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<b>Subject:</b>	<b>LEASEHOLD MANAGEMENT POLICY</b>
<b>Meeting and Date:</b>	<b>Cabinet – 5 February 2024</b>
<b>Report of:</b>	<b>David Parish, Head of Property Assets</b>
<b>Portfolio Holder:</b>	<b>Councillor Pam Brivio, Portfolio Holder for Housing, Skills and Education</b>
<b>Decision Type:</b>	<b>Key Decision</b>
<b>Classification:</b>	<b>Unrestricted</b>

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**Purpose of the report:** To provide detail in relation to the proposed Leasehold Management Policy (“the Policy”) and seek Cabinet approval for the Policy to be adopted.

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**Recommendation:** That Cabinet:

1. Notes and approves the content of the proposed Policy.
2. Approves for the proposed Policy to be adopted by the Council.
3. Approves delegated authority to the Strategic Director (Finance and Housing), in consultation with the Portfolio Holder for Housing, Education and Skills, authority to make future amendments to the policy as required.

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## **1. Summary**

- 1.1 When a property is purchased under the Right to Buy (RTB) and Shared Ownership schemes the buyer enters into a legal agreement to become a ‘leaseholder’ and adheres to the provisions within their lease agreement.
- 1.2 The Council has a total of 463 leasehold properties. Of this total:
  - 429 are RTB leasehold properties
  - 34 are Shared Ownership properties
  - 458 are flats
  - 5 are houses
- 1.3 Leasehold management is guided by legal framework, lease agreements, case law, regulations, and sources of good practice. The Council as the freeholder has an interest in ensuring that leasehold properties are managed in a compliant manner, that the leaseholder adheres to the terms of the lease agreement, and where there are breaches take appropriate enforcement action.
- 1.4 The Council does not have an established Leasehold Management Policy, and since the number of leasehold properties will increase over time, it is important for the Council to have a policy in place that sets out the responsibilities and obligations of both the Council as the freeholder, and the leaseholder, and how we will conduct overall leasehold management and provide consistent customer care and service to leaseholders.

## 2. Introduction and Background to 'Leasehold' Properties

- 2.1 Homeownership in England and Wales consists of two tenure types:
  1. **Freehold** is ownership that lasts in perpetuity, and generally gives extensive control of the property and the land it is situated on.
  2. **Leasehold** provides a time-limited ownership (bound by a lease (see 2.5)) and control of the property is shared with, and limited by, the Freeholder. Essentially, leaseholders buy 'the right to live' in their property for a given period.
- 2.2 In England and Wales most leasehold properties are flats. Houses can also be leasehold; this is the case for Shared Ownership properties, however legislation which affects Shared Ownership leases differs slightly to that of general leasehold properties.
- 2.3 Owners of leasehold properties are in a landlord and tenant relationship with the freeholder and therefore bound by landlord and tenant legislation. The rights and obligations of the respective parties are governed by the terms of a lease agreement.
- 2.4 'Leases' or 'lease agreements' are legally binding contracts which state the rights, responsibilities and obligations of the leaseholder and the landlord (Freeholder) during the tenure of the leasehold that apply for a set number of years, usually anywhere between 99 and 999 years. Leaseholders can extend the number of years left on the lease agreement at any time, but this must be agreed by the Freeholder, who in turn must abide by defined legislative criteria, when assessing the request to extend the length of the term.
- 2.5 Leaseholders do not have the same control over the property as the Freeholder. The lease agreement will normally include restrictions on their use of the property.
- 2.6 Where the property is a flat, management of the block, including maintenance and insurance, remains the responsibility of the Freeholder, who may contract these services to a management agency. Under the terms of the lease agreement, the cost of these services can be recharged to the leaseholder through a service charge (which can be fixed or variable), however the charges must be 'reasonable' and the service and works must be carried out to a 'reasonable standard' (The Landlord and Tenant Act 1985).
- 2.7 The lease must set out the way the service charge is organised and what can be charged. Any tenant who is expected to pay service charges has a right to ask for a summary showing how the charge is calculated and what it is spent on. They are also permitted to see any paperwork supporting the summary such as receipts. It is a criminal offence for a Landlord not to provide this if requested to do so. Furthermore, there are rules governing consulting periods in relation to planned work when certain thresholds are met, and Landlords would need to follow any prescribed consulting process. Failure to do so may result in the Landlord not being able to recover all of the monies through the service charge.
- 2.8 Leaseholders were required to pay Ground Rent to the Freeholder, as set out in their lease agreement. However, the Leasehold Reform (Ground Rent) Act 2022 ((the "Act") received Royal Assent on 8 February 2022 and came into force on 30 June 2022. The legislation formally implementing the Act has been published (The Leasehold Reform (Ground Rent) Act 2022 and (Commencement) Regulations 2022). This law aims to make leasehold ownership fairer and more affordable for leaseholders. The law restricts ground rents on certain leases to an annual rent of one peppercorn (nil £) and also prohibits the charging of administration charges in relation to peppercorn rents.
- 2.9 When a home is purchase through Shared Ownership the buyer generally buys a share of between 10% and 75% of the homes full market value and pays rent to the Landlord

on the unowned share. The scheme can assist people to get onto the property ladder, as smaller deposits are required in relation to the share of the mortgage being obtained. There are generally service charge payments to be made to the Landlord. Despite Shared Ownerships resembling something different to a traditional leasehold agreement, properties that fall within these schemes are considered to be leasehold properties.

- 2.10 Where either the freeholder or leaseholder is in breach of the statutory provision or the terms of their lease agreement, enforcement takes place through an application to the First-Tier Tribunal (Property Chamber) in England.

### **3. The Policy**

- 3.1 The Policy meets the expectations of the Council as a freeholder as stipulated in the Capital Funding Guide, the Landlord and Tenant Act 1985, the Equality Act 2010 and the Commonhold and Leasehold Reform Act 2002, and other legislation as listed in the Policy (please see 4.2 of the Policy).

#### Policy Aims

- 3.2 The aims of the Policy are:
- To set out the responsibilities and obligations of the Council and the leaseholder in accordance with the lease agreement and relevant legislation.
  - To ensure that we meet our responsibilities as the freeholder as contained in the lease agreement between us and the leaseholder.
  - Ensure leaseholders adhere to the lease agreement, and where there are breaches, what actions the Council will take to enforce them.
  - To set out a broad framework under which we will provide an efficient, customer focused leasehold management service that offers value for money.
- 3.3 The Policy outlines the key guiding principles that the Council will follow to deliver services to current and new leaseholders, notwithstanding the individual terms of each property lease and the legal framework and supports delivery of good practice.

#### Policy Scope

- 3.4 The Policy only applies to leasehold properties where the Council is the freeholder, which are those sold through the Right to Buy and Shared Ownership schemes.
- 3.5 The Policy will apply to flats purchased under the Right to Buy scheme, and both flats and houses purchased under the Shared Ownership scheme.
- 3.6 The Policy does not apply to or take precedence over any other leasehold properties owned and/or managed by developers, registered providers, or another local authority.
- 3.7 The Policy does not supersede existing lease agreements but provides a comprehensive overview of how the Council will oversee aspects of leasehold management.
- 3.8 The Policy, once approved and adopted, will impact 463 properties, and all future additional leasehold properties.
- 3.9 The Policy should be read in conjunction with other Council documents, including the Shared Ownership Policy and procedures, the Council Corporate Plan, Complaints Policy, and individual Lease Agreements.

#### Policy Statements

- 3.10 The proposed Policy covers the responsibilities and obligations of the Council. Appendix 3 provides a summary of each policy statement, however in brief the Policy covers the following:

- Repairs and maintenance
- Leasehold improvements
- Health and safety
- Subletting
- Pets
- Service charges
- Ground rent
- Management and administrative fees
- Enfranchisement
- Lease extensions and variations
- Leaseholder engagement
- Section 20 consultations
- Enforcement
- Resales

3.11 There are some differences to the way Shared Ownership properties are managed to normal leasehold properties. This is largely in part due to the nature of the lease and the provisions within the Capital Funding Guide. Where this is the case, a separate section outlining the different provisions has been provided for Shared Ownership.

3.12 General management of leasehold properties is overseen by the Homeownership Officer in the Asset Management team, and Accountancy who are responsible for the production of invoices and calculations of service charges and other fees (where applicable). Other service areas such as Housing Management, Property Services, Strategic Housing, and the Legal team also provide support with leasehold management.

#### **4. Monitoring and Implementation**

4.1 Formal reviews of the Policy will be conducted every 3 years or where changes to legislation and/or regulations require an immediate review of the policy. If the Policy is approved for use, the next expected review date will be in 2027.

4.2 Staff will be provided with guidance and training on the policy's provisions to ensure that they are compliant and can provide good customer service and care to leaseholders.

4.3 Once the Policy is approved by Cabinet, a copy will be made available online for residents to access on our 'Housing Documents' webpage ([Housing documents](https://www.dover.gov.uk/housing-documents) [dover.gov.uk](https://www.dover.gov.uk)).

#### **5. Equality Impact Assessment (EIA)**

5.1 A full equality impact assessment (Appendix 2) has been completed for the proposed policy and has identified the following potential negative impacts to groups with protected characteristics: Age, Disability, Pregnancy & Maternity and Race. Mitigating actions have been identified to reduce the impact to those affected.

#### **6. Identification of Options**

6.1 Option A: Cabinet agrees to the recommendations of this report.

6.2 Option B: Cabinet does not agree to the recommendations of this report.

#### **7. Evaluation of options**

7.1 Option A is the preferred option for the following reasons:

1. It will provide a broad overview of services that meet the requirements of lease agreements and legislation.

2. It will help staff to provide a consistent leasehold management service that continues to meet best practice.
3. It will provide leaseholders and residents with guidance on their responsibilities as a leaseholder, in accordance with their individual lease agreements.

7.2 Option B is not the preferred option since it would leave the Council without a Policy for staff and leaseholders can take guidance from, especially with regards to understanding their obligations and responsibilities to the lease agreement.

## 8. Resource Implications

### Financial Implications

8.1 The introduction of new model shared ownership will have some financial implications:

1. The Council will be responsible for covering the cost of some essential repairs to properties during the 'initial repair period' (4.8). The period lasts for 10 years, but only applies if the leaseholder owns less than 100% share of the property. If a claim is made during the initial repair period, the Council cannot (1) use a reserve fund ('sinking fund'), and (2) use the service charge to pay for repairs that are our responsibility.
2. Leases for 2021 may allow leaseholders to claim £500 a year to cover 'essential and genuine' repairs, maintenance, and replacement (if faulty) of fixtures that supply water, gas, and heat. A maximum of one year's allowance will roll over into the following year if the Leaseholder did not claim the full repairs allowance in one year (Table 1).

**Table 1: Example of how the repairs allowance works if a leaseholder claims in years 2 & 3**

Year	Repairs allowance	Allowance claimed for repairs	Amount rolled over to next year
Year 1	£500	£0	£500
Year 2	£1,000 (£500 + £500)	£750	£250
Year 3	£750 (£500 + £250)	£0	£500

8.2 The Leaseholder cannot claim costs from the Council if a repair is covered under the Building Warranty (which usually last for 10 or 12 years), an insurance policy or a guarantee. Paragraph 6.19 of the Policy stipulates that leaseholders are advised to check these documents before seeking to claim the costs from the Council.

- 8.3 The cost of the Initial Repair Period will need to be considered in the financial appraisals of sites where shared ownership is present. This is to ensure that there is an adequate budget in place to cover the potential costs.
- 8.4 Currently, the Council does not own any Shared Ownership properties that fall under the new model lease; however, this is likely to change. Therefore, the Council will need to ensure that it has adequate financial resources in place to cover potential costs of the initial repair period, whether this service provided internally or externally by contractors.

#### Operational Implications (including staff resources)

- 8.5 The introduction of the initial repair period for Shared Ownership will increase the responsibility of the Council to repair and maintain Shared Ownership properties (where applicable). This may include impacts to staff resources, in particular staff within the Asset Management team.
- 8.6 As mentioned in 9.2, the Council does not currently own any Shared Ownership properties under the new model where the initial repair period is applicable, but this is likely to change in the future.

#### Policy/Legislative Implications

- 8.7 The Government announced a Leasehold and Freehold Bill (“the Bill”) in this year’s Autumn Statement. The Leasehold Reform (Ground Rent) Act 2022 formed the first part of the Government’s programme of leasehold reform. The Bill will attempt to deliver significant reform to the leasehold and housing market, making long-term and necessary changes to improve homeownership for leaseholders in England and Wales.
- 8.8 The Government is confident that the Bill will pass its second reading before the next General Election (due sometime in 2024). When the Bill is passed, it will have impacts to the way leasehold properties are managed, meaning that changes to this Policy will be needed in the future to ensure that the Council remains compliant.
- 8.9 In a letter published on 19 December 2023 (see 12.5), the Secretary of State for the Department of Levelling Up, Housing and Communities (DLUHC) set out some key changes to the Shared Ownership section of the Capital Funding Guide as a direct result of the Building Safety Act 2022. The key change pertaining to this Policy is Shared Ownership subletting. Current lease agreements prohibit subletting of Shared Ownership properties; however, the Capital Funding Guide has been amended to relax these rules, with an expectation that Providers consider subletting requests by Shared Ownership leaseholders, rather than apply a one-size-fits-all approach. Sections 6.46 – 6.50 of the Policy outlines the Council’s position on subletting for Shared ownership properties.

### **9. Climate Change and Environmental Implications**

- 9.1 No implications or impacts have been identified in the preparation of this report or the development of the proposed Policy to climate change or the environment.

### **10. Corporate implications**

- 10.1 Comment from the Director of Finance (linked to the MTFP): Accountancy have been involved in the writing of this report and have no further comment to add (AC)

- 10.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make. (SRD)
- 10.3 Comment from the Equalities Officer: As noted at paragraph 5.1 the adoption of this policy will potentially have a negative impact upon four protected characteristic groups: age, disability, pregnancy & maternity, and race. Proposals to mitigate these impacts are detailed in the Equality Impact Assessment. The Equality Officer has no further comments to make, other than to remind Members that in discharging their responsibilities they are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010  
<http://www.legislation.gov.uk/ukpga/2010/15/section/149>

## **11. Appendices**

- 11.1 Appendix 1 – Leasehold Management Policy – draft
- 11.2 Appendix 2 – Equality Impact Assessment
- 11.3 Appendix 3 – Summary of policy statements

## **12. Background papers**

- 12.1 [Capital Funding Guide - 1. Shared Ownership - Guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- 12.2 [Shared ownership homes: buying, improving and selling: Selling your home - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- 12.3 [Right to buy: a guide for local authorities \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)
- 12.4 [Guide to the Leasehold and Freehold Reform Bill - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- 12.5 Secretary of State Letter (19 December 2023) [Shared ownership and building safety \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

Contact Officer: Perry DeSouza, Senior Housing Policy Officer