

## **Economy and Growth Committee**

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<b>Date of Meeting:</b>	6 June 2023
<b>Report Title:</b>	Notice of Motion: Leasehold Reform
<b>Report of:</b>	Jayne Traverse – Executive Director - Place
<b>Report Reference No:</b>	EG/01/23-24
<b>Ward(s) Affected:</b>	All Wards

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### **1. Purpose of Report**

- 1.1. At the full Council Meeting of 22<sup>nd</sup> February 2023, a notice of motion was proposed in relation to the Government's Leasehold Reform.
- 1.2. This report provides a suggested response to that notice of motion for the Committee's consideration.

### **2. Executive Summary**

- 2.1 A Notice of Motion relating to the Leasehold reform was proposed to Council at its meeting on 22<sup>nd</sup> February 2023. The motion was proposed by Councillor L Crane and seconded by Councillor M Goldsmith.
- 2.2 The motion proposed that the Council resolves to:
  - 1) Write to the Secretary of State for Levelling Up, Housing and Communities to request that the Government:
    - a. Delivers the leasehold reforms that were promised and that they include the online calculator for lease extensions and enfranchisement as soon as possible.
    - b. Prevents the sector from fixing capitalisation rates at a low rate in the calculation to avoid pushing up the cost for the leaseholder.
    - c. speeds up progress on other reforms from the Law Commission - such as Right to Manage and commonhold to address the issues that we see today with service charges and insurance commissions; and

- 2) Asks the council to consider through the refresh of the Local Plan:
  - a. implementing planning policy changes to ensure developers are unable to create so called 'fleecehold' where fees are typically secured by a rent charge (which means if residents fall into default on those fees the property can be converted from freehold to leasehold again and so the cycle begins again); and
  - b. if and when Cheshire East Council sells any reversionary freehold or leasehold interests then it will offer first refusal to the existing leaseholder at fair value.

**2.3** Council referred the motion, outlined in full at 6.1 to the Economy and Growth Committee for consideration.

**2.4** This report addresses the points raised in the Notice of Motion, outlines the changes to current legislation and proposes that a letter is sent to the Secretary of State for Levelling Up, Housing and Communities to raise the concerns in relation to 1 – a,b,c.

**2.5** This report also considers the request as outlined in 2a of the notice of motion and explains the reasons why this cannot be addressed through the next refresh of the Local Plan.

**2.6** In relation to 2b the Council has a duty under s123 of the Local Government Act to achieve the best price that is reasonably obtainable for its property transactions. As outlined in the main body of the report this would be considered on a case-by-case basis.

### **3. Recommendations**

**3.1.** The Committee is asked to agree that:

3.1.1. The Chair of the Growth and Economy Committee writes to the Secretary of State for Levelling Up, Housing and Communities raising the issues outlined in 1, a, b, c above;

3.1.2. That no further action is taken in relation to 2 a and b.

### **4. Reasons for Recommendations**

**4.1.** The Cheshire East Council Constitution sets out the procedure for Notices of Motion submitted to Council. A motion referred to the relevant decision-making body must be considered within two meeting cycles. At the meeting to which the motion has been referred for consideration, the proposer of the motion if present shall be invited to speak first, followed by the seconder. The matter will then be opened up to wider discussion.

## **5. Other Options Considered**

**5.1.** No other options have been considered.

## **6. Background**

**6.1.** The full Notice of Motion proposed to Council was as follows:

*This council notes:*

*Government promised to tackle the leasehold reforms through two pieces of legislation. The first to help new 'leases' and the second to help 'Existing' leaseholders. The first part was delivered earlier this year via The Leasehold Reform (Ground Rent) Act 2022. This was to be followed swiftly by the second part of the promised reforms, but this has been further delayed and leaves over 6 million existing leaseholders struggling to navigate a system that is currently stacked against them.*

*As a result of this delay, sales are falling through on many leasehold properties due to the ground rents. Many remain in leasehold limbo, with no affordable way out in the middle of a Cost-of-Living Crisis.*

*This council further notes that:*

*Developers may have moved away from building leasehold homes but they have replaced this with another model by creating the Private Residential Estate model (PRE's) for new build developments.*

*Historically, estate infrastructure would be adopted by the local authority.*

*It is now increasingly common that at least some of the estate's infrastructure is not adopted and for homeowners to pay maintenance. These charges can cover a large range of items: public open spaces, play areas, landscaped or ecological buffer areas, roads, highways, ground maintenance, street lighting, games areas, administration & management fees & public liability insurance.*

*Unlike leasehold properties homeowners of freehold properties with these private estate charges have no mechanism to challenge these charges/services. They are unregulated. There is no transparency and little accountability.*

*This council further notes:*

*Local authorities have policies on the requirements for adoption which include meeting minimal standards and developers must meet these standards prior to adoption. If they do not meet these standards, then the council will not adopt. Infrastructure can often be built, without ever meeting the required standards. In the past it was common practice for developers to pay a commuted sum to cover the adoption and maintenance of items such as amenity land, playgrounds and path ways so that these could be adopted by the Council. Now processes lean towards adoption of highways alone.*

*Unadopted infrastructure is often built to lower standards. Private roads may be narrower with less room for parking and no pavements, have lower specification*

*street lighting. There may also be problems when the estate is not maintained to an appropriate standard and disgruntled residents may then look to the local authority to help them out.*

*Therefore, this council resolves to:*

- 1 *Write to the Secretary of State for Levelling Up, Housing and Communities to request that the Government:*
  - a. *Delivers the leasehold reforms that were promised and that they include the online calculator for lease extensions and enfranchisement as soon as possible.*
  - b. *Prevents the sector from fixing capitalisation rates at a low rate in the calculation to avoid pushing up the cost for the leaseholder.*
  - c. *speeds up progress on other reforms from the Law Commission - such as Right to Manage and commonhold to address the issues that we see today with service charges and insurance commissions; and*
2. *Asks the council to consider through the refresh of the Local Plan:*
  - a. *implementing planning policy changes to ensure developers are unable to create so called 'fleecehold' where fees are typically secured by a rent charge (which means if residents fall into default on those fees the property can be converted from freehold to leasehold again and so the cycle begins again); and*
  - b. *if and when Cheshire East Council sells any reversionary freehold or leasehold interests then it will offer first refusal to the existing leaseholder at fair value.*

**6.2.** Consideration has been given to each part of the notice of motion as outlined below:

**6.3. Legislation:** - The Leasehold Reform (Ground Rent) Act 2022 came into force on 30th June 2022 and restricts ground rents on newly created long leases for residential properties (except for retirement properties where it will come into force on 1st April 2023), and this means that ground rent in most new leases cannot legally be for anything more than "one peppercorn per year". A "peppercorn rent" means that no money can be legally charged or paid as ground rent on leases regulated by the Act. The Act also does not place any obligation on the landlord to levy the peppercorn rent.

**6.4.** The Act also banned freeholders from charging administration fees for collecting a peppercorn rent. If landlords charge rent in contravention of the Act, they may receive a financial penalty up to £30,000. There are a few exceptions from the Act.

**6.5.** Statutory lease extensions for both houses and flats remain unchanged and are therefore exempt from the provisions of the Bill.

- 6.6.** This Act only deals with new leases and does not address the issues highlighted within the notice of motion in relation to existing leasehold properties. There is no indication from Government when further legislation will come into force.
- 6.7.** Following the Competition and Markets Authorities (CMA) national investigation into potential breaches of consumer protection law and mis-selling of leasehold properties in the housing market and the outcome of the CMA's investigation, the Housing Service consulted with all the key developers and registered housing providers (RP's) operating in Cheshire East.
- 6.8.** The aim was to ascertain if developers/RPs had experienced any specific issues with leasehold properties in the past, what their approach will be in relation to offering leasehold properties on new developments in the future, and whether they will be offering homeowners who purchased their property on a leasehold basis previously the opportunity to buy the freehold. This was to establish the approach that housing providers were taking across Cheshire East.
- 6.9.** The research showed that most developers/RPs who responded to our mailing now sell all houses on either a freehold or Shared Ownership basis. Many developers/RPs have already offered lessees the opportunity to purchase the freehold of their homes and all of those that undertake direct development now only offer houses for sale on a freehold basis.
- 6.10.** Members can agree to write to the Secretary of State for Levelling Up, Housing and Communities to express concerns in relation to the delay in legislation and request that the Government considers the points outlined in part 1 of the notice of motion.
- 6.11. Private Residential Estate model (PRE's) for new build developments. –**  
When purchasing a new build property, potential owners will be advised if there is a charge to maintain the open space on the estate or parts of the estate infrastructure which is not adopted by the Council. This is predominately on freehold properties, but leaseholders can also be charged a fee on top of their ground rent and service charge.
- 6.12.** The charge on freeholder properties is bound to the property through the title deeds and unlike leaseholders who can challenge through a tribunal, there is no dispute resolution available to freeholders.
- 6.13.** There is currently no requirement, as a matter of law or national planning policy, for new open space that is created as part of a development scheme to be conveyed to the council by the developer. There is similarly no general requirement on developers to have their new estate roads adopted by the council. Given the absence of any legal requirements and that a key test of local plan policy at examination is consistency with national planning policy, it is not

considered that the next Local Plan provides a route to address this issue. Cheshire East are therefore not able to implement 2a through the next Local Plan.

- 6.14.** On some new developments there is a need to include a charge to ensure the long-term stewardship. The Council is leading on the development of a Garden Village at Handforth, and there are planning requirements that a custodian and stewardship plan is put in place.
- 6.15.** This plan will be responsible for the maintenance and management of facilities in the village including, estate roads, a village hall, heat network, and the extensive lands the village is situated in.
- 6.16.** There is an expectation in the emerging business plan that households will be asked to contribute service charges to pay for such upkeep, with the aim to keep the village as an exemplar location to live.
- 6.17.** The type of enterprise is not yet specified or fully formed, but it could be a council owned ASDV, community enterprise, community interest company or some form of trust.
- 6.18.** We need to ensure that such a mechanism can be put in place which is adequately funded and that is not profit motivated, but will need to make modest surpluses to reinvest in the site over the medium and long term.
- 6.19. Cheshire East sale of leasehold** – The Notice of Motion seeks assurance that when Cheshire East Council sells any reversionary freehold or leasehold interests then it will offer first refusal to the existing leaseholder at fair value.
- 6.20.** The content of paragraph 2b of the motion would not be dealt with through the next Local Plan. The definition used in paragraph 2b of the notice of motion also extends beyond the property described in the notice of motion. Therefore, the notice of motion would, if adopted, affect a wider cohort of property than is set out in the notice.
- 6.21.** The Council does not employ the methodologies, with the impacts described, which are set out in the notice of motion, and it is not at all likely that the Council would choose to adopt these approaches irrespective of the current legislative position. The Council holds limited stocks of residential properties, and those it holds are principally for operational reasons.
- 6.22.** The Council does hold a wide range of land and property (including commercial property) under a range of tenures including reversionary freeholds. In circumstances where the Council sought to dispose of these interests it would consider these on a case-by-case basis.

- 6.23.** The Council is compelled by statute to achieve what is known as best price for its land and property assets. Using fair value as a basis of valuation for these assets would not achieve the objectives of the motion and it would not achieve the requirement to achieve best price. This would place the Council at risk of not complying with s123 of the Local Government Act 1972.
- 6.24.** Cheshire East Council are therefore not able to implement 2b of the notice of motion.
- 6.25.** Cheshire East does administer several Discounted for Sale affordable housing schemes, the majority of which are freehold, with the discount secured by the way of a charge on the property, however in some circumstances for example apartments the properties have to be sold on a leasehold basis.
- 6.26.** Previously the Council has sold land to Registered Housing Providers for affordable housing schemes on a leasehold basis which are subject to a ground rent and have in future years negotiated the sale of the freehold. This is however not on individual properties and would be considered on a case-by-case basis.
- 6.27.** Registered Housing Providers offer Shared Ownership homes on a long lease (125 up to 990 years), where purchasers buy a percentage of the property (10% to 75%) initially and pay subsidised rent on the remaining percentage of equity to the Registered Housing Provider. The Shared Owner can then buy further portions of the equity in their home, as and when they can afford to do so – this is called staircasing, and the Shared Owner can purchase the remaining equity in the property, on terms set out in the lease. When the property is owned outright the freehold will automatically be transferred to the Shared Owner, except in exceptional circumstances, e.g., in protected rural areas, where they can only purchase up to 80% of the equity, so the homes remain available for future shared ownership purchasers.

## **7. Implications**

### **7.1. Legal**

- 7.1.1. Leasehold and Freehold is governed by Government legislation and Councils can only adhere to the legislation. The Government have and are proposing further changes to the legislation in relation to leasehold properties.
- 7.1.2. In relation to charges on new build properties to cover costs associated with the maintenance of open space, highways and other infrastructure, the Council has no jurisdiction in relation to this. If owners refuse to pay the charges, then there is a risk of repossession. The 1925 Property Act states that a lease can be created on a property if an owner refuses to pay. Mortgage lenders will often insist on a Deed of Variation to protect them against this from happening.

- 7.1.3. As noted earlier in the report, there is no general legal obligation on developers to convey areas of open space within new developments to the council. Similarly, there is no general legal requirement on developers to have new estate roads adopted by the council.
- 7.1.4. As referred to in Paragraphs 6.23, Cheshire East do not hold the assets as mentioned in the notice of motion and if we were to adopt 2b it would place the Council at risk of not complying with s123 of the Local Government Act 1972.

## **7.2. Finance**

- 7.2.1. As mentioned in 6.23, the Council is compelled by statute to achieve what is known as best price for its land and property assets. Using fair value as a basis of valuation for these assets would not achieve the objectives of the motion and it would also not achieve the requirement to achieve best price.
- 7.2.2. When considering the long-term stewardship of Council residential schemes, the Council needs to ensure that all costs are covered and that a financial burden is not placed on the Council.

## **7.3. Policy**

- 7.3.1. There are no policy implications arising from this report.

## **7.4. Equality**

- 7.4.1. There are no equality implications arising from this report.

## **7.5. Human Resources**

- 7.5.1. There are no Human Resources implications arising from this report.

## **7.6. Risk Management**

- 7.6.1. The main risk to the Council is set out in 6.20 and 6.21 and to mitigate against developing such policies would deal with land and assets on a case-by-case basis.
- 7.6.2. The inability to charge a maintenance charge on new council lead developments could place the council at a financial risk and therefore were appropriate the Council needs to have the mechanism to enable this approach to be taken forward.

## **7.7. Rural Communities**

- 7.7.1. There are no issues relating specifically to rural communities arising from this report.



## 7.8. Children and Young People/Cared for Children

7.8.1. No implications for Children and Young People/Cared for Children arising from this report.

## 7.9. Public Health

7.9.1. Having access to safe, affordable, good quality housing is key to ensuring positive physical and mental health and wellbeing. Further delay by the Government in implementing the second part of its planned leasehold reforms risks more people falling into financial difficulty and experiencing the negative health and wellbeing impacts associated with this.

## 7.10. Climate Change

7.10.1. There are no climate change implications arising from this report.

<b>Access to Information</b>	
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Appendices:	N/A
Background Papers:	N/A