

Governance Risk and Best Value Committee

10.00am, Monday, 24 October 2016

Property Conservation – Scope for shared owners legislative change, ESRS consultation process with owners and Extra Judicial Agreement Process

Item number 7.8
Report number
Executive/routine
Wards

Executive Summary

On 18 August 2016, the Governance Risk and Best Value Committee requested a report on the scope for legislative change regarding shared owners, details of how the Council is ensuring effective consultation with owners under the new service and the extra judicial agreements process.

This report responds to that request.

Links

Coalition Pledges [P40](#), [P41](#)
Council Priorities [CO7](#), [CO19](#)
Single Outcome Agreement [SO4](#)

Property Conservation – Scope for shared owners legislative change, ESRS consultation process with owners and Extra Judicial Agreement Process

1. Recommendations

- 1.1 The Committee is requested to note:
- 1.1.1 The scope for shared owners legislative change.
 - 1.1.2 The Edinburgh Shared Repairs Service (ESRS) consultation process with owners in relation to Statutory Notices.
 - 1.1.3 The extra judicial agreement process as outlined in Appendix 1.

2. Background

- 2.1 At its meeting on 18 August 2016, the Governance Risk and Best Value Committee requested a further report on the extra judicial agreements process including:
- The governance and decision-making arrangements;
 - Details of cases settled out of court, including the reasons for arrangement, engagement by the Council and the sums settled versus original sums billed;
 - Total recovery costs to date; and
 - Earlier commitments regarding the fairness of the settlement programme across multi-owner blocks.
- 2.2 This report responds to that request and also addresses the scope for legislative change regarding shared owners, and how the Council is ensuring effective consultation with owners under the new Service.

3. Main report

Overview of Project Joule Billing

- 3.1 Under the auspices of Project Joule, Deloitte Real Estate was commissioned to review all unbilled project files at a collective value of £24m. The case reviews commenced in April 2013, and were completed in August 2015.

- 3.2 This resulted in a total of 208 projects identified for billing with 7,431 invoices being issued with a total value of £17.6m. The first bills were issued in January 2014 with the final bills being issued in September 2015.
- 3.3 As at 25 August 2016, of the £17.6m billed, £12.3m has been received in payments from individual owners. A further £1.2m has been secured in payment plans. This gives a total recovery, in paid and secured debt, of £13.5m representing 76% of total sum billed.
- 3.4 All bills issued following the Deloitte review are done so under the equal shares basis as described in the City of Edinburgh District Council Order Confirmation Act 1991.

Council Approach to Billing and Engagement with Owners

Owner Notification

- 3.5 On completion of a Deloitte review, a generic notification from the Council was sent to advise owners that they were going to receive a bill for statutory notice works carried out on their property. This letter reminded owners that works were carried out and described the work being done by Deloitte to arrive at the amount that owners individually would be billed for. This stage allowed owners to notify the Council of any changes of ownership of the property, and aimed to manage resident concerns and highlight the ability to pay via instalments.
- 3.6 Two to three weeks after the owner notification process, an “End of Works Report” was sent out to all affected owners. This letter detailed a description of works, appointed consultant, appointed contractor, tender sum total, final account sum total, completion of works date, net cost per share and details of management fee. The letter informed the owner that invoices would be issued in the near future.
- 3.7 Invoices were raised and issued within two weeks of the End of Works letter. Included were contact details for recipients who had any questions and also for those wishing to make arrangements to pay by instalments.
- 3.8 Should owners have not entered into payment arrangements within 86 days of receiving an invoice, their case was passed to Morton Fraser to progress recovery action.
- 3.9 The billing programme was designed to give owners significant time to ask questions of the Council about any aspects of their invoice.

Debt Collection

- 3.10 The Council’s approach to Statutory Notice debt follows the Council’s Debt Policy. This policy provides guidance for the Council’s income collection, debt recovery and related welfare support activities in any approach to the recovery of debt.
- 3.11 In December 2014, the Corporate Policy and Strategy Committee approved an amendment to the Corporate Debt Policy in respect of legacy statutory notice related debt.

- 3.12 The amendment recognised the often substantial sums relating to statutory notice works that individual home owners would face. As a result, the terms offered to customers were extended beyond the three month interest free instalment plan to allow repayment periods of up to 10 years, and in appropriate circumstances, voluntary inhibitions.

Morton Fraser Debt Recovery Overview

- 3.13 All Project Joule Statutory Notice debt related instructions are now with Morton Fraser to progress recovery action. From 1 April 2015 to 25 August 2016, a total of 673 instructions over 1,547 invoices have been issued to Morton Fraser for debt collection with an overall value of £7m.
- 3.14 Within this period the overall sums recovered or in payment plans secured by Morton Fraser total £2.9m (41%) over 345 customers.

The Settlement of Historic Complaints

- 3.15 The Finance and Resources Committee report dated 28 August 2014 (B Agenda), sets out the settlement principles in relation to the Deloitte reviewed projects, where parallel circumstances may apply. This report was concerned with the work being carried out by Deloitte in respect of outstanding historic complaints. This does not refer to extra judicial settlements.
- 3.16 The programme of work dealing with these historic complaints was called Project Momentum. A clear principle was established by Deloitte that were a reduction applied to the invoice of an individual complaint, because for example, works outside the scope of the Statutory Notice had been carried out, then the Council should take the approach that this reduction should be applied to all owners. This was known as 'parallel circumstances', and has been applied across both Project Momentum and Project Joule in regards to sums billed.

Potential for Legislative Change

- 3.17 It is recognised that there is a lack of maintenance being carried out on tenements in Edinburgh. The lack of maintenance over a long period can lead to the need for major repairs which can become unmanageable to the private property owner. The current legislation in Scotland includes the transfer of powers to the Local Authority (LA) to enforce repair works onto Private property owners. The Act which the Council currently uses to enforce these repairs is the City of Edinburgh District Council Order Confirmation Act 1991. There are a number of other pieces of legislation which also give powers to the LA to enforce repair works however none of these go far enough to force the private owner to participate in common repairs.
- 3.18 The reformed Property Sub-committee will consider the establishment of a working group to review the requirement for new legislation.

ESRS Consultation Process With Owners

- 3.19 The new ESRS process has been designed with a greater focus on customer engagement. There is a longer period of time, on average four months, between an initial service request from a property owner and the Panel's decision to enforce

works. This period allows for and encourages private owners to engage with each other and the Council with a view to arranging the works themselves.

- 3.20 The period taken to reach the stage of contract award will take at least a further four months which allows the owners more time to arrange the works privately. By the end of this period the owner will have received a building survey report and estimated costs therefore they will be more informed in relation to the solution and cost to rectify the defect. This can also allow for the owner to take the project back and arrange the works privately.
- 3.21 The service has been designed in such a way that enforcement of the repair work through a statutory notice is the last resort.
- 3.22 ESRS is currently in the implementation phase. During this period, the standard operating procedures (SOP's) developed by Deloitte Real Estate in consultation with Council officers are being reviewed regularly following the testing of procedures on live cases and projects.
- 3.23 The procedures reflect best practise, lessons learned from the closure of property conservation, and are in accordance with legislation. Embedded within the procedures, is the requirement for officers to have regular communication with owners before, during and after completion of the works.
- 3.24 In relation to change control, the procedures set out the process of assessment and reporting of additional works and variations. There are two categories which dictate different approaches by the Contract Administrator. These are:
- Variations to works within the scope of the Statutory Notice; and
 - Additional Works outwith the scope of the Statutory Notice.
- 3.25 When variations or additional works are found during the works, the Contract Administrator must determine which category would apply. Each category has a different process.

Variations to Work

- 3.26 Where variations to the works are unavoidable and are within the scope of the Statutory Notice, the surveyor must assess the value of the variation. If the value exceeds £3000 or the contingency amount for the project, the surveyor must prepare a Justification Report to be reviewed by the ESRS manager. Owners are issued with a report which provides the justification for the variation, cost implications, the amount of contingency expended and remaining and the change in the overall cost of the project.

Additional Works

- 3.27 Where works are categorised as additional and outwith the scope of the Statutory Notice, the surveyor must prepare a Cost Benefit analysis. This Cost Benefit analysis considers the timing of inclusion of the additional works into the current contract and the alternative consideration of undertaking works outwith the current contract. Upon completion of the report, the owners will be offered a stair meeting

to explain the report and to discuss the implications of the proposed additional works. A majority agreement from owners should be sought within the specified time period in the letter issued. In circumstances where a majority agreement is not obtained, the Contract Administrator must present the report to the Project Panel for a decision whether to instruct the works will be taken. The panel will consider the validity of the objections raised by owners.

- 3.28 Additionally, contract variations are dealt with at Section 10 of the Contract Standing Orders, and identify that a Head of Service (for under £25k) or a Director (over £25k) can sign a contract variation, providing the value does not exceed the original contract value (including client and contractor contingency), by more than 15% of the original contract value or £1m (whichever is lower). If it exceeds 15% or £1m, then Procurement will be consulted for options on how to proceed.

Conclusions

- 3.29 The reformed Property Sub-committee will consider the establishment of a working group to review the requirement for new legislation.
- 3.30 The new ESRS process has been designed with a greater focus on customer engagement than the previous service. Owner agreement for extended works on site will be added to operating procedures.

4. Measures of success

- 4.1 Establishment of new Edinburgh Shared Repairs Service.
- 4.2 Collection of outstanding debt by extra judicial agreement that represents value to the Council.

5. Financial impact

- 5.1 The cost of extra judicial agreements are contained within the overall amounts set aside for this purpose, as referenced in the Property Conservation – Irrecoverable Sums; Debt Recovery and Settlements report submitted monthly to the Finance and Resources Committee.

6. Risk, policy, compliance and governance impact

- 6.1 This area of work represents a significant financial and reputational risk for the Council.

7. Equalities impact

- 7.1 There is no equalities impact arising from this report.

8. Sustainability impact

8.1 There is no adverse environmental impact arising from this report.

9. Consultation and engagement

9.1 Not applicable.

10. Background reading/external references

[Report to City of Edinburgh Council, 12 February 2015, Shared Repairs Services - Development of a New Service](#)

[Report to City of Edinburgh Council 11 December 2014, Shared Repairs Services - Development of a New Service -](#)

http://www.edinburgh.gov.uk/download/meetings/id/40355/item_no_7_3-compliance_risk_and_governance-corporate_debt_policy

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11. Links

Coalition Pledges	P40 – Work with Edinburgh World Heritage Trust and other stakeholders to conserve the city’s built heritage P41 – Take firm action to resolve issues surrounding the Council’s Property Services
Council Priorities	CO19 – Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm
Single Outcome Agreement	SO4 – Edinburgh’s communities are safer and have improved physical and social fabric
Appendices	Appendix 1: Extra Judicial Agreements