

Report of Housing Senior Finance Manager

Report to Director of Housing and Environment

Date: 14th April 2016

Subject: Right to Buy – 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: Appendix 1 to this report has been marked as confidential under Access to Information Procedure Rules 10.4 (3) on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council.	<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 legislation. Where a 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 the transfer of the roof space as these are not included in their secure tenancies.

Periodically the Council is requested by the leaseholder to transfer the roof space to them where they have direct access. In agreeing to these requests to the acquisition/adaption of the roof space potential issues may arise. Each request is referred for consideration by the Head of Strategy and Investment (Property & Contracts) in order that the potential impact on the Council’s future investment in the blocks and the costs can be determined. Following recommendations in respect of each application by the Head of Strategy and Investment (Property and Contracts), the Director of Environment and Housing will make a decision as to whether to transfer the roof space to the leaseholder.

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.

This report considers three such applications from leaseholders

Recommendation

It is recommended that the Director note the requests for Sale of Roof Space detailed in 2.4 below and approve for each property the

- a) Sale of roof space above the property on a supplemental lease (co-terminus with original lease) and,
- b) Enter negotiations to agree a sum for consideration of the value of the roof space (plus Councils reasonable costs)

1. Purpose of this report

To seek the Director's approval, that the requests by leaseholders which are contained in 2.4 below to acquire/use the roof space directly accessible above their flats be agreed.

2. Main Issues

2.1 When a leaseholder requests to acquire the roof space above their flat each application should be considered on its own merits. In the determination of whether to agree to the request it is recognised that the Council could encounter 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;

2.2 As a result of the potential issues outlined in 2.1 above, the applications for the sale of roof spaces have been referred to the Head of Strategy and Investment for a decision. The outcome of his decision is conveyed in 2.4 below.

2.3 Where approval is given the subsequent supplementary lease for the roof space includes such provisions/covenants as recommended by the Council's, City Solicitor.

2.4 Details of each application are detailed in a confidential appendix.

3 Corporate Considerations

3.1 Consultation and Engagement

Consultation on this subject has been undertaken with the Head of Strategy and Investment (Property & Contracts) and their views and recommendations are incorporated within this 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

In July 2015 the Director of Environment & Neighbourhoods agreed the policy that requests by leaseholders of flats to acquire the roof space under Leasehold terms are considered on their own merits, and that such requests are first considered by the Head of Strategy and Development taking into consideration the future impact the sale may have on the Council.

Leaseholders are to meet all the Councils reasonable costs incurred in processing a case.

Fees by a leaseholder are not refunded where the Council has incurred costs for work/services carried out, irrespective of whether the request is refused.

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 is 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 could 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 Councils decision 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.

3. Conclusion:

4.1 Whilst the Council is under no legal obligation to sell the roof space the view of the Head of Strategy and Development is that the respective roof spaces are suitable for the proposed uses as requested and therefore has no objection to their sale.

4.2 In the determination of whether to agree the sale of the roof space consideration will be given to the risk a leaseholder's 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 In selling 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

It is recommended that the Director note the requests for Sale of Roof Space detailed in 2.4 and approve for each property

- a) Sale of roof space above the property on a supplemental lease (co-terminus with original lease)
- b) Enter negotiations to agree a sum for consideration of the value of the roof space (plus Council's reasonable costs)