

10.00am, Tuesday, 5 September 2017

Edinburgh Shared Repairs Service (ESRS) – Missing Share

Item number	8.2
Report number	
Executive/routine	
Wards	

Executive summary

This report seeks approval of the Finance and Resources Committee to implement the use of the missing share power under section 50 of the Housing (Scotland) Act 2006, following the completion of the pilot scheme approved by the Finance and Resources Committee in June 2016.

Edinburgh Shared Repairs Service (ESRS) – Missing Share

1. Recommendations

- 1.1 The Committee is asked to:
 - 1.1.1 Note the results of the pilot scheme of 3 projects approved by the Finance and Resources Committee in June 2016 and the cost benefits assessed.
 - 1.1.2 Approve the use of the powers for local authorities in accordance with Section 50 of the Housing (Scotland) Act 2006.
 - 1.1.3 Agree that the Council will recover the payments made in relation to missing shares including associated administrative expenses and interest.

2. Background

- 2.1 The City of Edinburgh Council's Scheme of Assistance promotes the principle that homeowners have the primary responsibility for maintaining and repairing their own homes.
- 2.2 However, responsible homeowners with shared responsibility for common repairs are often unable to progress essential repairs and maintenance due to other owners being unwilling or unable to contribute their share of the costs. This often leads to lengthy delays to repair works being undertaken resulting in further deterioration of the property.
- 2.3 If essential repairs are not carried out then the Council can, should it wish, issue a statutory notice to enforce repair works under the City of Edinburgh District Council Order Confirmation Act 1991.
- 2.4 In order to prevent a minority of owners delaying essential repairs and maintenance work, Section 50 of the Housing (Scotland) Act 2006 allows local authorities to pay missing shares when it is satisfied that:
 - 2.4.1 the maintenance proposed, having regard to the state of repair of the premises, is reasonable;
 - 2.4.2 the share of the estimated cost is correct, in terms of the title deeds or agreed Tenement Management Scheme (TMS) under the Tenement Scotland Act 2004;
 - 2.4.3 the owner who has not complied with the requirement is unable or unwilling to do so;

- 2.4.4 the majority of owners have agreed to carry out the work; and
- 2.4.5 the owners have set up a maintenance account as defined within the Scottish Government guidance.
- 2.5 The payment of missing shares is proposed as a further enhancement to the ESRS intervention service. The intervention part of the service has been successful in a number of cases in actively encouraging owners to organise repairs themselves without having to progress to the enforcement part of the service. The provision of the missing share option should contribute to the intervention activities of the service.
- 2.6 The current staffing resource identified in the ESRS business plan will be sufficient to manage this work.
- 2.7 The provision of funds is subject to available funds within the current ESRS budget and therefore a minimum and maximum level of share should be considered in any application from owners. The maximum financial commitment per missing share is recommended to be £20,000. Given the administrative tasks involved in the process, the minimum share value is recommended to be £500.
- 2.8 The administrative costs for tasks to be undertaken to process the application and undertake the accounting tasks should be charged to missing owners. It is recommended that additional charge of 10% be added to the share cost to cover administrative overheads. Interest will be applicable in the course of debt recovery in accordance with the Council's sundry debt policy.

3. Main report

Pilot Scheme

- 3.1 A pilot scheme of 3 projects was approved by the Finance and Resources Committee in June 2016. The table below shows the details of the 3 projects where missing shares applications were approved by the ESRS Project Panel.

Table 1

Projects	Value of Project (approx.)	Amount of Missing share approved by CEC.	Amount of Fee charged – 10%
Project A (21 owners) Roof & Stoneworks	£146,000.00	£7,133.31 (1 share)	£713.33
Project B (8 owners) Dry Rot Works	£40,000.00	£4,833.76 x 2 (2 shares)	£966.75
Project C (6 owners) Roof repairs	£4,000.00	£650.00 x 1 (1 share)	£65.00
Total	£190,000.00	£17,450.83	£1,745.08

- 3.2 Table 1 above shows that the pilot scheme enabled common repairs projects to be undertaken to the value of £190,000 privately by owners with payments approved by the Council amounting to £17,451.
- 3.3 The amounts paid by the Council will be recovered through the Council's Debt Recovery service. To safeguard the debt, the notice of payment is registered on the Property Enquiry Certificate (PEC) register in order for the debt to be associated with the property and flagged when the property is sold.
- 3.4 The ESRS Project Panel considered and agreed a change to the pilot scheme process for Project B. The change in process was due to the nature of the project and inherent risk of the project scope increasing during the works.
- 3.5 The common works includes the replacement of timbers due to dry rot hidden in the structure through-out the tenement from top floor to ground floor.
- 3.6 The Project Panel agreed to approve the payment of the missing shares. However the actual cost of which would be determined upon completion of the works and payment being made by the Council at the end of the project rather than being based on an estimated amount prior to work commencing.
- 3.7 This change in process reduces the risk of the payment being incorrect whether too low or too high. The owner will be sent an invoice upon payment of the share into the owners joint account.
- 3.8 Risk elements attached to Enforcement projects and Missing Shares projects are listed in table 2 below. The table shows the Red, Amber, Green (RAG) status of measured risks accepted by the Council when carrying out projects through enforcement under the 1991 Confirmation Act. The RAG status can be compared to the risk elements attached to projects approved by the Council under the Missing Shares legislation.

Table 2

Risks to Council	Project done through Statutory Notice legislation	Project done through the Missing Shares legislation
	RAG status	RAG status
Reputational Risk (enforcement on owners in dispute)		
Financial Risk (funding 100% of project for some months prior to billing)		
Bad Debt Risk (recovery of all shares & verify correct liability)		
Construction Industry Scope Risk (project creep)		
Procurement Risk – Contract Management of contractors		
Capability (Technical resource)		

3.9 This table above shows how the risks to the Council are reduced by the use of the missing share legislation.

3.10 A comprehensive procedure has been developed to add to the standard operating procedures currently being used in ESRS.

3.11 Should an owner wish an application to be considered, they can submit an application. This should include:-

3.11.1 Evidence that the repair is critical or essential.

3.11.2 Evidence that all other owners have deposited their share into the common maintenance account.

3.11.3 Evidence that the owner who is unable or unwilling to pay their share is in the minority.

3.11.4 The allocation of costs has been carried out in accordance with the title deeds or agreed TMS.

3.11.5 Evidence that the owners have served a Section 50 notice on the non-complying owner.

3.11.6 Evidence of owners serving of the S50 notice on the non-complying owner.

3.12 The application will be considered at the ESRS Project Panel. The Panel will consider payment of a missing share for an owner who is: -

3.12.1 unable to pay into the fund;

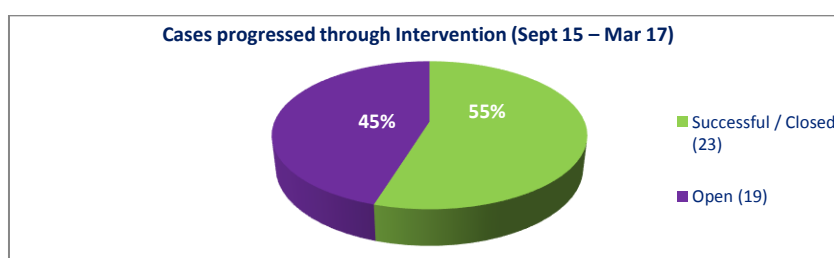
- 3.12.2 it is unreasonable to ask them to do so;
 - 3.12.3 the owner cannot be identified or found, by reasonable inquiry; or
 - 3.12.4 or an owner is unwilling to pay.
- 3.13 The ESRS Project Panel's decision will be final and there shall be no right of appeal.
- 3.14 If the Council reject an application for a missing share the owners may still progress with the works by covering the missing share between them and recovering their contribution from the owner through the process under the Tenements (Scotland) Act 2004.

Recovery of Costs by the Council

- 3.15 The power to pay the missing share under S50 of the Housing (Scotland) Act 2006 is matched by the power to recover the sum from the owner of the house concerned (S59), together with administration charges and interest.
- 3.16 The recovery of costs incurred by the Council from an owner of a successful missing share application should be in accordance with the Council's sundry debt policy. A further measure taken by ESRS is to issue a notice to the missing share owner and register the notice on the Property Enquiry Certificate (PEC) register. Upon sale or transfer of the property the notice and debt will be flagged during the property sale process. At the point of sale the debt will be settled.

4. Measures of success

- 4.1 The degree to which the Council encourage and enable owners to undertake works privately is increased. During the ESRS pilot period, ending in March 2017, 42 cases of tenemental repair were dealt with by Case Officers within the service. Of these cases, 55% were closed with successful intervention enabling owners to take works forward privately without the Council's further intervention.



- 4.2 The use of this power in other local authorities in Scotland is noted by them to have benefited the local economy and facilitated the improvement of their areas private sector housing stock.

5. Financial impact

- 5.1 The resulting costs are to be met from the existing ESRS budget.

6. Risk, policy, compliance and governance impact

- 6.1 This area of work represents a measured financial risk for the Council, the alternative to provision of missing shares for repair works is to enforce works under the Confirmation Act. This alternative action poses a far greater financial risk to the Council as the burden of debt recovery for the whole project lies with the Council when works are enforced.
- 6.2 The Scheme of Assistance statement shall be updated to reflect the Board and subsequent Committee approvals where appropriate.

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

- 10.1 Housing (Scotland) Act 2006, Section 50.

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11. Appendices

None.