

Report for: **Special Overview and Scrutiny Committee, 1 December 2020**

Title: Call-In of a decision taken by Cabinet on 10 November 2020 to approve the Alterations Policy for Leaseholders

Report authorised by: David Joyce, Director for Housing, Regeneration and Planning

Lead Officer: Robbie Erbmann, Assistant Director for Housing

Ward(s) affected: All

**Report for Key/
Non-Key Decision:** Key Decision

1. Describe the issue under consideration

- 1.1. On 10 November 2020 Cabinet agreed the following recommendations contained in a report presented to them:-
 - 1.1.1. To approve the revised 'Alterations Policy for Leaseholders' regarding the improvement works that leaseholders are permitted to make to their property as set out in appendix 1¹ of the policy.
 - 1.1.2. To approve the introduction of a requirement that, where a leaseholder's external windows and doors need to be changed, all such installations are to be carried out by the Council and its approved contractors.
 - 1.1.3. To approve the fee structure detailed in paragraphs 6.13, 6.16 of the report² presented to Cabinet and appendix 1 of the policy which will be subject to an annual review.
 - 1.1.4. To note the process for deciding whether landlord consent can be granted as detailed in paragraphs 6.6 to 6.12 of the report presented to Cabinet and appendix 1 of the policy.
- 1.2. Following a Call-In of that decision made in accordance with Council procedures, this report provides further information to support the Overview and Scrutiny Committee's (OSC) consideration of the issues raised in the Call-In.

2. Cabinet Member Introduction

- 2.1. My introduction to the original report considered by Cabinet on 10 November 2020 sets out the case for that decision. This report deals with the specific

¹ Now shown as appendix 4.

² Now shown as appendix 1.

points raised in the Call-In. The safety of residents, both leaseholders and tenants is of paramount importance and guides this decision. I believe that I have a duty to be guided by the safety considerations that have been brought to my attention and the accountability considerations highlighted in order to ensure that as a landlord and freeholder we take all possible steps to protect the safety of all residents in these buildings. This involves for me all reasonable steps to prevent alterations undermining the safety of residents. I confirm my view that nothing raised in the Call-In or set out in this report changes my view that the decision taken on 10 November 2020 was the correct one.

3. Recommendation

- 3.1. It is recommended that the Committee takes into account the information in this report when considering its decision on this matter.

4. Reasons for decision

- 4.1. Not applicable.

5. Alternative options considered

- 5.1. Not applicable.

6. The Decision and the Call-In

- 6.1. On 10 November 2020, Cabinet approved the recommendations set out in the report entitled: 'Alterations Policy for Leaseholders'. The decision and the report are available on the Council's website, are shown as appendix 1 in section 16 below.
- 6.2. Following the issuing of the draft minutes for the Cabinet meeting, a Call-In of that decision was received and validated, in line with agreed Council procedures. Accordingly, the matter is now to be considered by the Overview and Scrutiny Committee. Sections 7-13 of this report describes and responds to each of the reasons given for the Call-In.

7. Call-In issue a):

Given the paramount importance of the safety of leaseholders and tenants, we are concerned that this decision is counter to that objective. Para 6.4 of the report notes that officers had observed potentially hazardous alterations. However, there is no attempt to establish, or evidence provided in the report, that external installations carried out by Homes for Haringey (HfH) are more likely to be manufactured and fitted correctly and less likely to compromise fire safety than those done by a contractor chosen by a leaseholder.

During the 10th November meeting, both Ms Van Den Bergh and Cllr Cawley-Harrison noted cases of doors and windows installed by HfH having safety issues. Concerns were also raised during the meeting about cases where, following unsafe work, no follow up inspections took place to review the work, and when residents raised the failings with local ward

councillors having already done so to HfH without remedial action, works to rectify outstanding problems was not carried out for over 12 months. Furthermore, the Managing Director of Homes for Haringey stated during the Cabinet meeting that the number of complaints made by residents following works carried out by HfH was “higher than we would want it to be”.

Therefore, it appears untenable to assume that the work being done by HfH in and of itself guarantees its safety.

- 7.1. The Council’s decision to propose changes to our existing policy was directly related to the wider actions we are taking to mitigate the potential risk of fires within our buildings. This is an approach that all Councils were required to consider following new government guidance in the aftermath of the Grenfell Tower fire tragedy.
- 7.2. The Council’s view is that the best way to ensure the safety of our buildings and residents is through making sure that only approved contractors, directly overseen by the Council or its agents, carry out works that are our responsibility, under the terms of the lease.
- 7.3. No work carried out to the fabric of the building guarantees absolute safety by itself. All elements of the building need to work together to support the fire and structural safety of those living within it. Through HfH’s nominated contractors doing this work, there is a mechanism to hold the Arms Length Management Organisation (ALMO) to account. In addition, HfH’s contractual relationship with their contractors, makes the remedy and rectification of problems easier.
- 7.4. All works carried out by the Council’s contractors will have an official handover certificate. Following handover, an inspection of the works will be carried out by a qualified Clerk of Works, to ensure all works meet the required building standard. Each property will have received the required FENSA certificate³ and where applicable, the relevant fire safety certificate. This information is stored within the asset data on each dwelling, enabling any future maintenance to be carried out on each element without voiding the safety measures installed during the manufacturing of each unit.
- 7.5. The Council accepts that there may be cases where leaseholders have previously installed windows and doors to a higher standard than those installed by the Council’s nominated contractors. However, there is a lack of consistency in the current approach. This means there is no easy mechanism for holding individual leaseholders to account, if the fixtures they install are substandard or for the Council to rectify any poor or unsafe work.
- 7.6. Under the new policy, the Council will continue to have a repairing responsibility for the windows and doors of each flat. If a repair is required to a door or window that has been installed by a Council nominated contractor, this should be reported in the first instance to the Council’s customer contact centre, where staff will advise the leaseholder of our repair responsibilities relating to these

³ This provides assurance that the installer who fitted your windows or doors has complied with Building Regulations.

fixtures. Such repairs will be carried out under the same process as other communal works required within Council owned blocks.

- 7.7. It is not possible to comment on individual cases of alleged poor quality work because the details have not been provided, but HfH and the Council acknowledge some deficiencies in works and standards over time and that the levels of complaints have been higher than we would like.
- 7.8. HfH has advised they do not have a record of receiving any member enquiries from Councillor Cawley-Harrison regarding the standard of major works since the current administration was elected.

8. Call-In issue b)

Given the issues raised in point a), we believe that until HfH is able to improve on its processes, has sufficient quality control in terms of an independent building control sign-off process, and can evidence that all work is being carried out to a standard required for the safety of residents, that this decision will not positively contribute towards the discharge of the Council's legal responsibility to ensure it has robust processes in place to ensure doors and windows are installed to current regulatory standards in the event of a fire.

- 8.1. The Council and HfH are acutely aware of the need to guarantee the safety of residents in their homes. For this reason, HfH's Property Services team require that any future Front Entrance Door (FED) installations will be carried out by only by using the timber fire doors with primary test certification, confirming their compliance to the current legislation and standards. Furthermore, these doors will only be installed by a certified installer with a third-party accreditation.
- 8.2. All work will be inspected and delivered to the set standard of building control regulations. Any work that fails to meet the industry requirements, will not be signed off by the Clerk of Works and the contractor will be notified of the failure and instructed to return. No work will be financially completed without all the associated certification, including the Clerk of Work's sign off report.
- 8.3. HfH is in the process of enhancing their Property Services team. This includes the recruitment to the permanent post of Executive Director of Property Services. In addition, they are recruiting to the new post of Director of Building Compliance. HfH has also recruited to the Building Safety Manager position that will enable the Council to meet the requirements of the upcoming changes related to Building Safety Bill and Fire Safety Bill. The new team members within HfH will enhance the mechanisms and processes for ensuring the safety of all residents in Council-owned homes and buildings.
- 8.4. In addition to the above posts, there will be greater scrutiny of the work of HfH's Property Services team by the Council's Housing Service. This will be reflected by the recruitment of two new interim ALMO Client Manager posts and these will focus on HfH's capital major works programmes, as well as building safety and property compliance. These roles will incorporate monitoring HfH's processes and delivery within the key areas of the ALMO's business and the

enhancement of quality control mechanisms. They will also provide appropriate challenge and support, as necessary.

- 8.5. HfH has their own Health and Safety Board, with one of the external attendees a representative from the British Safety Council. A function of the Board is to review recurring problems revealed by safety audits and inspections.
- 8.6. HfH has established a combined Fire Risk and Property Compliance Board, chaired by the HfH Managing Director and attended by representatives from the Council. These meetings take place monthly and enable greater strategic oversight and focus on all aspects of compliance.
- 8.7. A Compliance Task and Finish Group, a sub-group of the HfH Board, has been established. This Group is chaired by an independent board member who makes sure the Group adheres to its primary role to provide oversight and scrutiny of HfH's plans to improve property related statutory and regulatory compliance.

9. Call-In issue c)

Given the position in Appendix 3 of the proposed revised “Alterations Policy for Leaseholders” that “[i]t is not appropriate for independent contractors to carry out alterations to our buildings”, it is necessary to consider the impact of mandating that leaseholders rely on a monopoly supplier, and the impact this may have on the cost and quality of work they can expect. We do not consider that their right to appeal unreasonable costs to the First Tier Tribunal provides this, as this is an inherently confrontational and technical process and many leaseholders may be reluctant to engage with it.

- 9.1 To re-iterate the point raised in 7.2, we feel the best way to ensure our buildings and residents are not put at risk, is by making sure that only approved contractors, directly overseen by the Council or its agents, should carry out works that are our responsibility, under the terms of the lease.
- 9.2. The procurement of all the Council's nominated contractors is by undertaking a compliant competitive process in accordance with HfH/the Council's policies and procedures.
- 9.3. In the event that a leaseholder believes that the quality of the works carried out by the Council is not sufficient, or that the costs are not reasonable, they have the right to make an application to the First Tier Tribunal to seek redress. The tribunal's practice and procedure are governed by their 'overriding objective', which is to make sure they deal with cases fairly.

10. Variation of action proposed

This decision going to Overview and Scrutiny Committee will provide a chance for fresh evidence about the relative safety of HfH and open market installations of doors and windows to be presented. If such evidence is not forthcoming, then the existing ‘Alterations Police for Leaseholders’ should remain in place.

10.1. There has been extensive engagement with leaseholders, prior to the revised policy being presented for Cabinet approval on 10 November 2020. Haringey Council undertook consultation between 24 February 2020 and 20 March 2020 and further consultation in July 2020. This included:-

- A letter dated 24 February 2020 was sent to all leaseholders which outlined the proposed changes.
- This correspondence incorporated a proposal that where a leaseholder wishes to replace the external windows and doors of their property, all such installations are to be carried out by the Council and its approved contractors.
- All leaseholders were invited to submit their responses and comments to the Homes for Haringey Leasehold Services team by 20 March 2020.
- Homes for Haringey wrote to all leaseholders on 26 June 2020 to invite them to attend one of three online meetings, that were held at the following times: 10.00am on 6 July 2020, 2.00pm on 7 July 2020 and 6.00pm on 9 July 2020.
- These meetings gave those leaseholders who attended, the opportunity to comment on the proposals that had been developed following the consultation.
- All attendees who attended the above sessions received a summary of the meetings, on 14 August 2020.

10.2. Following Cabinet's approval of the policy change at their meeting on 10 November 2020, there are no plans to undertake further consultation on this matter.

10.3. To re-iterate the point raised in 9.2, the procurement of all the Council's nominated contractors is by undertaking a compliant competitive process in accordance with HfH/the Council's policies and procedures.

10.4. In addition, by aligning the stock throughout the borough, the Council can ensure that all windows and doors are serviceable during cyclical maintenance programmes. This will allow us to extend the life span of each unit while ensuring the safety functions remain fully operational.

11. Variation of action proposed

Fresh provisions should be made to guarantee the cost and quality of work on leaseholder properties does not fall below the standard they could have obtained on the open market and which is not dependent on them taking cases to the First Tier Tribunal.

11.1. When the Council intends to enter into a contract where a leaseholder is required to contribute more than £250.00 for works that are carried out to the building, (including the windows and entrance doors) and this incorporates their property, we are required to consult with leaseholders. The Council must have regard to their comments before entering into such a contract.

11.2. The First-Tier Tribunal is required to consider that not only the quality, but the costs of the works are reasonable. The Tribunal is required to consider all

legitimate costs in relation to the works to the building and not just the costs to an individual property. For example, a ground floor property may not require scaffolding to install new windows where the upper floors would. This means that the cost of the scaffolding should be included when considering the contribution from leaseholders of ground floor flats. This approach is consistent with the lease agreement.

- 11.3. If a leaseholder has concerns regarding the cost or quality of any works, this should be initially raised with HfH to see if they are able to resolve these. It is only when HfH is unable to reach an agreement that the leaseholder, or HfH (on behalf of the Council), has the right to make an application to the First-Tier Tribunal to seek a determination of the leaseholder's liability.

12. Variation of action proposed

HfH to set out an additional QA process that includes an independent building control survey of the installation of doors and windows following the completion of the works and closure of the job in the works list, or instances where the job is not marked as completed, within 5 working days of any replacement or installation works carried out, irrespective of if the work is carried out by HfH or an external contractor, to ensure the work meets the safety standards expected by the Council, and for this report to be sent to the leaseholder of the property without request.

- 12.1. The Council can issue the complete handover certificate to leaseholders, although five working days will not allow sufficient time to process entire blocks. Following completion of all works within each building, the Council can supply leaseholders with copies of all certification relating to the dwelling.

13. Variation of action proposed

HfH to offer a market comparison document with all S20 notices, or notices of works to leaseholders comparing their costs (presented as a complete, itemised breakdown) with alternative suppliers that may have been available on the open-market as is now standard practise in other industries such as utilities.

- 13.1. The consultation requirements under Section 20 of the Landlord and Tenant Act 1985 (as amended) are detailed in the Service Charges (Consultation Requirements) (England) Regulations 2003. Such consultation requires that the landlord has regard to any comments made by a leaseholder in relation to the proposed works. This allows for the leaseholder to make observations in relation to the cost of the works and provide evidence to support their view.
- 13.2. In addition, as part of the Section 20 requirements, unless the work is to be carried out by a contractor appointed under a Qualifying Long Term Agreement (which is itself subject to statutory consultation) or has been procured under EU procurement regulations requiring public notice, leaseholders may nominate suppliers. The process itself provides an opportunity for leaseholder-nominated suppliers to bid for the works. The Cabinet award report would outline the bids received in the exempt section, due to the requirement not to disclose commercially sensitive information.

14. Contribution to strategic outcomes

14.1. The contribution of the decision regarding strategic outcomes was set out in the report to Cabinet on 10 November 2020.

15. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Chief Finance Officer

15.1. The Director of Finance & Section 151 Officer has been consulted in the preparation of this report.

15.2. The financial implication of the decision taken by Cabinet were highlighted in the 10th November 2020 Cabinet report.

Strategic Procurement

15.3. Strategic Procurement notes the contents of this report. The Call In primarily relates to a policy decision; therefore, Procurement comments are not applicable as this sits outside of the Procurement Contract Regulations and HfH's Contract Standing Orders.

15.4. Strategic Procurement confirms procurements relating works stated in this report are subject to a competitive tendering process in accordance with the Public Contract Regulations, the Councils Contract Standing Orders and Section 20 requirements (where applicable).

Assistant Director of Corporate Governance

15.5. The Assistant Director for Corporate Governance has been consulted in the drafting of this report.

15.5.1. The relationship between the Council and the leaseholders is governed by the lease. Right to buy ("RtB") leases are granted in accordance with the provisions contained in the Housing Act 1985.

15.5.2. While there have been variations in the form of the standard RtB lease from time to time, the standard form has always excluded both the structural and exterior parts and the windows and external doors – the entrance doors – from the definition of the Flat.

15.5.3. The Council is responsible under the terms of the standard RtB lease to keep in repair the structure and exterior of the buildings of which the Flats form part (including windows and external doors, other than the window glass). While it is open to the Council to seek remedies over against a leaseholder as a result of whose actions doors or windows fall into disrepair and/or who create a danger to other residents, the repair responsibility is not one that it is entitled to delegate to individual leaseholders.

- 15.5.4. The standard RtB lease has always included a provision preventing leaseholders carrying out alterations to the Flat without written consent.
- 15.5.5. The effect of these provisions is - so far as relevant to the issues raised in the call-in relating to replacement windows and external doors:-
- (a) The Council – not the individual leaseholder - is responsible to the residents in any building for repair of the windows and external doors installed in any given flat.
- (b) The leaseholder has no right to alter the structural or exterior parts or the windows or external doors of the Flat, all of which remain the Council's property.
- (c) The leaseholder's right to alter non-structural parts is subject to the Council's consent, which must not unreasonably be withheld.
- 15.5.6. By concession, the Council has hitherto permitted alterations to windows and external doors subject to conditions. The proposed policy withdraws that concession for the reasons set out in this report and the report before Cabinet 10 November 2020.
- 15.5.7. Further legal comment appears in the body of the report.

Equalities

- 15.6. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:-
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
 - Advance equality of opportunity between people who share those protected characteristics and people who do not.
 - Foster good relations between people who share those characteristics and people who do not.
- 15.7. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 15.8. This call-in relates to the proposed decision is to approve the revised 'Alterations Policy for Leaseholders' regarding the improvement works that leaseholders are permitted to make to their property, introducing a requirement that, where leaseholders wish to install new external windows and doors, all such installations are to be carried out by the Council and its approved contractors. The objective of this decision is to ensure the health and safety of tenants and leaseholders living in Council properties.
- 15.9. As indicated in the original Cabinet report, the profile of tenants and leaseholders in Council properties is such that women, individuals over 45 years old, BAME communities, and individuals with disabilities are likely to be

overrepresented among those affected by the decision. As the decision represents a step to ensure the health and safety of tenants and leaseholders, it can be expected to have a positive impact for residents who share the protected characteristics of sex, age, race/ethnicity, and disability.

15.10. Leaseholders have been engaged on the proposed decision, with reasonable adjustments made to ensure that all leaseholders were able to participate. There is no indication that any objections to the proposed decision arise from concern regarding the Council's public sector equality duty.

16. Use of Appendices

- Appendix 1: Cabinet report dated 10 November 2020
- Appendix 2: Published draft minutes of the Cabinet meeting on 10 November 2020.
- Appendix 3: Call-In request.
- Appendix 4: Alterations Policy for Leaseholders.

17. Local Government (Access to Information) Act 1985

17.1 Not applicable.