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## **Implement the use of Missing Shares to enable Common Repair**

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### **Report by the Service Director Regulatory Services EXECUTIVE COMMITTEE**

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**Date: 20<sup>th</sup> August 2019**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report seeks approval to implement the missing share power under section 50 of the Housing (Scotland) Act 2006 to enable essential common repairs to proceed.
- 1.2 It is proposed to implement the scheme as a pilot project over a 2 year period, targeted on Hawick Conservation Area, which will supplement the approved Conservation Area Regeneration Scheme.
- 1.3 The Council will seek to recover missing share payments including associated administrative expenses and interest.
- 1.4 A review will be carried out at the conclusion of the pilot scheme to inform the potential for the Missing Shares Scheme being rolled out to the private sector throughout the Borders.

#### **2 RECOMMENDATIONS**

**2.1 I recommend that the Executive Committee:-**

- (a) approves the pilot project to implement the use of Missing Shares to enable essential repairs to proceed in Hawick, and**
- (b) that a report be brought back to the Executive Committee on the conclusion of the pilot project with proposals for the wider roll out of the project throughout the Borders.**

### **3 SUBJECT MATTER**

#### **3.1 Background**

- (a) There is a serious disrepair problem re-emerging within our built environment. Scotland's private housing stock is deteriorating because of a lack of regular and on-going maintenance and repair. The Scottish House Condition Survey reports that almost 60% of dwellings in the Scottish Borders have disrepair to 'critical elements' of their fabric, two thirds of which are in need of urgent attention (Scottish Government, 2019). These cover building elements critical to ensuring weather tightness, structural stability and preventing the deterioration of the property.
- (b) Scottish Borders Council's Scheme of Assistance promotes the Scottish Government principle that homeowners have the primary responsibility for maintaining and repairing their own homes.
- (c) 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 or repair works not being undertaken, resulting in further deterioration of the property.
- (d) The adoption of the missing share approach is a pro-active measure rather than having to wait and be reactive after building failure.
- (e) If essential repairs are not carried out then the Council can, should it wish, issue statutory notices on the property owners to enforce necessary repair works. The lack of suitable repair and maintenance can lead to serious disrepair and ultimately to a building becoming dangerous, when the Council may be required to take direct action to secure public safety.
- (f) 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:
- the maintenance proposed, having regard to the state of repair of the premises, is reasonable.
  - the share of the estimated cost is correct, in terms of the title deeds.
  - the owner who has not complied with the requirement is unable to do so.
  - the majority of owners have agreed to carry out the work.
  - the owners have set up a maintenance account as defined within the Scottish Government guidance.
  - the payment of missing shares is proposed as an enhancement to the Scheme of Assistance service. Encouraging owners to organise repairs themselves without having to progress to enforcement. The provision of the missing share option should contribute to that service.
- (g) 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 10-15% of the project cost. Given the administrative tasks involved in the process, the minimum share value would be £500.
- (h) It is proposed that the administrative costs to process the application and undertake the project accounting be charged to the missing owners. It is also proposed that an additional charge of 10% be added to the share cost. Interest will be applicable in the course of debt recovery in accordance with the Council's sundry debt policy.

### 3.2 **Outline Procedures**

- (a) A comprehensive procedure is being developed to add to the Scheme of Assistance Procedures to set out the basis of how the Missing Share scheme will operate.
- (b) An application by an owner under the scheme must include the following:-
- Evidence that the repair is critical or essential.
  - Evidence that all other owners have deposited their share into the common maintenance account.
  - Evidence that the owner who is unable to pay their share is in the minority.
  - The allocation of costs has been carried out in accordance with the title deeds or agreed Tenement Management Scheme Evidence that the owners have served a Section 50 notice on the non-complying owner(s).
  - Further information including the last date for owners to pay their share and the start and completion dates programmed for the works.
- (c) The application will be considered at the Missing Share Project Panel. The Panel will consider payment of a missing share for an owner who is: -
- Unable to pay into the funds; or
  - It is unreasonable to ask them to do so; or
  - The owner cannot be identified or found, by reasonable inquiry.
  - Or an owner is unwilling to pay.
  - The Panel's decision will be final and there shall be no right of appeal.
  - 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.
  - Alternatively the Council can if it wishes issue a statutory notice to enforce repair works.

### 3.3 **Measures of Success**

- (a) Improving the capacity of building owners to undertake regular maintenance.
- (b) Missing share intervention levers a much larger spend on necessary repair works.
- (c) Reduction in numbers of 'Buildings at Risk' on the national Register.
- (d) Promotes investment in traditional buildings and encourages the development/retention of appropriate skills for contractors.
- (e) Successful delivery of the Conservation Area Regeneration Scheme.
- (f) Provides positive enhancement and preservation of the character and appearance of the conservation area.
- (g) Projects don't require alternative more resource intensive enforcement process.
- (h) The use of this power in other local authorities in Scotland is noted by them to have benefitted the local economy and facilitated the improvement of their areas private sector housing stock.

## **4 IMPLICATIONS**

### **4.1 Financial**

- (a) The maximum financial commitment per missing share is recommended to be 10-15% of the project cost. Given the administrative tasks involved in the process, the minimum share value would be £500.
- (b) 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.
- (c) The local authority may also issue a repayment charge against the property to recover these expenses.
- (d) 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 SBC 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.
- (e) The resulting costs are to be met from the existing Regulatory Services budget.

The current staffing resource applied through Scheme of Assistance and Heritage & Design will be sufficient to manage this work.

### **4.2 Risk and Mitigations**

- (a) This area of work represents a measured financial risk for the Council. A possible alternative to provision of missing shares for repair works is to enforce works using works notices or defective buildings notices. 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.
- (b) The Scheme of Assistance statement shall be updated to reflect the Committee approvals where appropriate.

### **4.3 Equalities**

There is no equalities impact arising from this report.

### **4.4 Acting Sustainably**

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.

### **4.5 Carbon Management**

It is considered that there are no direct effects on the Council's carbon emissions arising from the report recommendations.

### **4.6 Rural Proofing**

It is anticipated there will be no adverse impact on the rural area arising from the proposals contained in this report.

4.7 **Changes to Scheme of Administration or Scheme of Delegation**

The payment of missing shares is proposed as an enhancement to the Scheme of Assistance service.

Managed by Housing it's proposed applications will be considered at a Missing Share Project Panel.

**5 CONSULTATION**

5.1 The Lead Officer (Heritage & Design) and CARS project officer were consulted and contributed to this report.

5.2 The Chief Financial Officer, Monitoring Officer, Chief Legal Officer, Chief Officer Audit and Risk, Clerk to the Council, and Chief Officer HR have yet to be consulted and their comments will be incorporated in the final report.

**Approved by**

**Brain Frater**  
**Service Director Regulatory Services**

**Signature .....**

**Author(s)**

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**Background Papers: None**

**Previous Minute Reference: None**

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