



CABINET: 12 March 2019

Report of: Director Development and Regeneration

Relevant Portfolio Holder: Councillor J. Hodson

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SUBJECT: LEASEHOLDER PROPERTIES AND THE PLANNING PROCESS

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To advise Members with regard to the Council's ability to restrict the development of further leasehold homes through the planning process.

2.0 RECOMMENDATION

2.1 That the contents of the report be noted.

3.0 BACKGROUND

3.1 At full Council held on Wednesday 12th December 2018, Members debated a motion regarding leaseholder properties. In this country properties can either be owned as freehold or leasehold. Leasehold is a form of ownership where a person owns a property for a set number of years (typically, 99 or 125) on a lease from a landlord, who owns the freehold. Leaseholders pay ground rent to their freeholder and leasehold owners often do not have the same control over their homes as a freehold owner. Leaseholders may not be able to make alteration to their home without obtaining the permission of their landlord, and there are often fees payable to secure ground landlord's consent.

3.2 Residential leasehold, has for some time been the subject of increasingly prominent policy debate. The current system has been criticised as being too costly and difficult for leasehold owners. Last year the Government set out plans to end the current leasehold practices. The Secretary of State for Housing,

Communities and Local Government has stated his intention to introduce new legislation to make the leasehold system in England fairer and more transparent.

- 3.3 The Law Commission recently published a Consultation Paper on leasehold enfranchisement reform " Leasehold home ownership: buying your freehold or extending your lease". The consultation closed on 7th January and the report outlining the results of the consultation is awaited. The stated aim of the consultation is to provide a comprehensive review of leaseholders' rights with a view to improving the position.
- 3.4 At the December meeting of Council, Members expressed the view that the Government's failure to adequately regulate the sale of leasehold properties within the UK and tackle the onerous terms of existing leases is of considerable concern. Whilst pledges to address the matter are welcomed, Council remains frustrated regarding the extent of the Government's plans and its commitment to support those already affected by unfair practices and charges.
- 3.5 Council resolved that the Chief Executive be requested to write to the Secretary of State for Housing, Communities and Local Government, to express the Council's concern regarding the issues caused for residents of leaseholder properties, and request further, pressing action is taken not only to restrict the development of further leasehold homes, but to provide appropriate support and means of redress for existing leaseholders. Furthermore, officers were instructed to provide a report to Cabinet on the options available to this Council in controlling:
- i) The number of properties sold on leasehold in future housing developments and
 - ii) The terms under which these leaseholds are offered to prospective buyers
- 3.6 This report seeks to provide information regarding the Council's ability to use the planning process to restrict the number of new leasehold properties in future housing developments.

4.0 LEASEHOLDER PROPERTIES AND PLANNING RESTRICTIONS

- 4.1 When an application for planning permission is submitted, it is assessed in relation the Council's Local Plan, national planning policy and guidance and all other material planning considerations. Material planning considerations include matters such as impact on residential amenity, highway safety, ecology and landscape. Officers are not made aware of the applicant's intention with regard to leaseholder/freeholder ownership as this is not a material planning consideration and the owners' intention in this regard cannot be given any weight in the Council's consideration of a planning application.
- 4.2 Furthermore there would be no basis in law for the Council to impose a planning condition in relation to leasehold/freehold ownership on a residential development scheme. National Planning Policy is contained within the National Planning Policy Framework. The National Planning Policy Framework indicates

that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development being permitted, enforceable, precise and reasonable in all other aspects. It is my view that the imposition of such a condition would neither be relevant to planning or reasonable, and would therefore fail to meet the tests for planning conditions.

- 4.3 Therefore through the planning process there is no ability to control the number of properties sold on leasehold in future housing developments or the terms on which leaseholds are offered to perspective buyers.
- 4.4 Concern was expressed by Members that leasehold properties may create a problem for registered social landlords. Housing Associations who develop and acquire properties to be used as affordable housing are clearly subject to considering the matter of leaseholder arrangements. However, officers have been advised that such arrangements do not deter a housing association from acquiring leasehold properties provided that leasehold terms can be negotiated to meet requirements of housing association, for example social landlords generally prefer a 125 year lease.

5.0 CONCLUSION

- 5.1 Whilst Members concerns are recognised there is no ability to use the planning process to restrict the number of new leasehold properties within the Borough.
- 5.2 A response has been received from the Ministry of Housing, Communities and Local Government in reply to the letter sent by the Chief Executive. The response indicates that in addition to a legislative reform programme to help future leaseholders, the Government is committed to support existing leaseholders by putting pressure on developers who have onerous leases to provide support to leaseholders. The Government is also working with the Law Commission to make it easier and cheaper for leaseholders to buy their freehold or extend their lease.
- 5.3 In response to the specific points raised in the Council's resolution, the Minister for Housing and Homelessness indicates that the recent Consultation Paper does propose to abolish the rule that limits the enfranchisement rights to leaseholders of two years.
- 5.4 Furthermore the Minister indicates that the Government is also committed to improving the rights of freeholders who pay charges for the management and maintenance of communal areas and facilities.

6.0 SUSTAINABILITY IMPLICATIONS

- 6.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 7.1 There are no significant financial or resource implications arising from this report.

8.0 RISK ASSESSMENT

- 8.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers.
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Background Documents

Minutes of Full Council 12th December 2018

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.