REPORT TO:	**FINANCE AND MANAGEMENT COMMITTEE**	**AGENDA ITEM: 12**
DATE OF MEETING:	**1st SEPTEMBER 2016**	**CATEGORY: DELEGATED**
REPORT FROM:	**DIRECTOR OF FINANCE AND CORPORATE SERVICES**	**OPEN**
MEMBERS' CONTACT POINT:	**KEVIN STACKHOUSE (01283 595811)** **Kevin.stackhouse@south-derbys.gov.uk**	**DOC:** u/ks/revenues and benefits/policies and procedures/leasehold flat insurance
SUBJECT:	**LEASEHOLD FLAT INSURANCE**	**REF:**
WARD(S) AFFECTED:	**ALL**	**TERMS OF REFERENCE: FM 08**

1.0 Recommendations

1.1 That the annual recharge to leaseholders of Council flats for buildings insurance is considered and a decision is made regarding the cost passed onto individual leaseholders.

1.2 That subject to 1.1, the difference between the total cost to the Council and the amount recharged is met from the Housing Revenue Account (HRA).

1.3 That subject to 1.1, the terms of the lease are varied to reflect any change in the cost of the buildings insurance recharged.

2.0 Purpose of Report

2.1 To consider a matter raised by leaseholders regarding the level of buildings insurance recharged by the Council.

3.0 Detail

Background

3.1 The Council owns leases on 38 flats under long-term agreements. The flats were originally sold under the right to buy scheme. The Council owns the land and the leaseholder effectively owns the buildings until the expiry of the lease. Each lease has an initial period of 125 years.

3.2 Under accounting regulations, each flat is a HRA property as the Council owns the land and the leasehold flats are situated in blocks with other HRA rented properties. Each leaseholder is charged a service charge of approximately £10 per year.

3.3 The leaseholder is responsible for the management and maintenance of their flat, whilst the Council is responsible for communal areas such as corridors and hallways.

3.4 As part of the lease agreement, the leaseholder is required to reimburse the Council for buildings insurance. The current recharge policy, which has always existed, is that the full cost to the Council of insuring these flats is recharged to the leaseholder. This is standard practice at other authorities.

3.5 The leaseholders are made fully aware of this when signing their Agreement.

3.6 From time-to-time, the Council has received concerns that the level of recharge is expensive compared to what an individual leaseholder could potentially insure their flat for themselves. There has now been a formal request for the Council to review the level of recharge.

Buildings Insurance

3.7 The leaseholder is responsible for contents insurance whilst the Council remains responsible for insuring the buildings. The insurance cover is provided through the Council's insurers (Zurich Municipal) and this forms part of the overall insurance provided to the Council.

3.8 The Council has previously tried unsuccessfully to source a separate insurer just for leasehold flats. Indeed, when the Council's insurance premiums were last retendered in September 2015, it was only Zurich who tendered for this policy.

3.9 The policy is a stand-alone policy which the Council effectively administers on behalf of the leaseholders. The premium is calculated at a rate of "£x" per £1,000 of the market value of the flat.

The Legal Position

3.10 Under the Landlord and Tenant Act 1985, the leaseholder has the right to challenge the cost of insurance and can provide evidence to demonstrate that the cost is unreasonable. The Council does not need to charge the cheapest premium available as long as the reasons for doing so can be justified and that the premium reflects the "market norm."

3.11 Within the lease, the Council covenants to insure the building and the tenant covenants to pay a yearly insurance. The relevant clause clearly states that the building will be insured with other properties in a composite policy and that a fair proportion of the premium is payable annually. If challenged, the Council's position in passing on the charge from the insurers following a tendering exercise would be considered a robust defence.

The Cost of Insurance

3.12 As stated above, the cost of the buildings insurance for leaseholders is contained in a separate policy for the individual flats. The whole building, including other tenanted flats, common parts and communal areas are insured under the Council's Property Insurance.

3.13 It is important the Council retains control over the insurance of the entire building for the benefit and protection of all occupying leaseholders and other tenants, together with protecting the Council's freehold interest.

3.14 Several leaseholders have asked whether they can arrange their own insurance. However, this could become an uncontrollable risk for the Council if a policy became invalidated in the event of default.

3.15 Even if leaseholders provided the Council annually with proof that they had secured adequate insurance, the Council could not guarantee that they would not default in some way between the annual check, i.e. missing a payment, failing to abide by the conditions or even cancelling the policy.

3.16 The price of insurance appears high for an individual flat. However, the Council has a large portfolio of property, with complex and frequently changing tenancy and user arrangements.

3.17 This requires a specialist local authority insurer able to cater for the associated risks and perils. The cost may be higher than the individual flat on its own, as the Insurers need to protect the Council against an incident caused by the leaseholder damaging the entire building structure and consequently protect the Council's freehold interest.

3.18 However, the Council does have flexibility to charge a lower amount if it considers that it is reasonable to do so. Some individual leaseholders have sourced their own quotes (just for their own flat) and the price has been between 50% and 60% lower, clearly a significant difference when the current annual premium charged by Zurich is up to £300.

3.19 Research by council officers has verified that this is the case, with the market average, depending on post code area, being lower for an individual flat. Therefore, it could be considered that the Council's charge, although legitimate, is above the "market norm."

3.20 However, as highlighted above, individual quotes from a non-local authority insurer, may not be on a like for like basis. In addition, the Council could find itself in a position in having to negotiate the annual recharge where a different quote is sought by the leaseholder.

3.21 With the current recharge, there is certainty that the cost is based on a tendered sum and reflects all the risks to the Council. Therefore, the Council's assessment of any other amount to be recharged would need to be final.

3.22 This would then need to be reflected and made clear in a variation to the lease agreement. This could be a lengthy and costly process to agree changes to both the Council and to each individual leaseholder if they need to seek independent advice.

4.0 Financial Implications

4.1 The total cost of leasehold insurance recharged is £11,110 in 2016/17 for all leaseholders. If the recharge was reduced to reflect just the cost of an individual flat, for example by 60%, this would cost the Council approximately £6,500 per year.

4.2 This would be a charge in the HRA as these flats are still classified as housing assets. Although the annual charge is not considered significant, it is an on-going cost.

4.3 This on-going cost needs to be considered at a time when the financial position on the HRA is tight and future capital expenditure budgets have recently been reduced to ensure the sustainability of the HRA in the longer-term.

4.4 It is also likely that there would be some legal costs associated with varying the terms of the lease.

5.0 Corporate Implications

5.1 None directly.

6.0 Community Implications

6.1 None directly.

7.0 Background Papers

7.1 None