

---

**To: Council**

**On: 27 February 2020**

---

**Report by: Lead Officer on behalf of the Audit, Risk and Scrutiny Board**

---

**Heading: MAINTENANCE OF MULTI OCCUPANCY ACCOMMODATION  
(MIXED TENURE BUILDINGS)**

---

**1. Summary**

- 1.1 As part of its annual programme the Audit, Risk and Scrutiny Board at its meeting on 27<sup>th</sup> August 2018 agreed the annual programme of activity for the Board for 2019/20. This included a review entitled “Maintenance of Multi Occupancy Accommodation”.
- 1.2 The purpose of the Review was to consider potential options for ensuring that mixed tenure properties, where Renfrewshire Council has an interest therein, are maintained and that private homeowners and landlords are complying with their obligations under the Tenements (Scotland) Act 2004.
- 1.3 This report provides a summary of the Board’s findings. The reports presented to the Board meetings are available as background papers.
- 1.4 In undertaking this review, consultations took place with other local authorities, housing providers, tenants and residents’ associations and the Scottish Government.
- 1.5 The final report to Audit, Risk & Scrutiny Board on 20<sup>th</sup> January 2020 asked the board to note the good work that Communities, Housing & Planning Services currently provide and that they continued to work with owners of properties in mixed tenure accommodation as outlined in the Tenements (Scotland) Act 2004.
- 1.6 The Board were also asked to note that the majority of the Tenants and Residents’ Associations were not aware of grant funding available to owners involved in the Council’s capital improvement programmes and recommends that Communities,

Housing & Planning Services target awareness to owners.

- 1.7 It was also important to note that a working group report of cross party MSPs on Maintenance of Tenement Scheme Property was published in June 2019 which considered the challenges arising from the difficulties owners face in organising common repairs, identifying owners and securing contributions from owners. This is detailed further in section 3.4 of this report.
- 1.8 Given the good practice already taking place and the new legislation from Scottish Government which will require to be implemented in due course, there were no major recommendations from the Review.
- 

## **2. Recommendations**

- 2.1 Council is asked to approve the findings of the review and the recommendation approved by the Audit, Risk and Scrutiny Board on 20<sup>th</sup> January 2020 as outlined in Section 4 of this report.
- 

## **3. Background**

- 3.1 There is a variety of legislation which covers repairs in mixed tenure properties, including:

- Tenements (Scotland) Act 2004
- Housing (Scotland) Acts 1987 and 2006
- Environmental Protection Act 1990
- Building (Scotland) Act 2003
- The Private Housing (Tenancies) (Scotland) Act 2016
- Title Conditions (Scotland) Act 2003
- Property Factors (Scotland) Act 2011
- Repairing Standard 2016 (amended 2006 Act)

### **3.2 Tenements (Scotland) Act 2004**

- 3.2.1 The primary legislation, where existing Title Deeds within a block are silent or inconsistent in relation to repairs to common parts is the Tenements (Scotland) Act 2004. The Act defines a tenement as being a building, or part of a building, which has two related flats, or has more than two flats, at least two of which are divided from each other horizontally, (i.e. flats on different floors), and at least two of which are, or are designed to be, in separate ownership. The flats can be domestic houses, shops or businesses.
- 3.2.2 The Act has the effect that all owners of flatted property in a tenement can consult on scheme decisions for management and maintenance of common parts so as to help ensure that the communally-owned parts of buildings, are kept in good repair. It sets up a default decision-making structure in the Tenement Management Scheme that

applies to many of the main structural parts of the building which are referred to in the Act as “scheme property”, where the title deeds to the properties in the tenement building do not all deal with a particular issue or are inconsistent: this should make it easier for owners to reach decisions to enable them to carry out repairs and maintenance. Where the Tenement Management Scheme is applicable, in most cases, this will mean that common repairs can be carried out with the agreement of the majority of owners. However, whilst the Tenements (Scotland) Act provides that in certain circumstances where there are disputes court actions can be raised in the sheriff court, the Act does not put in place any mechanism for mediation for resolution of disputes between owners.

### 3.2.3 Who is responsible for what?

- (a) Individual responsibility - Anything serving only one flat, including the door to that flat from the stair, its windows and the inside of walls, floors and ceilings to the halfway point of the boundary with the next property. Generally speaking, owners are solely responsible for all repairs and maintenance to their own flat.
- (b) Where anything is used by or serves two or more flats, including the close stairs, close stair windows, chimneystacks, service cables, pipes etc., the flats served by that item have a right of common property in it. Where the Tenement Management Scheme applies, repairs to these common parts of the building should be paid for equally by all who use that part, except where the floor area of the largest flat is more than 1.5 times that of the smallest, in which case the costs are calculated on a proportion basis.
- (c) An important part of the relevant law, is that relating to all the parts of the building where maintenance is paid for by all owners. These usually include in tenement buildings part-owned by the Council: the roof, the foundations and external walls, and also any other part of the property which the Title Deeds set out as being the property of all owners. It is important to note that where the Tenement Management Scheme is applicable to maintenance of a tenement building's roof, paying for roof repairs is basically the responsibility of every owner in the building. This is unless the Deeds completely provide for maintenance otherwise.

## 3.3 Consultation Process for Maintenance and Repair of Multi-Occupancy Accommodation (mixed tenure properties).

- 3.3.1 Renfrewshire Council will not generally carry out repairs or improvements without consulting other owners within the building first. Where its decision-making provisions apply, the Tenements (Scotland) Act 2004 allows the Council to carry out common repairs to scheme property if a majority of the relevant owners agree to the work. However, Renfrewshire Council will also intervene where emergency common repairs are required, particularly where a repair directly affects a Council-owned property. Other more general repairs that are reported by owners or tenants in a block will be assessed and prioritised.

- 3.3.2 Annually, there are around 1000-1500 repair jobs raised for mixed tenure/multi-occupancy properties. Renfrewshire Council or their appointed Contractor carry out all repair and maintenance in mixed tenure accommodation. Renfrewshire Council do not carry out these works as a factor. If a repair is an emergency then the Council would carry out the works as another owner and bill the owners. For routine repairs and maintenance, quotes are sent to owners to indicate if they are willing to pay their share. There is a 28-day period for the tenant to inform Renfrewshire Council of their decision.
- 3.3.3 A majority agreement in the scheme decision is required for the maintenance or repairs to proceed. Generally, there is one vote per unit / dwelling. The voting rights are contained within a properties' title deeds or, where applicable, under the Tenements (Scotland) Act 2004. Around one third of jobs do not go ahead as there is no majority agreement with tenants. Anecdotally, this is due to maintenance / repair costs and a lack of funds by owners. Annually around 20-50 owners in mixed tenure properties progress with completing the repair works themselves and invoicing Renfrewshire Council on completion.

### 3.4 **Scottish Government and Legislative review**

- 3.4.1 A working group report of cross party MSPs on Maintenance of Tenement Scheme Property was published in June 2019 which considered the challenges arising from the difficulties owners face in organising common repairs, identifying owners and securing contributions from owners.
- 3.4.2 The recommendations proposed in this Working Group report, which is not restrictive to pre 1919 tenemental blocks and acknowledges that all flatted property have similar challenges in securing common repairs will require legislative changes which will take some time to evolve. Without these further changes in the law for "tenements," landlords and owners associations will continue to face obstacles in securing common repairs and the cooperation of owners.
- 3.4.3 Their report contained three main recommendations - regular inspections of common property, establishment of owners associations and/or compulsory factoring and the creation of reserve funds for blocks.
- (a) Building Inspections - The "scheme property" of all tenements should be inspected every five years and a report prepared that will be publicly available to existing or prospective owners and tenants, neighbours and policy makers.
  - (b) Establishing compulsory owners' associations - The group continues to believe that owners' associations are an essential element of tenement maintenance by providing leadership, effective decision-making processes and the ability of groups to enter into contracts.
  - (c) Establishment of Building Reserve Funds - The core of the original proposals was that Building Reserve Funds (BRF) should be held in a specially established national or regional level fund, in the form of a social investment

fund. Safe Deposits Scotland was used as an example, but a Credit Union structure could equally be suitable. However, it is accepted that some residents' associations will already have, or will want to establish and control, their own building maintenance accounts. Comparing the two, it is felt that a central fund has many advantages over an owners' association-held fund.

- 3.4.4 The majority of this report's proposals require legislative action. Some may simply require secondary legislation and could be introduced relatively quickly; whilst other proposals – those which are more straightforward – might be included in related legislation dealing with, for example, planning, finance or energy. The report, entitled Working Group on Maintenance of Tenement Scheme Property Final Recommendations Report is attached as appendix 1 to this Council report for information.

#### **4. Recommendations**

- 4.1 The recommendations approved by the Audit, Risk and Scrutiny Board on 20<sup>th</sup> January 2020 were as follows:
- (a) Notes the key findings of the review including consultations with other local authorities, housing providers, tenants and residents' associations and the Scottish Government.
  - (b) Notes the good work that Communities, Housing & Planning Services currently provide and that they continue to work with owners of properties in mixed tenure accommodation as outlined in the Tenements (Scotland) Act 2004.
  - (c) Notes that the majority of the Tenants and Residents' Associations were not aware of grant funding available to owners involved in the Council's capital improvement programmes and recommends that Communities, Housing & Planning Services target awareness to owners.
  - (d) Notes the recommendations of the Working Group report of cross party MSPs on Maintenance of Tenement Scheme Property – Final Recommendations Report had three main recommendations including Building Inspections, Establishing compulsory owners' associations and Establishment of Building Reserve Funds.
  - (e) Approves that Communities, Housing & Planning Services continues to monitor legislative changes following the Maintenance of Tenement Scheme Property – Final Recommendations Report in order to implement guidelines and processes for Renfrewshire Council.
  - (f) Approves report to be presented to a future meeting of the Council.
-

## Implications of the Report

1. **Financial** – None
  2. **HR & Organisational Development** – None
  3. **Community Planning** – None
  4. **Legal** - None
  5. **Property/Assets** – None
  6. **Information Technology** - None
  7. **Equality & Human Rights** - The recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website
  8. **Health & Safety** – All work undertaken is assessed under appropriate Health and Safety legislation.
  9. **Procurement** – All procurement legislation is adhered to when items are procured for this project.
  10. **Risk** – None
  11. **Privacy Impact** – None
  12. **Cosla Policy Position** – None
  13. **Climate Risk** – none.
- 

## List of Background Papers

- |     |  |
|-----|--|
| (a) | Audit, Risk and Scrutiny Board Report 01 – 28 <sup>th</sup> May 2019       |
| (b) | Audit, Risk and Scrutiny Board Report 02 – 26 <sup>th</sup> August 2019    |
| (c) | Audit, Risk and Scrutiny Board Report 03 – 23 <sup>rd</sup> September 2019 |
| (d) | Audit, Risk and Scrutiny Board Report 04 – 21 <sup>st</sup> October 2019   |
| (e) | Audit, Risk and Scrutiny Board Report 05 – 20 <sup>th</sup> January 2020   |

The foregoing background papers will be retained within Environment & Infrastructure for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is Dorothy Kerr, Service Coordination Manager 0141 618 7578

---

Author: Lead Officer - Dorothy Kerr, Service Coordination Manager 618 7578