
SUPPORT TO PRIVATE HOMEOWNERS WHO HAVE COMMON REPAIR RESPONSIBILITIES

1.0 SUMMARY

1.1 The Council has recently received proposals from Argyll Community Housing Association (ACHA) requesting Council assistance to help them to fulfil their obligation to meet the Scottish Housing Quality Standard (SHQS) by 2015 and to sustain the SHQS through their improvement programme to 2020. ACHA's inability to reach agreement with some owners who have common repair responsibilities is hindering the programme. This report provides Members with the contextual background information and sets out the Council's proposed response to the ACHA proposals.

2.0 RECOMMENDATIONS

2.1 Members are asked to agree that in order to assist ACHA to progress their house improvement programme and to overcome wider common repair issues that:

- A report on enforcement action policy and financial implications is prepared for Members consideration at a future meeting.
- Thereafter the Council seek agreement with ACHA on protocols for using their respective enforcement powers
- the Council and ACHA jointly instigate negotiations with the Scottish Government to establish if there is any possible relaxation of the criteria relating to Right to Buy receipts for Support to Owners which was set out in the stock transfer agreement.

3.0 DETAIL

3.1 Background. The Right to Buy legislation has resulted in many, former local authority, properties with common repair responsibilities being in mixed ownership buildings. Some of the relevant legislation and policies which deal with this situation are to a degree conflicting. For example, the SHQS which social landlords have to achieve does not apply to private sector houses and raises conflicting pressures in mixed ownership situations. Property disrepair and associated energy efficiency and fuel poverty issues are significant challenges which the Council has prioritised and seeks to address, through the local housing strategy. The Council has a strategic, enabling role which covers all tenures and any approach has to be balanced, fair and equitable. It is with these principles in mind that this response has

been prepared.

3.1.1 Housing (Scotland) Act 2006. The guidance to the Housing (Scotland) Act 2006 states that grant funding should be used sparingly and not as the solution to all aspects of private sector disrepair. At the time of the 2006 Act, public investment in private houses was supposed to diminish with owners taking on greater responsibilities and the Council's policies reflect that in the Section 72 Statement of the Scheme of Assistance which was agreed in 2010. These are explained in paragraph 3.1.2 below.

3.1.2 Local authority grant assistance for common works. A standard grant of £250 per private unit for a tenement condition survey is offered. This enables owners to jointly appoint an agent to survey their buildings and report on repair and maintenance options to the owners.

Thereafter, grants for common repair are currently set as follows;

- a) Small works = amenity grants. 30% of costs up to a maximum of £1,000 per property
- b) Major Works = Standard grant = deduct first £5,000, thereafter 50% of the cost of the work up to £10,000 per property.
- c) Hardship grant = deduct first £5,000, thereafter 75% up to £15,000 per property. Hardship includes an equity assessment which means that few people qualify. The equity assessment includes a valuation of the renovated house from which any outstanding mortgage is deducted. This provides the free equity in the house. A notional 20% of the free equity to be invested in the necessary works is then calculated before consideration of enhanced grant.

3.1.3 Grant assistance is predicated on the requirement that owners either form an owners association (which should include ACHA) or join the ACHA factoring scheme as an indication that the framework exists within the tenement to maintain and repair the property over the longer term.

3.1.4 ACHA's concerns relate primarily to property in poor condition that **will fail** the SHQS in future years if they don't make progress with their neighbouring owners. The current Scottish Housing Charter requires that landlord's 'meet the SHQS standard by 2015 and continue to meet it thereafter'. ACHA's achievement of SHQS by March 2015, based on Scottish Government guidance is reported to be proceeding as planned.

3.2 Issues which impede progress. There are a wide range of factors in common ownership scenarios which make progress difficult to achieve and some of the factors which specifically relate to ACHA common ownership are outlined below.

3.2.1 ACHA have taken a decision not to participate in owners associations requiring instead that owners join their factoring scheme and pay the fee. An owners association provides the forum to discuss, debate and agree issues of common concern. If ACHA do not participate with co-owners in a formal setting, as one of equal co-owners, then projects can often be divisive from the start.

3.2.2 An owner in a tenement has common repair responsibilities for that tenement building only. Their interest does not extend over the entire estate. ACHA understandably seek to achieve economies of scale and aim to renovate all tenements within a particular estate with the same works, irrespective of individual circumstances. A more personalised approach on a smaller scale, tenement by tenement, may achieve more owner buy in although it is both time and resource intensive. Owners often only want to pay for the minimum requirements for essential repairs.

3.2.3 Owners who have purchased their property under the Right to Buy legislation sometimes do not fully appreciate the significance and potential financial commitments of their common repair responsibilities. Agreement to appoint an agent defers consideration of the issues. It is only when the full costs are known that owners raise their concerns and may indicate an unwillingness or inability to proceed. Also, some owners do not have the disposable funds to meet the costs of the essential repair work.

3.3 The foregoing paragraphs set out the background to the proposals submitted to the Council for consideration. There are, as clearly demonstrated, a range of potentially complex scenarios surrounding common repair work. The costs associated with the work for private individuals can be substantial. This is the case for any owner and not just those who have common responsibilities with ACHA. In order to move forward ACHA has made six suggestions which the Council have been asked to consider. These are noted, in bold, in the following paragraphs with the suggested Council response below.

3.4 Review the PSHG grant rates available to owners to encourage participation. Suggest an increase of percentage grant up to 90% and a reduction of the £5000 amount ineligible for grant.

3.4.1 Spending on grants for housing repairs is a limited resource which is decreasing over time. It is currently, £1.3m this year and next, reducing to £1m in 2015/16. ACHA have calculated that a total

owners' assistance package of £6.3million, which amounts to slightly over £1million per year until 2020, would make the material difference between progress to deal with these issues and stagnation and consequent building decline. Viewed in the context of the current funding available for all PSHG commitments this would represent a significant increase for a specific group of owners i.e. those who have common repair responsibilities with ACHA.

3.4.2 The Council's approach has to be equitable and therefore any changes to the level of grant funding would need to be applied to all owners and not just those who happen to have common repair responsibilities with ACHA. The Council has to ensure that its grant policy is proportionate and that it balances public investment in some private property with the fact that most owners will be left to pay for works themselves. Any increase to individuals will reduce the number of properties which can be dealt with unless, as ACHA suggest, the overall budget is increased. It is worth noting that the Council's capital programme for 2014/15 is £50m a year and from 2016/17 it will reduce to £11m. Clearly, with all the demands on the capital budget this will require clear prioritisation of future spend.

3.5 Target the Private Sector Housing Grant (PSHG) allocation to assist the ACHA programme

The PSHG is targeted at disabled adaptations as these are (mainly) mandatory grants. In 2012/13 this represented approximately 54% of the budget c£700k. Thereafter, common repairs are prioritised which includes mixed ownership. Other priorities include regeneration activities such as THI, CARS and other town centre regeneration which the Council would not want to compromise in the next couple of years and this limits the finance available to support ACHA. The Council are already assisting in major building improvement projects in Soroba, Oban and Maitland Court in Helensburgh.

3.6 Provide low cost loans to owners.

This is not something the Council has done for many years due to the associated high level of risk it would carry. If owners are unable to raise finance through commercial lending it would seem to indicate that there would be the potential for high levels of default and associated risk to the Council. Given current finances the Council would not be in a position to offer cheaper loans than any of the commercial lenders and we would have to apply an equally stringent financial check which would not make Council lending any more attractive to low income owners.

3.7 Use enforcement powers and agree with ACHA a set of triggers when these powers would be used. If resources limited, agree the scope and extent possible.

3.7.1 It is agreed that in certain circumstances the Council would, and

indeed, has already used enforcement powers. However, there should be a protocol agreed with ACHA for working with private owners. The Council's main aim is to get the vast majority of owners to agree to both the extent and cost of works required. Enforcement powers would only be used to fund work to bring elements of a building to a good state of repair if it was in severe disrepair, or where elements have reached the end of their serviceable life. This work would not necessarily be the same as SHQS which covers the entire building.

- 3.7.2** ACHA have a planned maintenance programme as is the case with all public sector landlords. As Council powers can only be used in cases of severe disrepair and virtually all ACHA properties will meet the SHQS by 2015, it is likely that only a relatively small percentage of the properties would meet the severe disrepair criteria at the time work is proposed. Currently, ACHA have identified 509 owners affected by the long term improvement programme. On their assumption that 30% completely refuse to participate, and on the basis of recent average unit enforcement costs of £16,300, the Council are being asked to consider serving enforcement notices to deal with around a further £2.5m of long term debt with medium recovery risks.
- 3.7.3** Owners have expressed concern to the Council about ACHA undertaking perceived unnecessary works, high cost and owners not able to choose contractors. ACHA's priorities are not always those of many of their co-owners and if the Council were to enforce ACHA's preferences we could be open to challenge. Given there is no clear definition of what constitutes severe disrepair then it is likely that individuals who are not in agreement with a potential enforcement action could regularly challenge any enforcement action and the use of expert witnesses could make for protracted legal disputes.
- 3.7.4** Operation of these powers has significant resource implications for the Council. Currently decisions around enforcement actions are subjective. The need for a clear council policy has been identified, which sets out guidance for staff on when enforcement action should be taken. It is therefore proposed that a draft policy on closing orders; demolition orders and works notices will be prepared for Members consideration at a future meeting. This issue will not only apply to ACHA's mixed ownership properties but to all private owners with common repair responsibilities
- 3.7.5** Legal services have confirmed that when considering enforcement it should be borne in mind that ACHA have the same powers as the Council, only under Title or the Tenement Act, but to date they have chosen not to use these powers due to financial risk. The Tenement (Scotland) Act 2004 gives any majority group of owners power to carry out works and recover costs from defaulting owners.
- 3.7.6** Also, if ACHA are the owners of the majority of properties in a block they can decide to proceed with common repair works either in terms

of the titles or in terms of the Tenement Management Scheme which fills the gaps that may exist in title provisions. Where they do so they would be entitled to recover an appropriate share of the cost of the works from the other owners. They would also be entitled to raise proceedings in court to recover these other shares. If they aren't majority owners then they would require to persuade a majority to vote in favour of the works being carried out (unless the titles provide otherwise) because without that majority decision they would not be entitled to recover the other shares.

3.8 Negotiate with Scottish Government for the recycling of Right to Buy (RTB) receipts to assist owners, either as PSHG grants or when Council step in with enforcement powers.

RTB receipts in 11/12 were £684,377 and £618,942 in 12/13. As part of the stock transfer agreement, an element of these funds was identified for support to owners and in 13/14 the amount earmarked is £250k. The Scottish Government has advised that this agreement will only run until 2015. The money can only be made available for support to owners if owners' costs put extra demand on PSHG. The Council has to be able to demonstrate that all other avenues have been exhausted i.e. PSHG is fully committed. Grant would be paid on the same basis as the existing Council scheme. The Council could consider negotiation with the government to relax the criteria for utilising these funds to assist ACHA to meet SHQS but in the longer term this will not be a potential source of funding as it ceases at the conclusion of the stock transfer agreement in November 2015 and the if the proposed abolition of RTB is approved there will not be any RTB receipts after 2016/17.

3.9 Review the Strategic Housing Fund as a potential source of assistance to top up the other possible tools.

The Council clearly set out its policy for the use of the Strategic Housing Fund in August 2012. The guidance which governs the use of the Strategic Housing Fund does not include it being used to support private home owners to meet their repair obligations. It does specifically refer to the provision of grant funding to private owners to bring empty homes back into affordable housing use. It is worth noting that since stock transfer ACHA has received £3.3m grant funding from the Strategic Housing Fund and £2.9m loans from Council reserves to support their new build development programme. In addition, it has received Scottish Government grant funding of £9m per annum since 2006 to assist with the delivery of the SHQS. Significant public finance has been provided to ACHA to enable it to meet SHQS and the Strategic Housing Fund cannot be viewed as a potential source of assistance for this purpose.

4.0 CONCLUSION

4.1 In summary, the Council is working pro-actively with owners to

encourage, negotiate and in certain circumstances enforce work to address repair issues in property in common ownership. There is no justification for the Council to enhance grant funding solely to owners who happen to be common owners with ACHA. There are steps which ACHA could take to improve their relationship with owners to encourage them to work more effectively together. There will be instances where it is not possible to reach agreement and in those circumstances alternative solutions will need to be found. It should be noted that this work is very time consuming and resource intensive, there is no easy fix.

5.0 IMPLICATIONS

- 5.1 Legal:** Provisions in the Housing (Scotland) Act 2006 and the Tenement Act have a bearing on the issues set out in the report. The council has legal powers to address some of these issues and will use these powers when appropriate to do so.
- 5.2 Financial:** PSHG resources are available and used to assist private owners in line with Council policy
- 5.3 HR:** None
- 5.4 Policy:** Proposals are consistent with current Council policy.
- 5.5 Equal Opportunities:** The proposals are consistent with aims and objectives set out in the local housing strategy which has been subject to an EQIA.
- 5.6 Risk:** Risk to the Council has been considered and is reflected in the proposed response to ACHA.
- 5.7 Customer Service:** None

Cleland Sneddon
Executive Director of Community Services
14 February 2014

For further information contact: Donald MacVicar, Head of Community and Culture 01546 604364