

Title: Authority to Amend Shared Ownership Leases
 Lead Officer: Will Anstey (Ext. 6044 will.anstey@warwickdc.gov.uk)
 Portfolio Holder: Councillor Paul Wightman
 Wards of the District directly affected: All wards

Approvals required	Date	Name
Portfolio Holder		Paul Wightman
Finance		Charlie Griggs
Legal Services		Katherine Tebbey
Chief Executive	07.06.2024	Chris Elliott
Director of Climate Change	11.06.2024	Dave Barber
Head of Service(s)	06.06.2024	Lisa Barker
Section 151 Officer		Andrew Rollins
Monitoring Officer		Graham Leach
Leadership Co-ordination Group		
Final decision by this Committee or rec to another Cttee / Council?	Yes/ No Recommendation to: Cabinet / Council Committee	
Contrary to Policy / Budget framework?	No/Yes	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	No/Yes, Paragraphs:	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	No/Yes, Forward Plan item – scheduled for (date)	
Accessibility Checked?	Yes/No	

Summary

This report seeks approval for a new policy explaining how applications for alterations and extensions to shared ownership properties will be managed and works overseen as required.

Recommendations

- (1) That Cabinet approves a new policy (as attached at Appendix ***) setting out the process for applicants to apply for consent for alterations and extensions to WDC shared ownership homes and how applications will be assessed and recommends to Council the approval of the fees set out in the policy.
 - (2) To grant delegated authority for the Head of Housing in consultation with the Portfolio Holder for Housing and Assets, to make minor amendments to the policy as necessary, excluding the fees and asks the Council to update the Constitution to reflect this delegation.
 - (3) To grant delegated authority for the Head of Housing to amend shared ownership leases for the purpose of permitting residents to alter and extend their homes subject to the written agreement of the Council and asks the Council to update the Constitution to reflect this delegation.
-

1 Reasons for the Recommendations

Introduction

- 1.1 This report concerns the Council's shared ownership homes. Shared ownership homes are a form of affordable housing where a resident buys part of a home and pays rent on the remaining part, which is owned by a Council or Housing Association. Shared ownership provides a route to home ownership for households unable to afford an equivalent home on the open market. The Council own a small but growing number of shared ownership homes.
- 1.2 This specific matter has arisen after the residents of a Warwick District Council (WDC) shared ownership home on Great Field Drive, Warwick, sought permission from the Council to alter and extend their home to accommodate their family. It was found that the Council does not have a policy setting out how it will determine requests to alter or extend shared ownership homes. To ensure fairness and consistency in decision making, and to protect Council assets, it is considered that a policy is required.
- 1.3 In addition, the existing lease does not include a mechanism to allow the Council to permit the residents to make structural alterations to their home. If the Council wants to agree to the works, the lease requires amendment.
- 1.4 The Scheme of Delegation includes authority for the Head of Housing to approve the terms to be incorporated into new shared ownership leases (HS-93) but does not include authority to instruct changes to existing shared ownership leases. It also does not give any authority to prepare and apply a policy authorising alterations or extensions to shared ownership properties. These matters therefore require Cabinet approval.

Recommendations 1 and 2 - Policy

- 1.5 A formal policy covering requests for extensions and/or alterations to WDC shared ownership homes is considered necessary to provide clarity for residents, transparent decision making and to ensure the Council's interest in a property is not adversely affected by any alterations or extensions.
- 1.6 A draft policy has been prepared and is attached to this report at Appendix X. The policy is intended to be publicly available and therefore starts with an introduction and background along with guidance on when consent may or may not be required.
- 1.7 The following section, titled 'What Alterations Will Not Be Permitted', identifies certain types of work that won't be permitted and circumstances when work will not be allowed. In respect of communal areas, given a resident's ownership only extends to their property it would be inappropriate for them to undertake any works to communal areas. These might be internal areas but could also include external areas such as resident car parks and landscaped areas.
- 1.8 The exclusion of third party funded solar panels is necessary to avoid legal complications from having equipment fitted to a property owned by a third party. Excluding wood burners and the alike is considered appropriate to protect local air quality.
- 1.9 In respect of normally withholding consent if a resident owns less than 50% of the property, this is recommended as a way to manage the risk exposure of the Council if there are any problems with the works. There may however be situations where we wish to deviate from this policy if a resident has a specific need for alterations, such as for a disability.
- 1.10 The policy continues to explain the application process and includes guidance on the supporting information likely to be required. Due to the wide range of alterations a resident may wish to undertake, it is not possible to set out exactly what supporting information will be required. Contact details will be included in the policy to allow residents to make enquiries with the Council before submitting an application. An application form template has been prepared to identify the information that would be required for an application however a digital form will be developed in line with the Council's move to digital service delivery.
- 1.11 The assessment criteria listed in the policy covers the key factors that will need to be assessed in determining an application in order to protect the interest of the Council in the property and neighbouring properties. The purpose of listing these criteria is to allow residents to understand the factors that will be considered as part of their application and the range of matters that will have to be taken into account.
- 1.12 The policy also identifies conditions that may be applied to any permission granted. The conditions listed are intended to mitigate the risk to the Council of the resident undertaking works.
- 1.13 The application process will create additional work for Officers and therefore it is considered appropriate to charge a fee for applications. Two fees are proposed, one for minor works which will not require significant Officer time and a higher fee for more significant works which will require more Officer time. The fees will continue to be evaluated as part of the ongoing fees and charges review and as the policy is implemented.

- 1.14 The policy also highlights the potential building insurance implications of residents undertaking work and the impact of alterations on the property value.
- 1.15 In addition to approving the proposed policy, the recommendation also seeks delegated authority for the Head of Housing to make minor alterations to the policy as necessary. Given this is a new area of work for the Council, it is anticipated that minor changes may be required once we start applying.
- 1.16 If the policy is approved, an internal procedure will be prepared setting out the internal processes to ensure the smooth operation of the policy. This procedure will consider how our internal processes can be made digital to improve customer experience and efficient service delivery.

Recommendation 3 - Lease Amendment

- 1.17 All shared ownership homes are sold as leasehold, including houses. This is because the resident only buys part of a property and the Council retains ownership of the remaining part, along with the freehold.
- 1.18 The lease is made between the resident and WDC and gives the resident the right to occupy their shared ownership home subject to certain conditions. These conditions include, amongst other matters, a requirement to pay rent on the part of the property they don't own, restrictions on what they can and can't use the property for and what works they can and can't do to the property.
- 1.19 Different properties have different leases. The lease for the shared ownership homes on Great Field Drive includes a covenant preventing the residents from undertaking certain works, as follows:
Not to:
 - (a) Make any alterations or additions to the exterior of the Premises;*
 - (b) Make any structural alterations or structural additions to the Premises;*
 - (c) Erect any new buildings on the Premises; or*
 - (d) Remove any of the Landlord's fixtures from the Premises*
- 1.20 This covenant protects the Council's interest in the property by ensuring that residents do not make changes which could be detrimental to the property value, could require rectification by the Council or adversely affect adjoining properties. However, there is no mechanism in the lease to allow the Council, as landlord, to give consent for any extensions or significant alterations if it considers it is reasonable and appropriate to do so.
- 1.21 Purchasing a shared ownership home is a significant commitment for a household. Having made that commitment a household may find that they want or need to change their home to meet their circumstances. Altering an existing home can often be a more affordable option than moving to a different property. It may also be that no suitable alternative homes exist, or the costs of moving are prohibitive. For these reasons it is considered there will be circumstances where the Council concludes that permitting a resident to extend or alter their home is reasonable. However, the existing clause in the lease prevents the Council from doing so.
- 1.22 As the existing covenant serves a valuable purpose in protecting the Council's interests it is not proposed to remove it, but to modify it to introduce the facility for the Council to give consent where appropriate. This consent would be in writing and would be conditional to ensure the Council retains oversight of any works a resident proposes. The decision on whether to grant consent would be taken by the Head of Housing in accordance with a new policy on Altering

and Extending Shared Ownership Properties as set out in Appendix X (please see Recommendation 2).

- 1.23 Legal advice received on this matter confirms that the Council can make an application to the Land Registry to discharge or modify a covenant on an existing lease. However, an exception cannot be made in an individual case, therefore if the covenant was modified, this modification would apply to the whole of the Council's interest in an estate. This is one reason why delegated authority is sought on a general basis rather than for a specific property. The second reason is that it may be necessary to modify leases on other estates to give residents the same flexibility in the future and the delegated authority, if granted, would allow the Head of Housing to action this without seeking further approval from Cabinet.
- 1.24 Any change to the lease or consent provided to a resident for alterations would not affect the need for the resident to obtain relevant statutory consents such as planning permission and building regulations approval.
- 1.25 Officers have reviewed the policies of other Registered Providers and most have a process in place to allow shared ownership residents to apply for permission to alter their homes, though the details vary between Registered Providers and are subject to limitations in individual leases.
- 1.26 Moving forward it is intended for all new shared ownership leases to include provision for the Council to grant permission for extensions.

2 Alternative Options

- 2.1 In respect of the policy recommendation, it is considered necessary to have a policy controlling alterations and extensions to shared ownership homes. Therefore the only alternative option is not to approve the policy and require Officers to prepare amendments. Members may also choose not to give delegated authority to the Head of Housing, Homes and Communities to make minor changes to the policy in order to retain full control over the policy. Any changes would then need Cabinet approval which could, in turn, add considerable delay.
- 2.2 In respect of the lease recommendation, there are two alternative options. The first is not to agree to any changes to shared ownership leases. This would prevent residents making structural alterations or extensions to shared ownership homes. For the reasons discussed above it is considered that there are likely to be circumstances where residents may reasonably wish to alter their homes and therefore if flexibility is not introduced into leases, it could cause reputational damage to the Council and could also negatively affect the living conditions of residents. Further, it could harm Council sales of new shared ownership homes if prospective buyers are deterred by this position.
- 2.3 The second option is to require any proposed lease change for the purpose of permitting an extension or alteration to a shared ownership home to be approved by Cabinet. This option would require cases to be presented to Cabinet as and when they arise which would require additional Officer time to prepare reports and additional Cabinet time to consider them. This would also delay the approval process for residents potentially by some months. Given the additional administrative burden, this option is not preferred.

3 Legal Implications

- 3.1 It is recommended that providers developing Shared Ownership with Homes England grant should adopt the model lease though this is not a requirement. However, the model leases provided by Homes England are considered as a widely accepted route to providing the necessary protection and comfort to providers, leaseholders, lenders and others. Providers looking to use alternative leases that differ too much from the model leases in content and format may find particular difficulties in selling or re-selling their Shared Ownership homes. Providers can amend the model leases to suit circumstances without the consent of Homes England. Homes England's consent is required if providers wish to vary one of the fundamental clauses. However, applications for consent to carry out alterations is not considered to be a fundamental clause. Where existing leases need to be varied to reflect the proposed change in policy, this can be done by way of agreement between the parties and documented accordingly. Thereafter, the model form of agreement can be modified in accordance with the recommendations within this report.

4 Financial Services

Recommendation 1 and 2 - Policy

- 4.1 There would be a small additional burden on Officer time to consider and determine resident requests for alterations and extensions. There would also be Officer time required to monitor works whilst they are ongoing. A fee is therefore proposed to assist with this additional cost which will be evaluated as part of the ongoing fees and charges review.
- 4.2 There would also be legal fees associated with issuing licences for structural works to proceed, which are normally paid by the leaseholder. Legal have advised that each licence is £750 plus disbursements, though we have discretion to reduce these to £325 if considered appropriate.
- 4.3 Financial risks associated with allowing residents to undertake alterations to their homes are considered in the risk assessment section below.

Recommendation 3 - Lease

- 4.4 There would be legal costs associated with amending existing leases which would be covered by the Council. Legal Services have advised that the existing lease can be modified by way of a Deed of Variation and there is a fixed fee of £750 plus disbursements to undertake this work.

5 Corporate Strategy

- 5.1 Warwick District Council has adopted a Corporate Strategy which sets three strategic aims for the organisation.
- 5.2 ***Delivering valued, sustainable services*** – The recommendations will assist in delivering valued services to our residents by ensuring those living in WDC owned shared ownership homes have the opportunity to adapt their homes to meet their needs.
- 5.3 ***Low cost, low carbon energy across the district*** – This matter is likely to have a neutral impact on this priority with a small potential for minor benefits. Allowing alterations and extensions to shared ownership properties typically wouldn't have a significant impact on energy consumption or costs. However, a small benefit may arise if a resident wishes to make improvements specifically targeting energy use.
- 5.4 ***Creating vibrant, safe and healthy communities of the future*** – The recommendations directly align with this priority as they would enable residents to better meet their own housing needs. It would also allow people to remain in

their homes rather than moving, thereby helping to sustain healthy communities.

6 Environmental/Climate Change Implications

- 6.1 There are no significant environmental or climate change implications identified for either recommendation.

7 Analysis of the effects on Equality

- 7.1 In many cases the motivation for alterations will be personal preference but there may be situations where works are necessary to accommodate the medical needs of residents. The recommendations ensure that residents will be able to meet their specific needs which they are unable to at the moment. The proposals there have a positive impact on the protected characteristics of age, disability and pregnancy & maternity. The recommendations are considered to have a neutral impact on sex, race, religion or belief, gender re-assignment, sexual orientation and marriage & civil partnership.

8 Data Protection

- 8.1 The policy recommendation will require residents to submit their details to us along with details of the work they intend to undertake. The details required are set out in the draft policy and the application form.
- 8.2 The contact details requested on the application form are no more than the information we already hold as landlord and are only required to identify the resident's application and ensure we have the correct contact details.
- 8.3 In respect of the supporting information required, there are two areas where personal and special category data may be collected; the supporting reasons for the alterations or extensions which may include health information and the financial information to confirm the resident has the funds to undertake the work.
- 8.4 This information will only be used in connection with assessing the application and will not be used for any other purposes. It will be stored in accordance with the Council's existing privacy and data protection policies.
- 8.5 The lease recommendation has no data protection implications.

9 Health and Wellbeing

- 9.1 Allowing residents to adapt their homes to meet their needs should be beneficial to their health and wellbeing, particularly where changes are needed for medical reasons. The proposed policy also requires that we consider the impact of proposed alterations on neighbouring residents, thereby ensuring their health and wellbeing is taken into account.

10 Risk Assessment

- 10.1 Risks of proceeding with recommendations:

Risk	Mitigation
Residents undertake poor quality work which devalues the property or requires rectification and the residents is unwilling or unable to address the problems.	The application process is designed to filter out unsuitable proposals and ensure that acceptable proposals are undertaken to a good standard. However, as the Council is not undertaking the work, a small

	residual risk remains and the financial impact of that risk could be significant depending on the works being undertaken.
Residents have insufficient funds to complete works and works are therefore left unfinished which is detrimental to the property value.	By checking a resident has sufficient funds to cover the works before granting approval we can reduce this risk, however a residual risk remains. The likelihood of this occurring is considered low, but the impacts could be moderate.
Potential for complaints if applications for extensions of alterations are refused.	The proposed policy is intended to create a framework to allow for reasoned decision making. The risk of this occurring is considered moderate but the impacts are low.

11 Consultation

- 11.1 Consultation is not considered necessary for the policy as it does not introduce any new restrictions on shared ownership residents compared to those within the lease. It simply provides a framework for the application and decision-making processes.
- 11.2 With regard to changing a shared ownership lease, these introduce additional flexibility for residents rather than any new restrictions and therefore consultation is not considered necessary.

Background papers:

- None

Supporting documents:

- Draft Shared Ownership – Extensions and Structural Alterations Policy