

EXECUTIVE – 14 SEPTEMBER 2017

MAJOR WORKS AFFECTING LEASEHOLDERS AND ARRANGEMENT FOR THE PAYMENT OF SERVICE CHARGES

Executive Summary

This report sets out the proposed updates to the procedure for consulting Leaseholders for major works, which was last agreed by the Executive on 29 June 2006, and seeks approval for an updated scheme for recharging major works service charges.

The Housing Task Group considered the draft report at its meeting on 27 July 2017 and was supportive of the proposals, subject to there being no significant objections arising from the matter being discussed at the Leaseholder Forum on 6 September 2017.

Reasons for Decision

To update the existing procedures to ensure the Council consults effectively with Leaseholders and in doing so, complies with the statutory legal duty to notify Leaseholders of works and additionally, provide financial payment options that can assist Leaseholders to meet their commitments whilst adopting a sympathetic approach.

Recommendations

The Executive is requested to:

RECOMMEND to Council That

- i) **the consultation procedure and payment plan arrangements for Leaseholders outlined in the report be adopted; and**
- ii) **delegated authority be given to the Strategic Director for Housing to make minor changes to the policy in consultation with the Portfolio Holder for Housing.**

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| This matter will need to be dealt with by way of a recommendation to the Council. |
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Background Papers:

Leaseholders in Housing: Paying for major works (England)
Right To Buy Service Charge Loans
Previous Policy - dated June 2006

Sustainability Impact Assessment
Equalities Impact Assessment

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1.0 Introduction

- 1.1 Leaseholders have to pay an annual service charge. This is for the upkeep of their portion of day to day repairs to common parts of buildings and incorporates a service charge (e.g. cleaning, grounds maintenance, and landlord utilities) to pay for the management of the Leasehold Service.
- 1.2 Depending on the nature of the individual lease, Leaseholders also have to pay their portion of major works (either planned maintenance or capital works) about which they have been notified through formal notice, required by Section 151 of the Commonhold and Leasehold Reform Act 2002.
- 1.3 In order to maintain the condition of its social housing the Council must plan and undertake major repairs to its housing stock. It is important to ensure that systems are in place to collect the associated charges from Leaseholders with options for payment which take account of the terms of the lease and the Leaseholders ability to pay.
- 1.4 A review of the policy from 2006 has been undertaken and the updated proposals for enhanced consultation with Leaseholders and payment plans are outlined below.

2.0 Consultation Procedure

- 2.1 A forecast of major works, which may be programmed within the next five years, will be provided to Leaseholders and updated annually. The forecast will include an estimate of the cost and the percentage which would be recharged to the Leaseholder. This report will be a forecast only and subject to change dependent upon any urgent or additional works being identified during the period.
- 2.2 The letter sent out annually to all Leaseholders with the “actual” annual service charges will outline the Major Works programme for the year and clearly state where costs are likely to occur for Leaseholders. Within this letter information on the potential cost of any identified forthcoming works will be included.
- 2.3 In addition to the annual forecast and letter about service charges, individual Leaseholders will continue to be consulted at least three months before any chargeable major works are planned. This initial notification will be followed by statutory notices as appropriate. With this consultation there will be an information sheet/leaflet explaining what happens and how the work can be paid for. If the need for urgent or emergency major works arises then as much advance notice will be given as possible. Payment for non chargeable “improvements” such as entry phones and photovoltaics, will be negotiated with affected Leaseholders.
- 2.4 Leaseholders buying a property under the ‘Right to Buy’ scheme will continue to be given details of expected planned works due within five years of the sale date based on stock condition surveys. Recharges for major works will not exceed these charges within the five years from the date of the sale.
- 2.5 Details of expected planned works, due within five years of the date of a shared ownership agreement, based on stock condition surveys, will be provided to the Leaseholder. Recharges for major works will not exceed these charges within the five years from the date of the sale.
- 2.6 Service charges for major works will continue to be added as they currently are to the rent account as a separate sub account to provide the Leaseholder with a complete history of their account and Housing charges.

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3.0 Proposed Payment Plan

3.1 Based on best practise, payment plan options are detailed below.

Easy Payment Option - All Leaseholders will be offered the following 'easy payment terms' if they do not wish to pay the charges in full at the point of invoicing.

Bills between £200 and £2,000

If the bill is under £2,000, the payments can be spread over a year in equal monthly payments. No interest or administration fees would be payable.

Bills £2,000 and over and less than £5,000

If the bill is between these amounts, it can be spread over two years in equal monthly payments. No interest or administration fees would be payable.

Bills £5,000 and over

If the bill is £5,000 or more payments can be spread over 5 years. No interest or administration fees would be payable.

In exceptional circumstances, the Council reserves the right to agree payment terms in excess of 5 years, should the bill be in excess of £5,000. In such circumstances both an administration fee and interest may become payable.

Failure to pay an instalment for a payment plan over 1, 3 or 5 years will make the charge payable in full immediately and interest could be charged on outstanding amounts at 0.25% above the Bank of England base rate.

Sale of the leasehold property will make the charge payable in full immediately and interest could be charged on outstanding amounts at 0.25% above the Bank of England base rate.

Details of the easy payment option will be provided to the Leaseholder at the time of the initial consultation. It will be the responsibility of the Leaseholder to apply to the Council if they would suffer hardship, and wish to be considered for the recovery methods below.

3.2 If the Leaseholder would have difficulty paying the charges under the scheme above, the 'Eligibility Criteria' for other payment options can be considered, which are detailed in Appendix A - including:

- The Limitation Option
- Voluntary Legal Charges Option
- Loan

3.3 The Limitation Option – Under the Housing Act 1996 and the 1997 Directions it is possible to limit a major works charge to a maximum of £10,000 over a five year period, and it is a duty to consider the Leaseholders ability to pay. The Council can exercise discretion to limit charges, but Directions set out specific criteria that are needed such as:

- Whether the purchase price paid by the lessee took account of the costs of works of repair, maintenance or improvements.

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- Whether the costs of the work have affected the value of the property. Increases in the value must be considered before limiting the charge. For example, if the costs of the work was £15,000 and the increased value was £12,000, then the Council could not reduce the charge to below £12,000 to the limit of £10,000, but must charge a minimum of £12,000.
 - What benefits the work has for the Leaseholder, for example energy efficiency thus saving on bills, improved security, amenity and other services.
 - Whether the charge will cause exceptional financial hardship.
 - Any estimate of costs given to the Lessee prior to their purchase of the lease.
 - Any other circumstances of the Lessee which the Council considers relevant.
- 3.4 Voluntary Legal Charges Option – The Council may have the option of placing a charge on a Leaseholder’s property as an alternative to other forms of debt collection where the Leaseholder is eligible. Putting a charge on the property results in the debt accruing interest, at 0.25% above Bank of England base rate. This interest can be paid for by the Leaseholder on a monthly basis or rolled up into the debt. This means that in the event the property is sold, the Council will have a call on the proceeds of the sale to pay off the outstanding major works charge plus interest. Eligibility for the scheme is set out in Appendix A.
- 3.5 Loan Option – The Leaseholder may be entitled to a loan under the Housing Act 1985, sections 450A and 450B, if certain conditions are met. This is set out in Appendix A. The Council’s Major Works loan will beset at the same rate as the Council’s variable mortgage interest rate. The Council uses LAMAC – Loan and Mortgage Administration Centre, an external company, to administer housing advances. Loan repayments will be collected by this company. There would be a one-off set up charge and ongoing maintenance to administer this new set of loans.

4.0 Implications

Financial

- 4.1 Where charges are recovered over a longer period, the HRA will bear the loss.
- 4.2 It is a statutory requirement that charges must be invoiced to the Leaseholder within 18 months of the completion of the works to enable recovery.
- 4.3 Charges to “shared ownership” properties will be pro-rata based on the percentage of the property owned by the Leaseholder.

Human Resource/Training and Development

- 4.4 The consultation process and management of the payment plan can be absorbed within current staffing resources. There will be a need for minor additional training for Housing Management staff within NVH.

Environmental/Sustainability/Community Safety

- 4.5 Assistance to Leaseholders will contribute to community cohesion and sustainability by preserving mixed housing tenure areas.

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4.6 Improved communication with Leaseholders will lead to greater engagement.

Risk Management

4.7 The adoption of this consultation procedure and payment plan will reduce the chance of the development of a poor perception of the Council's Leasehold management responsibility.

4.8 The risk of non payment of service charges due for major works will be reduced.

5.0 Consultations

5.1 There has been consultation with New Vision Homes, Housing Task Group (27 July 2017), Portfolio Holder and Leaseholders via the Leaseholder Forum (6 September 2017).

REPORT ENDS

EXE17-045

Leasehold Payment Plan – Eligibility Criteria

To be considered for the following payment plans, the property must be the Leaseholder's main residence and they must not own another property.

Sale of the leasehold property will make the charge payable in full immediately and interest could be charged on outstanding amounts at 0.25% above the Bank of England base rate.

1. Limitation Method

This method would only be available in the following circumstances to reduce the charge to £10,000:

- The major works charge is over £10,000;
- The Leaseholder is not the original purchaser of the property from the Council and was unaware of the likely major works cost at the time of purchase;
- The Leaseholder is either eligible for or in receipt of a means-tested state benefit;
- The Leaseholder has less than £8,000 in savings - anything over £8,000 to be used to pay off the amount of the charge exceeding £10,000;
- The scheme immediately reverts to immediate payment if a payment is missed (subject to officer discretion).

2. Voluntary Legal Charges Options

This option is available where:

- The Leaseholder is not the original purchaser of the property from the Council and was not aware of the work at the time of the purchase;
- The Leaseholder is of statutory retirement age
- The Leaseholder is either eligible for or in receipt of a means-tested state benefit;
- The Leaseholder has less than £8,000 in savings;
- The major works charge is over £5,000;

3. Loan Option

Under Section 450A of the Housing Act 1985, the lessee will be entitled to a loan in certain circumstances. These are:

- The loan relates to repairs carried out in the first 10 years of the lease (or the first 10 accounting years);
- The lease must be given under the right to buy provisions of the Act;
- The demand letter for the service charge must advise the tenant of their right to a loan;
- The tenant must claim the loan within 6 weeks.

The right arises in respect of a service charge exceeding the minimum (£1,500) but less than the maximum (£20,000). The loan itself must then exceed a minimum (£500). [All sums are index linked – the base date is January 1992].

Interest has to be fixed under Schedule 16 of the Act - the higher of the Standard National Rate and the applicable local average rate. Repayment is by equal instalments over the life of the loan.

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The maximum repayment periods are:

| | |
|------------------|----------|
| Less than £1,500 | 3 years |
| £1,500 - £4,999 | 5 years |
| £5,000 + | 10 years |

Administration expenses may be billed to the borrower. A maximum of £100 may be put as a charge on the property, at the borrower's request.

However, under Section 450B of the Housing Act 1985, the Council may make loans in other circumstances. The Council can decide the rate provided it is reasonable. Administration expenses may be billed to the borrower. These may be put as a charge on the property, with the lender's consent. The Council can determine other terms.

A loan granted under either 450A or 450B will be a charge on the property and may exceed the equity in the property.

Equality Impact Assessment

The purpose of this assessment is to improve the work of the Council by making sure that it does not discriminate against any individual or group and that, where possible, it promotes equality. The Council has a legal duty to comply with equalities legislation and this template enables you to consider the impact (positive or negative) a strategy, policy, project or service may have upon the protected groups.

| | | Positive impact? | | | Negative impact? | No specific impact | What will the impact be? If the impact is negative how can it be mitigated? (action) THIS SECTION NEEDS TO BE COMPLETED AS EVIDENCE OF WHAT THE POSITIVE IMPACT IS OR WHAT ACTIONS ARE BEING TAKEN TO MITIGATE ANY NEGATIVE IMPACTS |
|----------------------------|---------------------------------------|--------------------------|------------------|----------------|------------------|--------------------|---|
| | | Eliminate discrimination | Advance equality | Good relations | | | |
| Gender | Men | | | x | | | Improved communication and engagement with all Leaseholders and additional options to reduce the financial pressures of paying for major works. |
| | Women | | | x | | | As above |
| Gender Reassignment | | | | x | | | As above |
| Race | White | | | x | | | As above |
| | Mixed/Multiple ethnic groups | | | x | | | As above |
| | Asian/Asian British | | | x | | | As above |
| | Black/African/Caribbean/Black British | | | x | | | As above |
| | Gypsies / travellers | | | | | x | |
| | Other ethnic group | | | x | | | As above |

| | | Positive impact? | | | Negative impact? | No specific impact | What will the impact be? If the impact is negative how can it be mitigated? (action) THIS SECTION NEEDS TO BE COMPLETED AS EVIDENCE OF WHAT THE POSITIVE IMPACT IS OR WHAT ACTIONS ARE BEING TAKEN TO MITIGATE ANY NEGATIVE IMPACTS |
|---|----------------------------|--------------------------|------------------|----------------|------------------|--------------------|---|
| | | Eliminate discrimination | Advance equality | Good relations | | | |
| Disability | Physical | | | x | | | As above |
| | Sensory | | | x | | | As above |
| | Learning Difficulties | | | x | | | As above |
| | Mental Health | | | x | | | As above |
| Sexual Orientation | Lesbian, gay men, bisexual | | | x | | | As above |
| Age | Older people (50+) | | | x | | | As above |
| | Younger people (16 - 25) | | | x | | | As above |
| Religion or Belief | Faith Groups | | | x | | | As above |
| Pregnancy & maternity | | | x | | | | As above |
| Marriage & Civil Partnership | | | x | | | | As above |
| Socio-economic Background | | | x | | | | As above |

The purpose of the Equality Impact Assessment is to improve the work of the Council by making sure it does not discriminate against any individual or group and that, where possible, it promotes equality. The assessment is quick and straightforward to undertake but it is an important step to make sure that individuals and teams think carefully about the likely impact of their work on people in Woking and take action to improve strategies, policies, services and projects, where appropriate. Further details and guidance on completing the form are [available](#).

Sustainability Impact Assessment

Officers preparing a committee report are required to complete a Sustainability Impact Assessment. Sustainability is one of the Council's 'cross-cutting themes' and the Council has made a corporate commitment to address the social, economic and environmental effects of activities across Business Units. The purpose of this Impact Assessment is to record any positive or negative impacts this decision, project or programme is likely to have on each of the Council's Sustainability Themes. For assistance with completing the Impact Assessment, please refer to the instructions below. Further details and guidance on completing the form are [available](#).

| Theme (Potential impacts of the project) | Positive Impact | Negative Impact | No specific impact | What will the impact be? If the impact is negative, how can it be mitigated? (action) |
|---|------------------------|------------------------|---------------------------|--|
| Use of energy, water, minerals and materials | | | x | |
| Waste generation / sustainable waste management | | | x | |
| Pollution to air, land and water | | | x | |
| Factors that contribute to Climate Change | | | x | |
| Protection of and access to the natural environment | | | x | |
| Travel choices that do not rely on the car | | | x | |
| A strong, diverse and sustainable local economy | | | x | |
| Meet local needs locally | | | x | |
| Opportunities for education and information | | | x | |
| Provision of appropriate and sustainable housing | x | | | |
| Personal safety and reduced fear of crime | | | x | |
| Equality in health and good health | | | x | |
| Access to cultural and leisure facilities | | | x | |
| Social inclusion / engage and consult communities | x | | | |
| Equal opportunities for the whole community | | | x | |
| Contribute to Woking's pride of place | | | x | |