council may need to undertake works to the roof space immediately if the condition/shared services require such works.

4.4 The sale compared with potential future costs is unlikely to represent value for money.

4.5 There is the possibility that a leaseholder may use the area irrespective. However, without prior written approval/sale of the roof space the Council would have recourse to the leaseholder for re-instatement and all costs, or where agreed for consideration and all costs.

4.6 The consideration of each case on its own merits where required is likely to remove, or at least mitigate the possibility of the Council being challenged.

4.7 In the event that approval is given to acquire the roof space the Council will aim to recover all its costs. The leaseholders will have to obtain all necessary Planning and Building regulation approvals prior to entering in to any supplemental lease. In addition they will need prior written approval from the Council in order to comply with the covenants contained in the Transfer Document.

5 Recommendation

The Director is requested to approve:-

- a)** That requests by leaseholders of flats to acquire the roof space under leasehold terms supplementary to their RTB Leases are considered on their own merits.
- b)** That such requests are considered by the Head of Strategy and Development taking into consideration the future impact the sale may have on the Council.
- c)** Leaseholders are to meet all the Councils reasonable costs incurred in considering and processing a request.
- d)** Fees to be payable by a leaseholder are not refunded where the Council has incurred costs for work/services carried out as a result of their request, where the request may subsequently be refused.