

Report to: EXECUTIVE CABINET

Date: 27 January 2021

Executive Member: Councillor Oliver Ryan – Executive Member (Finance and Economic Growth)

Reporting Officer: Jayne Traverse – Director of Growth

Subject: **CORPORATE POLICY: RESIDENTIAL FREEHOLD REVERSIONS (A SUPPLEMENTARY POLICY)**

Report Summary: This report sets out a supplementary policy: the Corporate Policy: Disposals Policy for residential ground plots leased to residents.

Recommendations: That Executive Cabinet be recommended to agree:

- (i) To adopt the Policy enabling the Disposal of residential ground plots leased to residents and set out at **Appendix 1**.
- (ii) That the Council should as a general principle not dispose of its reversionary freehold portfolio as a whole on the investment market, in order to protect the interests of residents.

Decisions on all future disposals of the Council's freehold reversions to individual homeowners to be made by the Director of Growth, subject to compliance with the Council's Residential Freehold Reversions Policy and the requirements of The Openness of Local Government Bodies Regulations 2014:

<https://www.legislation.gov.uk/uksi/2014/2095/contents/made> .

Policy Implications: The proposed land sales will deliver corporate priorities – housing, economic growth and employment opportunities. The Council has an approved Corporate Policy: Disposal of Council Owned Land. The Corporate Policy: Residential Freehold Reversions is a supplemental policy to this approved policy. When either policy is reviewed, the two policies should be checked to ensure there are no inconsistencies between the two as a result of the process.

Financial Implications:
(Authorised by the statutory Section 151 Officer & Chief Finance Officer) The report proposes the approval of a policy to dispose of residential ground plots that are leased to residents. For context, the Council holds over 900 ground leases where the administration cost of managing these leases far exceeds the annual income received.

The value of a capital receipt received in any financial year if less than £ 10,000 will be allocated to the respective directorate revenue budget that receives the annual rent. Any capital receipt that exceeds this de-minimus value will be a corporate receipt to support the funding of the Council's capital programme.

These will be allocated to the Growth directorate revenue budget in the financial year received. In addition the Council will levy legal fees of £300 and £250 for surveying fees (plus VAT when applicable) as stated in the policy for each disposal. These fees will be allocated to the respective Council directorates on receipt

and will be reviewed on an annual basis to ensure the fee level recovers all related costs incurred.

**Legal Implications:
(Authorised by the Borough
Solicitor)**

The Council must ensure that it complies with the law and its own policy in disposing of land. The policy seeks to provide transparency in the process for disposing of freehold reversions to owner/occupiers.

Assuming the policy is adopted, the report seeks delegation to the Director of Growth to agree future freehold reversion disposals.

It is important to note that this is a limited delegation relating to a particular type of transaction of low value, which tend to need to be progressed quickly to assist owners/occupiers in re-mortgaging/selling their homes.

However, it should be noted that Millions of leaseholders will be given the right to extend their lease by a maximum term of 990 years at zero ground rent, the Housing Secretary Robert Jenrick has announced 7 January 2021. It comes as part of the biggest reforms to English property law for 40 years, fundamentally making home ownership fairer and more secure.

Under the current law many people face high ground rents, which combined with a mortgage, can make it feel like they are paying rent on a property they own. Freeholders can increase the amount of ground rent with little or no benefit seen to those faced with extra charges. It can also lengthen and lead to increased costs when buying or selling the property.

The changes will mean that any leaseholder who chooses to extend their lease on their home will no longer pay any ground rent to the freeholder, enabling those who dream of fully owning their home to do so without cumbersome bureaucracy and additional, unnecessary and unfair expenses

The government is also now establishing a Commonhold Council - a partnership of leasehold groups, industry and government - that will prepare homeowners and the market for the widespread take-up of commonhold. The commonhold model is widely used around the world and allows homeowners to own their property on a freehold basis, giving them greater control over the costs of home ownership. Blocks are jointly owned and managed, meaning when someone buys a flat or a house, it is truly theirs and any decisions about its future are theirs too. Under current rules, leaseholders of flats can extend their lease at a zero 'peppercorn' ground rent, but usually only for 90 years. Leaseholders can also face high charges to extend their lease. For leasehold house owners, which face slightly different rules, they can also face barriers when they look to extend their leases. Today's changes mean both house and flat leaseholders will now be able to extend their lease to a new standard 990 years with a ground rent at zero.

A cap will also be introduced on ground rent payable when a leaseholder chooses to either extend their lease or become the freeholder. An online calculator will be introduced to make it simpler for leaseholders to find out how much it will cost them to buy their freehold or extend their lease.

The government is abolishing prohibitive costs like ‘marriage value’ and set the calculation rates to ensure this is fairer, cheaper and more transparent.

Further measures will be introduced to protect the elderly. The government has previously committed to restricting ground rents to zero for new leases to make the process fairer for leaseholders. This will also now apply to retirement leasehold properties (homes built specifically for older people), so purchasers of these homes have the same rights as other homeowners and are protected from uncertain and rip-off practices.

Leaseholders will also be able to voluntarily agree to a restriction on future development of their property to avoid paying ‘development value’. Legislation will be brought forward in the upcoming session of Parliament, to set future ground rents to zero.

The Law Commission published their report on enfranchisement valuation ‘Report on options to reduce the price payable’ in January 2020 and their reports on enfranchisement, commonhold and right to manage in July 2020. These reports can be found on the [Law Commission’s website](#).

A freeholder owns both the property and the land it stands on while leaseholders only own the property.

Marriage value assumes that the value of one party holding both the leasehold and freehold interest is greater than when those interests are held by separate parties. Today’s announcement will remove marriage value from the premium calculation.

‘Modern ground rent’ is the rent (determined under section 15 of the 1967 Act) payable during the additional term of a lease extension of a house (under the current law). It is calculated by valuing the “site”, and then decapitalising that value.

The formula used to work out the cost to leaseholders for buying the freehold or extending the lease includes a discount for any improvements the leaseholder has made and a discount where leaseholders have the right to remain in the property on an assured tenancy after the lease expires. These existing discounts will be retained, alongside a separate valuation methodology for low-value properties known as ‘section 9(1)’.

In recognition of the previous announcement of the ground rent exemption for retirement properties in June 2019, and wishing to mitigate potential impact on these developers, commencement of this provision will be deferred and come into force (for retirement properties) 12 months after Royal Assent. This means the Policy will need to be reviewed in due course owing to the change of law.

Risk Management:

There are risks of complaints and reputational damage should the Council be unable to dispose of land within this asset category due to the detriment caused to residents.

Background Information:

The background papers relating to this report can be inspected by contacting Mathew Chetwynd – Estates Business Manager



Telephone: 0161 342 5500



e-mail: mathew.chetwynd@nhs.net

1. INTRODUCTION

- 1.1 The Council holds approximately 900 residential plots of land which are typically occupied by a single home. The vast majority of the leases are for the ground only and the resident usually owns the freehold home.
- 1.2 A considerable number of the Council ground leases have less than 60 years remaining which prevents home owners from selling their property as buyers are often unable to obtain a mortgage where ground leases have less than 80 years remaining. This in effect prevents a resident from selling their property unless they are able to attract a buyer with no borrowing requirements. The limitation also prevents some mortgage holders from switching to different lending products which may disadvantage them financially.
- 1.3 The Council has not carried out any residential freehold reversionary sales since early 2018 due to a requirement for the Council to ensure that it has adequate governance arrangements in place for surplus land disposals. It has considered and approved one case by exception in December 2020 and this is presently been progressed.
- 1.4 There are presently circa 55 requests from residents to acquire their reversionary freeholds, of which 8 are pressing.
- 1.5 General Government Policy is that Local Authorities dispose of surplus and underused land and property wherever possible. The Council has fairly wide discretion to dispose of its assets (such as land and buildings). When disposing of such assets the Council is subject to statutory provisions, in particular the overriding duty, under Section 123 of the Local Government Act 1972, to obtain the best consideration that can be reasonably obtained for the disposal subject to certain exceptions contained in the General Disposals Consent (England) 2003.
- 1.6 While the Council does not have a statutory duty to sell reversionary freeholds, it does want to assist leaseholders.
- 1.7 Reversionary freeholds and ground rents are historic ways of developing land for residential and commercial purposes. While the system allows land to be developed it does allow the freeholder to retain a reversionary interest and it is this reversionary interest which generates two types of market issues.
- 1.8 Firstly as residents' leasehold interests get shorter over time it means that finance becomes more difficult to obtain. The consequences of this are two fold, firstly residents cannot sell and move home because purchasers are restricted to cash buyers who do not need finance, and secondly homeowners may not be able to obtain the most favourable financial terms.
- 1.9 Secondly, residents and leaseholders in England may find that the superior landlord charges high levels of fees for permission to do works or enforces lease clauses that cause hardship. The Council does not act in this way and it is for this reason it is recommended that reversionary freeholds are only sold to residents on the appropriate market terms rather than disposing of the reversionary interest portfolio as an investment to a third party, thereby putting residents at risk of being potentially exploited.
- 1.10 Disposals will be progressed through negotiation on the basis of a valuation carried out by an approved Chartered Surveyor. The Head of Estates will either appoint a qualified Chartered Surveyor from the Estates Team or appoint a firm of Agents to carry out the valuation.

2 THE VALUATION

- 2.1 The Valuation will be carried out by the approved Chartered Surveyor appointed by the Head of Estates.
- 2.2 The Valuation will be carried in accordance with the requirements contained in the Corporate Policy: Residential Freehold Disposals, which is a supplemental policy to the Corporate Policy: Disposal of Council Owned Land (September 2020). In the case of any conflicts between the two policies the Corporate Policy: Disposal of Council Owned Land (September 2020) will prevail.
- 2.3 The Valuation approach to be used will be based on the then current legislation, the dominant case law of the time and any best professional market practice as evidenced by Codes of Practice issued by the Royal Institution of Chartered Surveyors or the Law Society.
- 2.4 The Council Chartered Surveyor or approved external chartered surveyor will produce a formal valuation report in accordance with the requirements of Section 5 of the Corporate Policy: Residential Freehold Disposals as modified by changes in practice as noted above
- 2.5 The Council does not actively market the opportunity for residents to acquire their Freehold Reversion, however now that the disposals within this asset category shall resume it is expected that a report shall be presented at each Executive Cabinet due to the number of enquiries that the Council receives.
- 2.6 In all circumstances the Council assess each application on a case by case basis to ensure that any adjacent Council land does not result in a landlocked scenario, for example where ground leases encompass separate garden and garage plots which are detached from the main property boundary.
- 2.7 The individual executive reports regarding a transaction will contain exempt information relating to paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended) in that it relates to private and confidential information of an individual resident and is therefore not for publication.

3 RECOMMENDATIONS

- 3.1 As set out at the front of the report.