

Key Decision Required:	No	In the Forward Plan:	No
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REPORT OF CORPORATE DIRECTOR OF OPERATIONAL SERVICES

25 NOVEMBER 2019

A.1 GRANTING OF A NEW LEASE IN RESPECT OF A FORMER COUNCIL OWNED FLAT

(Report prepared by Emma Norton)

PART 1 – KEY INFORMATION

1.1 PURPOSE OF THE REPORT

To obtain the approval of the Housing Portfolio Holder to the granting of a new lease in respect of 3 Lower Green House, Brightlingsea, a former Council owned property.

1.2 EXECUTIVE SUMMARY

In accordance with the Leasehold Reform, Housing and Urban Development Act 1993, a residential tenant has a right to a new lease under Chapter II of Part I. This entitles them, where the set qualifying criteria are met, to an entirely new lease but this is commonly referred to as a lease extension.

Where the qualification criteria are met, the legislation entitles the tenant to a new lease:

- For a term of 90 years plus the remainder of the term of the existing lease; and
- At a peppercorn rent.

A premium is paid for the lease extension to compensate the landlord for the loss of the remainder of the term of the existing lease and for being kept out of its reversion for the additional 90 years.

A leaseholder wishing to proceed by the statutory route is required to serve formal notice on the Council in the form stipulated by section 42 of the above legislation which then requires the Council to respond within a two month period.

However, the Council is also able to offer a lease extension on a voluntary scheme, which does not require the service of a formal notice, although the qualification criteria are still applicable.

On 22 September 2017, the Council received confirmation from the solicitor acting on behalf of the lessees of 3 Lower Green House of their wish to request an extension of the lease of this property upon payment of a premium and continued payment of ground rent.

Although a formal Section 42 Notice was not served, it was considered disproportionate to request this as the Council has the ability to offer a lease extension on a voluntary basis and requiring the submission of a notice would incur additional costs for the lessee and Council without any gain.

However, this matter was not progressed to completion following this initial request. The solicitor acting on behalf of the lessee has now confirmed their wish to proceed with this matter and approval is being sought to respond to this enquiry and to enter into negotiations in respect of a new lease.

Part B refers to the details of the application and proposed negotiations.

1.3 RECOMMENDATION(S)

That the Housing Portfolio Holder agrees to the extension of the lease for 3 Lower Green House and authorises the Corporate Director (Operational Services), in consultation with the Corporate Director (Corporate Services), to enter into negotiations to agree the premium payable and to formalise this lease extension, subject to such other terms as considered necessary.

PART 2 – IMPLICATIONS OF THE DECISION

2.1 DELIVERING PRIORITIES

Granting of a lease extension would contribute towards the following priorities in the Council's Corporate Plan for the period 2016 to 2020:

Council and Community

Make the most of our assets

Health and Housing

Deliver a high quality living environment

2.2 FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The Council's offer in respect of the granting of a new lease would require a premium to be paid based upon advice obtained by an independent valuer engaged by the Council with the aim of ensuring best consideration in relation to the Council's assets.

The Council's offer also details the Council's costs which are to be paid by the applicant. These are as set out below:

- (a) Valuation Report Fee in the sum of £350 plus VAT at 20%;
- (b) Fees of Our Professional Adviser for investigating title £100.00; and
- (c) Cost for the preparation and completion of a new lease in the sum of £450.00 in accordance with the Council's General Fund Fees and Charges Schedule 2019/2020.

Risk

If the Council fails to grant a new lease, the leaseholder would be entitled to apply under the statutory provisions and ultimately risks the leaseholder applying to the Court for an order granting a new lease. These could result in a loss for the Council in terms of the premium payable for the new lease as well as increased administrative and legal costs in dealing with the application.

2.3 LEGAL

The granting of a new lease is in accordance with the Leasehold Reform, Housing and Urban Development Act 1993.

2.4 OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and there are not considered to be any significant issues.

Crime and Disorder / Equality and Diversity / Consultation

None

PART 3 – SUPPORTING INFORMATION

3.1 BACKGROUND

In accordance with Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act 1993, a residential tenant has a right to a new lease. The right entitles the tenant to an entirely new lease replacing the existing lease but is commonly referred to as a lease extension. The tenant must satisfy qualifying criteria to exercise the right to a lease extension.

In order to be able to extend a lease, a leaseholder must own a long lease of a flat which is:

- a lease for a term of more than twenty one years; or
- a lease granted under the Social Homebuy scheme with 100% ownership; or
- a lease granted under “right to buy” or “right to acquire under rent to mortgage terms”

In addition, the following conditions must be satisfied:

- the lessees must have owned the lease of their flat for more than two years; and
- must not be a commercial or business tenant

Where the qualifying criteria are met, the legislation entitles the tenant to a new lease:

- For a term of 90 years plus the remainder of the term of the existing lease; and
- At a peppercorn rent.

A premium is paid for the lease extension to compensate the landlord for the loss of rent for the remainder of the term of the existing lease and for being kept out of its reversion for the additional 90 years.

A leaseholder wishing to proceed by the statutory route is required to serve formal notice on the Council in the form stipulated by section 42 of the above legislation which then requires the Council to respond within a two month period.

However, the Council is also able to offer a lease extension on a voluntary scheme which does not require the service of a formal notice although the qualification criteria are still applicable.

On 22 September 2017, the Council received confirmation from the solicitor acting on behalf of the lessees of 3 Lower Green House of their wish to request an extension of the lease of this property upon payment of a premium and continued payment of annual ground rent.

Although a formal Section 42 Notice was not served, it was considered disproportionate to request this as the Council has the ability to offer a lease extension on a voluntary basis and requiring the submission of a notice would incur additional costs for the lessee and Council without any gain.

However, this matter was not progressed to completion following this initial request. The solicitor acting on behalf of the lessee has now confirmed their wish to proceed with this matter and approval is, therefore, being sought to respond to this enquiry and to enter into negotiations in respect of a new lease.

Part B refers to the details of the application and proposed terms for the new lease.

3.2 BACKGROUND PAPERS FOR DECISION

None.

3.3 APPENDICES

None