

Subject:	Bristol Estate Phase 2 – First-Tier Tribunal Decision		
Date of Meeting:	16th January 2019		
Report of:	Executive Director, Neighbourhoods, Communities & Housing		
Contact Officer:	Name:	Dave Arthur, Leasehold Services Manager	Tel: 293072
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report looks at the decision, and gives thought to similar issues which may arise, relating to the First-Tier Tribunal Property Chamber decision of 18 October 2018 on the liability of leaseholders to pay service charges at five high-rise buildings on the Bristol estate. (See Appendix 1).
- 1.2 The tribunal has published the decision notice online as a public document. This is available on the Courts and Tribunals Judiciary website at the following link:
http://www.residential-property.judiciary.gov.uk/Files/2018/October/CHI_00ML_LIS_2017_57_30_Oct_2018_17_40_09.htm

2. RECOMMENDATIONS:

- 2.1 That the committee notes the decision of the First-Tier Tribunal in relation to these works along with the implications for other, similar works of repair undertaken or to be undertaken in the future by the council where service charges for major works of repair may be disputed in a similar way.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 In November 2017 the council applied to the First-Tier Tribunal for a decision on the liability to pay service charge for major work carried out at five high rise buildings on the Bristol estate. The work included replacement roof coverings, replacement windows and external wall insulation.
- 3.2 The total expenditure incurred by the council was in the order of £650,000 for each building. Under their leases, leaseholders covenant to pay a percentage share of the council's total expenditure on keeping the exterior, structure and common parts in repair. 39 leaseholders were charged £24,000 - £28,000 each, depending on their lease terms.

- 3.3 Some leaseholders withheld payment, disputing that the service charge was payable. The council was unable to satisfy the leaseholders' challenges to the service charge through its own internal service charge disputes procedure.
- 3.4 Housing & New Homes Committee received a number of questions from residents as part of the public involvement section of the committee agenda whilst the case progressed. Officers also briefed members at key stages.
- 3.5 Leaseholders have asked questions about whether mediation was considered in this case. Mediation can undoubtedly be effective in some scenarios, but can be difficult when dealing with high cost structural surveying and leasehold issues involving large numbers of service charge payers. Arbitration is conducted by a suitably qualified person, often a former judge, and the legal costs can be the same as they would be for a tribunal. The two sides need to prepare detailed cases as they would for the First-tier tribunal and present them in similar manner. It is normally used for very high value cases. In this case, the council received no detailed case against its position until the tribunal required it to be presented.
- 3.6 With mediation, any settlement only applies to the people involved and who agree to sign up to it. The tribunal, on the other hand, offered the council and leaseholders closure on the matter as a whole. The tribunal decision is binding on all parties involved. This is especially important in leasehold management as any leaseholder has the right to dispute the service charge whether they have paid or not.
- 3.7 Leaseholders have the right at any time to make a tribunal application. This means the council is in the position where at a later date it can find itself defending a service charge challenge from a single leaseholder not bound by any mediated settlement. A case brought by one leaseholder is almost as costly as a case involving multiple leaseholders. There is also a lot of officer time used in dealing with often multiple groups raising different issues and operating in very different ways.
- 3.8 The council does not wish to go to tribunals, and does everything it can to avoid going to tribunal. The council operates an internal service charge dispute process that has dealt with over 500 disputes over the last 10 years. This has been highly effective with over 90% of disputes successfully resolved at Stage 1 or 2. Of the remainder only four have gone on to tribunal hearings. The council has not been asked to limit the service charge significantly in any of those cases, and in three of them, not at all.
- 3.9 However, a tribunal is the most appropriate forum to resolve a high cost service charge dispute that cannot be agreed between the parties. The council after all is dealing with public money, in this case tenants' rents. It cannot without sufficient reason reduce service charges it believes to be overwhelmingly justified without a reasoned decision from an authority such as the First-tier tribunal.
- 3.10 In the case of the Bristol Estate Phase 2 tribunal, at the time of the application there was £400,000 of unpaid or withheld service charge.

3.11 Prior to the hearing, the barrister acting for a group of 20 leaseholders approached the council's barrister to offer a financial settlement. A full and final financial settlement was agreed with this group without any prejudice to the tribunal hearing itself.

First-tier tribunal written decision

3.12 The three members of the tribunal – the judge and two structural surveyors – inspected the buildings which were constructed c1957 by Wimpey using 'No-Fines' concrete. They recognised that 'there are well-documented difficulties with 'No-Fines' concrete which in this case led to early deterioration of the elevations' and the council receiving structural surveying advice to seal and clad them with external wall insulation (EWI).

3.13 The tribunal's written decision supported the council's work, practice and management decisions in this matter - that the repairs were required and carried out to a reasonable standard. The key points in its decision were:

- The council followed all processes correctly and the service charge costs were reasonably incurred
- All the costs incurred by the council, including for roofs, windows, balconies and external wall insulation were reasonably incurred
- The council complied in full with the consultation requirements, along with the terms of the leases and all the statutory requirements
- The major work was found to be works of 'repair' as the condition of the roof coverings, windows, balconies and non-traditional concrete envelope of the buildings had deteriorated sufficiently to be 'out of repair' – the choice of remedial work being essentially a matter for the landlord
- The cladding 'did coincidentally involve an element of improvement', but that was 'not in itself something which takes the works beyond a repair'. This is an important finding as some early Brighton leases do not allow the council to recover the cost for 'improvements'.
- On the standard of work, the tribunal was struck by the extremely exposed location of the site, essentially high-rise buildings on a hill overlooking the sea, with no protection at all from the sea winds. They said, 'a more challenging environment for maintenance can scarcely be imagined'.
- Given this, the tribunal found that the condition of the balconies 'was in many ways quite good' and that the overall standard of painting in 2014 was reasonable.
- Importantly, the tribunal decision recognises that minor problems are inevitable in such a large project and that 'the standard is one of reasonableness and not perfection'.

- The windows inspected in the various blocks were essentially in reasonable condition and the tribunal was satisfied that the original window installation work was of a reasonable standard.
- On the windows, the tribunal recognised that there were difficulties with adjustment and operation of the ‘tilt and turn’ mechanisms and problems were observed with the mechanisms in the flats visited and in the common parts (which were installed separately to this project). However, the tribunal decision says that the problems essentially related to lack of maintenance, not poor installation.
- The tribunal ruled that no limitation should be made to the costs incurred by the council for the purposes of leaseholders service charges and that the service charge costs were payable in full.

3.14 This decision has resolved all disputes on the service charge for the works at these buildings.

3.15 At the end of September 2016, the council billed 37 leaseholders on five other high rise buildings on the Bristol estate known as Phase 3 of the external refurbishment works. This is almost identical major work and it now falls to the council to seek to resolve any outstanding disputes and seek collection of outstanding service charges being withheld on these properties.

3.16 In September 2018, five high rise buildings at Clarendon Road, Hove were billed service charge at the end of September 2018, for concrete and brickwork repairs, cavity wall insulation, replacement windows and roof coverings. Multiple leaseholders are disputing the service charge for these works citing that the costs were not reasonably incurred and the works not carried out to a reasonable standard. The issues are the same as those taken to the Tribunal as above.

3.17 The council has also embarked on projects of external refurbishment including EWI at St John’s Mount, Tyson Place and Saxonbury which are likely to give rise to the same challenges, the same arguments and the same need for dispute resolution and service charge collection.

3.18 Further works to high-rise and other buildings in the council’s housing portfolio are ongoing.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 None for this report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 The council seeks to work in partnership with leaseholders through the Leaseholder Action Group. In addition, the council supports an Annual General Meeting for leaseholders. A members working group on Leaseholder Engagement was established in 2017 and a report detailing proposed improvements to Leaseholder Engagement was presented to Housing & New

Homes Committee in June 2018. The council is making a number of improvements to how it engages with leaseholders as detailed in that report.

6. CONCLUSION

- 6.1 The tribunal hearing was a very real test of the council's processes it has been operating on identifying, instructing and delivering major works projects to keep our buildings in repair over the last eight years.
- 6.2 The tribunal's conclusion that the costs incurred were reasonable, that the works had been carried out to a reasonable standard and that all the service charge was payable sets a very clear marker for the council for future works and future service charge disputes. The council can be confident that its working method is sound and the legislative framework is being complied with.
- 6.3 Additionally, in view of the fact that the independent expert appointed for the tribunal case assessed the costs to be within 1% of those incurred by the council, Brighton & Hove can be very confident in its practice on major works projects of this nature both in the past and in the future.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The Council as landlord has a duty to collect income from leaseholders for a share of major works costs to their blocks as specified in their lease agreements. If these sums are not paid by leaseholders, then the major works costs will have to be met from tenants' rents and service charges reducing the resources available for the management and maintenance of tenants' homes.

Finance Officer Consulted: Monica Brooks

Date: 03/01/19

Legal Implications:

- 7.2 The Tribunal Judgement is set out in the body of the report. There are no further legal implications arising from the report which is seeking that the Committee note the Tribunal decision.

Lawyer Consulted:

Simon Court

Date: 11/12/18

Equalities Implications:

- 7.3 None for this report.

Sustainability Implications:

- 7.4 None for this report.

Any Other Significant Implications:

7.5 None for this report.

SUPPORTING DOCUMENTATION

Appendices:

1. Written decision of First-tier tribunal 18 October 2018

Documents in Members' Rooms

1. None.

Background Documents

1. None.