

Finance and Resources Committee

10.00am, Tuesday, 25 June 2024

Review of Missing Share Scheme and Chargeable Fees for Major Emergency Building Incidents

Executive/routine
Wards

Executive
All

1. Recommendations

- 1.1 Finance and Resources Committee are asked to approve:
 - 1.1.1 An increase to the current threshold for missing shares, set in 2017, for major tenement repair projects where a Dangerous Building Notice has been served from £20,000 to £80,000;
 - 1.1.2 The capping of administrative fees at £2,000, which is 10% of the current Missing Share payment threshold of £20,000;
 - 1.1.3 In situations where Shared Repairs attendance to an emergency building incident extends beyond the day of the incident, fees be calculated using approved hourly rates and time spent during the make safe works to ensure that costs charged do not exceed costs incurred and to mitigate the impact of the current fee arrangement to owners.
- 1.2 Committee is also asked to note that the Section 95 officer will be required to approve payment of an approved Missing Share application for payments over the existing threshold of £20,000. Additional due diligence will be carried out on

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property owner's financial circumstances during verification of an application for a Missing Share payment application over £20,000.

Report

Review of Missing Share Scheme and Chargeable Fees for Major Emergency Building Incidents

2. Executive Summary

- 2.1 This report requests approval to increase the threshold for applications received by Edinburgh Shared Repairs Service (ESRS) under the Missing Shares Scheme. The increased threshold from £20,000 to £80,000 will allow flexibility in the existing Scheme where a Dangerous Building Notice has been served on the property.
- 2.2 The report also requests approval of capping the administrative fees. The cap would be £2,000, which is 10% of the current £20,000 upper threshold for Missing Shares to reflect the work carried out by officers to administer the application.
- 2.3 This report also requests that where attendance to an emergency building incident, extends beyond the day of the incident, fees should be calculated using approved hourly rates and time spent, during the make safe works. This approach is to ensure that costs charged do not exceed costs incurred. .

3. Background

- 3.1 ESRS objectives are to encourage and support tenement owners to arrange and carry out common repairs privately in tenements without intervention by the Council. Over the nine years of ESRS, tools and schemes have been created and developed to assist private owners and to remove the blockers which owners face when trying to arrange works privately. The context in Edinburgh is that most tenements do not have a Property Factor to manage their building and owners must arrange these privately together which is often difficult and time consuming.
- 3.2 The recommendation to increase the upper threshold of a Missing Share application could remove the blocker that the current £20,000 limit creates, in exceptional circumstances where a dangerous building notice has been served by the Council.
- 3.3 On 5 September 2017, Finance and Resources Committee approved the implementation of the use of the [missing share power](#) under section 50 of the Housing (Scotland) Act 2006.

- 3.4 The Council recover all payments made in relation to missing shares, including associated administrative expenses, in accordance with the Council's Corporate Debt policy.

4. Main report

Missing Share Scheme Threshold

- 4.1 The Council's Scheme of Assistance promotes the principle that homeowners have the primary responsibility for maintaining and repairing their own homes.
- 4.2 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.
- 4.3 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:
- 4.4 The maintenance proposed, having regard to the state of repair of the premises, is reasonable;
- 4.5 The share of the estimated cost is correct, in terms of the title deeds or agreed Tenement Management Scheme (TMS) under the Tenements (Scotland) Act 2004;
- 4.5.1 The owner/s who have not complied with the requirement is unable or unwilling to do so;
- 4.5.2 The majority of owners have agreed to carry out the work; and
- 4.5.3 The owners have set up a joint maintenance account.
- 4.6 Since the introduction of this policy, the payment of missing shares has been a successful tool in actively encouraging owners to organise repairs themselves without having to progress to enforcement of repairs by the Council in default of owners.
- 4.7 The table below shows the applications received and amounts applied for through the scheme since 2017. As seen below, the current threshold of £20,000 has been satisfactory for tenement repair cases generally:

Missing Share Project Value	No of Projects
Under £1k	28
£1k to £5k	51
£5k to £10k	29
£10k to £15k	3
£15k to £19k	2
£20k or over	4

Total Projects	117
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4.8 The table below shows the applications approved and paid by ESRS and the debt recovery status:

Edinburgh Shared Repairs - Missing Share Cases Overview									
Projects	Total Owners	Value of Projects	Total Missing Share owners	Total Applied for	Total Paid (46)	Total Recovered	Total in Payment Plans	Secured By Inhibition	Total Outstanding
117	1,263	£5,874k	145 (11%)	£519k (9%)	£225k (4%)	£114k (51%)	£23k (10%)	£13k (6%)	£75k (33%)

4.9 The outstanding Missing Share debt, amounting to £75,000 is being actively pursued by the Debt Recovery service. The debt stems from 16 individual invoices. 13 of these have a total value of £30,000 with individual values ranging from £360 to £4,624. The remaining three invoices have a total value of £44,000 and are at various stages in the recovery process. All debtors have been identified.

4.10 All outstanding Missing Share debt is monitored on a monthly basis with recovery action initiated when required.

4.11 In circumstances where the Council has served a Dangerous Building Notice under Section 29 of the Building (Scotland) Act 2003, permanent repairs required (as set out on the Notice) are often substantial in scope, complex, required urgently and expensive. A recent tenement repair estimate has shown that share costs can range from £15,000 to £60,000 per flat.

4.12 ESPC data for the average selling prices of flats in Edinburgh sold between May 2023 and April 2024 is £257,496. If calculating a commercially viable repair is assumed to be around 30% of the value of the property, this will amount to £77,249.

4.13 The situation identified at paragraph 4.9 has recently manifested in the Anchorfield project in Leith, where missing shares assistance may be requested in the region of £60,000 per share for the costliest share.

4.14 It is therefore recommended that, to provide the flexibility in the Scheme, the upper threshold be set at £80,000 per application for tenement repairs where a Dangerous Building Notice has been served.

4.15 This recommendation to increase the upper threshold of payments made for each successful missing shares application is principally on the basis that the Council recognises that the current threshold of £20,000 can be a blocker for owners who are keen to keep control of their repair project. If owners do not receive all shares

from their fellow owners and the Council cannot approve a Missing Share application, owners may not find the funds to cover the missing shares and fail to progress the repairs.

- 4.16 This recommendation would only apply to Tenements where repairs are set out by the requirements on a Dangerous Building Notice, served by the Council.

Missing Share Scheme Fees

- 4.17 The current approved fee of 10% on missing share payments covers the costs incurred by ESRS when administering an application. The costs incurred have been reviewed and, on average, verification of a Missing Share application requires up to 30 hours of officer time including input from a Chartered Surveyor, Case Officer, Senior Manager, legal services and finance colleagues.
- 4.18 The 10% fee applied to an application based on a new higher threshold of £80,000 would exceed the costs incurred by the service to administer an application and therefore it is recommended that the fee is capped at £2,000, which is 10% of the current £20,000 threshold for applications.

Emergency Building Fees

- 4.19 The current approved fee of 10% and five hours of officer's time covers the cost incurred by ESRS when attending to the average emergency job, including contractor management, customer contacts, statutory notice administration and billing of owners. The majority of jobs are drainage related and are one and done within the same day as the customer report is received. The average cost of an emergency job in 2023/24 was £713.55. ESRS attend on average 51 jobs per month.
- 4.20 In recent major incidents where the make safe works costs are much higher than the average job, the 10% fee may exceed the costs incurred. As the hours spent to attend to major incidents vary according to the complexity of the incident, the costs incurred in each case will differ. The proposal is that where officers attendance extends beyond one day, the fees charged will be equivalent to officer hours spent (at the approved hourly rate) to attend and support the incident while make safe works are carried out. This fee would be applied where the Council intervene under powers provided by the City of Edinburgh District Council Order Confirmation Act 1991 and the Building (Scotland) Act 2003.

5. Next Steps

- 5.1 If Committee approve the recommendations in this report:
- 5.1.1 The relevant operating procedures will be updated to reflect the decision and accept applications up to the higher threshold, on verification of a Dangerous Building Notice served by Building Standards on the owners of the tenement in the application.

- 5.1.2 The relevant operating procedures for the Missing Share administrative fee (to £2,000) will be updated to reflect the decision and apply the 10% or capped fee where appropriate.
- 5.1.3 The relevant operating procedures will be updated to reflect the appropriate application of fees for attendance and support of major emergency incidents.

6. Financial impact

- 6.1 The scheme is cost neutral. The financial risk to the Council is in relation to the Debt created by the payment made for the Missing Share. All payments made by the Council are recoverable from owners for whom the payments have been made in accordance with the Corporate Debt policy. In cases where missing share payment exceed the £20,000 threshold, additional checks to assess financial risk for the Council will be carried out including an assessment of the value of the property to consider viability of the cost of the repairs and maintenance. Debt recovery processes can be accelerated where the risk is increased under the inhibition option.
- 6.2 The Debt Recovery service have advised that there is no limit on the value of Inhibitions which are registered at Registers of Scotland after Court decree, they are renewed every five years, valid for up to 20 years, and is a powerful tool to secure debt for the Council. The interest rate applicable to this debt is 8% until settlement,
- 6.3 Missing Shares paid since the implementation of the scheme amounts to £225,000. The value of works facilitated through applications to the scheme amounts to £5.874m of privately arranged common repair projects, which demonstrates the value of the scheme for private owners. Only 39% of applications result in payment by the Council, due to owners who previously did not pay then making payment as a result of applications submitted.

7. Equality and Poverty Impact

- 7.1 Emergency building repair work can be required on any building, and therefore poverty and equality issues are not material in setting or reviewing a policy as the income or characteristic of building occupants cannot be predicted. It is clear though that emergency works are, by their nature, unexpected and expensive and the missing shares scheme is designed to cover occasions including when occupants are unable to meet the cost. This may include occasions when occupants are unable to meet the cost due to experiencing poverty, and it is known that people with some protected characteristics are also more likely to experience poverty.
- 7.2 It is important therefore that any review of policy includes consideration of wider poverty issues in the city.

8. Climate and Nature Emergency Implications

8.1 None.

9. Risk, policy, compliance, governance and community impact

- 9.1 Risks to the Council in relation to reputational risk, finance risk, bad debt risk, construction industry scope risk, procurement risk and resourcing risk will be reduced by the use of the missing share legislation when compared to the Councils use of enforcement powers to carry out works in default of owners. The higher threshold, if approved, will reduce the risks to the Council of carrying out urgent and complex repairs on private property where the Council have no ownership responsibilities. The consequences of not increasing the limits are that the Council, in the situation where there is a Dangerous Building notice on a tenement, may be in the position where it must act in default of owners, carry out the repairs and recover the costs incurred from all owners in the tenement. The financial risk related to this is much higher.
- 9.2 All Missing Share applications are considered by a Project Panel in ESRS.
- 9.3 If the Council reject an application for a missing share, the owners may still progress with the works by raising the funds to cover the missing share between them and recovering their contribution from the owner through the process under the Tenements (Scotland) Act 2004.

10. Background reading/external references

10.1 None.

11. Appendices

None.