

<b>Subject:</b>	<b>Leasehold Payment Options and Updates</b>		
<b>Date of Meeting:</b>	<b>23 June 2021</b>		
<b>Report of:</b>	<b>Executive Director Housing, Neighbourhoods and Communities</b>		
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<b>Ward(s) affected:</b>	<b>All</b>		

## **1. SUMMARY AND POLICY CONTEXT:**

- 1.1 Brighton & Hove City Council is responsible for keeping our residential blocks of flats in good repair including, where necessary, carrying out major works. Leaseholders are responsible for meeting the relevant costs of works under the terms of their leases so long as:
- The costs are reasonably incurred
  - The works are carried out to a reasonable standard
  - The consultation requirements have been complied with
- 1.2 Where substantial repairs and improvements are carried out to blocks this can mean that leaseholders contributions are significant.
- 1.3 The council has a range of payment support options available to support leaseholders with payments for works. The current payment support options are set out in this report. The report notes potential changes that could be made to the current payment support options.
- 1.4 The report also updates on a number of other areas of leasehold management and engagement including our satisfaction survey of leaseholders, the introduction of additional consultation with tenants and leaseholders ahead of major works and how the council will be working with residents to review quality of works and address any issues as part of the end of each project.

## **2. RECOMMENDATIONS:**

- 2.1 That committee notes the proposal to develop and consult with residents on any changes to the leaseholder payment options.
- 2.2 That committee notes the progress in other areas of leasehold management as detailed in section 5 of this report.

### **3. RELEVANT BACKGROUND INFORMATION:**

- 3.1 Brighton & Hove City Council owns around 2,900 leasehold flats across the city. Under the terms of their leases, leaseholders are responsible for paying the service charge which is a proportion of the costs incurred by the council for the works and services at their building. This includes but is not limited to:
- Repairs to the exterior, structure or common parts
  - Major works and improvements, e.g. lift replacement, window replacement, refurbishment or insulation
  - Services to their building such as cleaning or grounds maintenance
  - Management charges
- 3.2 The term 'major works' normally refers to works that cost individual leaseholders more than £250. Where this applies the council is legally required to undertake a formal consultation process – section 20 consultation under the Landlord and Tenant Act 1985. These are typically capital works undertaken to the block.

### **4. Extending the Payment Options**

- 4.1 The current payment options were put in place to assist resident leaseholders who could not afford the major works charges and who may be put in a position of having to sell their property to meet these costs. The options were designed to particularly assist those who had sufficient equity in their properties but had low or fixed incomes to enable them to stay in their homes.
- 4.2 The scheme was not intended to provide the same options to all leaseholders as it was likely that those who sub-let and received market rate rents for the properties could fund major works through other sources. It is also important to balance the interests of leaseholders with those of tenants in considering how to plan and pay for major works.
- 4.3 In recent years there have been enquiries from a small number of non-resident leaseholders regarding the possibility of extending the payments options to them as their circumstances were such that while non-resident they may be in financial hardship. An extension of the policy in these cases would be of benefit to those leaseholders. It is estimated this would be of benefit to a very small number of leaseholders, at most possibly 3-5 a year. The council has checked with other local authority landlords to see if they operate a payment support option for non-resident leaseholders in this way but have not been able to identify any similar schemes.
- 4.4 This report sets out how the current payment options scheme could be extended to any non-resident leaseholders for whom this is the only property they own where all other options to meet the cost of the works have failed, with evidence provided of refusal of a loan from at least two specialist mortgage lenders. Each case would need to be subject to an individual financial assessment at the time of the application. There is additional complexity in operating a scheme in this way as it would need to deal appropriately with considerations around how

leaseholders hold a property, leaseholders with mixed portfolios of properties and a range of ownership and transfer risks. The intention of the policy is to support leaseholders where they are in genuine cases of hardship.

- 4.5 In addition it is proposed that the council considers working with leaseholders to offer a mix of extended payments options if this better suits the leaseholder's circumstances. For example, the leaseholder might opt for spreading some of the outstanding sum over a five years interest period while taking an equity loan for the remainder. If a leaseholder faced a bill for, say, £18,000 then they could repay £8,000 over a 4 years interest free payment at £222 approximately per calendar month. They could then secure the remaining £10,000 on an equity loan. The difference being that if the part sum was secured the share the council would reduce from 7.2% to 4%.
- 4.6 The payment options available to both resident and non-resident leaseholders and potential changes to this are set out in Table 1 below.

**Table 1 – Payment options for leaseholders**

No.	Payment Option	Available to Resident Leaseholders	Available to Non-Resident Leaseholder	Potential change for non-resident leaseholders owning one property
1	A mortgage lender (if any) may add the amount to an existing mortgage	√	√	√
2	A loan from a private lending institution such as a bank or building society	√	√	√
3	Leaseholders over 60 may be entitled to help from the Pension Centre	√	√	√
4	Leaseholders of working age may be entitled to help from Income Support	√	√	√
5	An interest-bearing council loan to spread the cost for up to ten years for any major works bill over £1,000 or five years for over £500	√	√	√
6	An interest-only loan from the council for those of pension age, even this option may be impossible for some leaseholders on a low fixed income	√	√	√
7	A formal agreement can be made to spread the payment over a maximum of 12 months	√	√	√
8	Equity Loans  The loan will be secured on the property to which the service charge relates and charged at the Land Registry. The charge on the property is expressed as a percentage of the value of the	√	X	√

	property. The loan will be paid back either when the property is sold or earlier if the leaseholder wishes to. The amount paid back is dependent upon the valuation at the time of sale of the property.			
9	<p><b>Maturity Loans</b></p> <p>This is where a loan is agreed to fund the value of the works and a charge is placed on the property. The loan will attract interest. When the property is sold the value of the loan plus interest is repaid to the Council. There is no maturity date for the loan so it can carry on indefinitely. It will be paid either when the property is sold or earlier if agreed.</p>	✓	X	✓
10	<p><b>Long-term interest-bearing loans up to 25 years</b></p> <p>These are interest bearing loans over 25 years offered by the council and work in the same way as any other commercial mortgage.</p>	✓	X	✓
11	<p><b>Extending the interest-free repayment option from 12 months to a maximum of 5 years, depending on the loan amount. This is where the Council makes a formal agreement with the leaseholder to repay in monthly instalments over a specified period without adding interest. Further information shown in table 2 below.</b></p>	✓	X	✓

### **Payment option 8 – equity loans**

- 4.7 In order to process applications for extended payment options, particularly Equity Loans, a current market valuation of the property needs to be obtained, this is currently undertaken by the council's contracted valuers.
- 4.8 Valuations are normally carried out at the point of application which can be some months after both completion of the works and in some cases the invoices being sent to leaseholders.
- 4.9 A formal valuation is required to calculate the amount of equity the council will be taking in the property as this needs to be registered as a legal charge against the property to secure repayment of the "loan".
- 4.10 There has been confusion regarding equity loans, with these being confused with Equity Release schemes operated by the financial institutions. An explanation of the scheme the council operates is set out below.

4.11 To give an example:

Loan requested £	£26,248.83
Costs £	£330
Total Loan amount £	£26,578.83
Property Valuation	£165,000
Loan to property value (%)	16.11%
Agreed Equity loan share (%)	0-5 years: 17.11% 5-10 years: 16.61% 10 + years: 16.11% (To be capped at BHCC average borrowing rate + 0.25%)

4.12 The amount of the outstanding Invoice, in this case £26,248.83 and the legal and valuation costs are wrapped into the total sum and this is calculated as a percentage of the flat value. 16.11%. If the flat is sold after 10 years, the council will recover 16.11% of new sale price. So, if it is sold for £200,000 the council will receive £32,220. The difference would be checked to see if that total is more than the council average borrowing rate over the period plus 0.25%, if it was then the repayment would be capped at the lower figure.

4.13 The formula allows 1% to be added to the interest if the property was sold in the first five years, and 0.5 % in years 5 to 10. This protects the council against possible short-term losses if the housing market dips. However, any gain by the council at the point of sale is capped so that the maximum sum gained is equal to the interest on the loan at the council average borrowing rate plus 0.25%.

4.14 The current value of the Equity Loans held by the council is £554,081 and a further £82,279 is covered by Maturity Loans/Voluntary Charges.

4.15 Payment Options 9 and 10 relate to interest bearing loans. In compliance with the 1985 Housing Act, the council must charge the higher of the Council's average borrowing rate or 'Local Average Rate' (LAR), and the Standard National Rate (SNR). Historically, the LAR has been higher than the SNR (currently 3.13%) so it is generally the case that this is the rate used for leaseholder loans. This rate is updated every six months. The rate for the 6 months from 1 April 2021 is 4.06%.

#### 4.16 Payment Option 11 - Interest-free repayment

4.17 Table 2 below shows the interest free repayment periods available for loan amounts.

**Table 2 – Interest free repayment period**

Loan Amount	Interest-free repayment period
Up to £2,000	12 months
£2,000 - £5,000	24 months
£5000 - £10,000	36 months

£10,000 - £15,000	48 months
£15,000 +	60 months

- 4.18 The payment support options have been in place since 2012 and there have been 98 applications for payment options. The table below sets out the take up of the various payment support options.

**Table 3 – Take up of payment options since introduction in 2012 as at March 2021**

<b>Support option</b>	<b>Number of leaseholders</b>
Paid by the Pension Service	3
Current Equity Loans	25
Current Maturity Loans/Charges	5
Interest bearing loans	56
Currently in progress	3
Loans redeemed/Paid/Property Sold	2
Payment Options not pursued	4

#### **4.19 Discretionary Reduction of Service Charges**

- 4.20 The Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014 gives the council the discretion to reduce major works charges. This is for cases of extreme hardship. The government has issued guidance on how to comply with these directions.
- 4.21 If a leaseholder makes an application under this discretion, the case needs to be considered on its merits, taking into account whether the dwelling is the leaseholder's only home, their financial resources, their ability to pay over a longer period of time, the impact on the value of their home and other matters.
- 4.22 The landlord would be likely to be considered reasonable by the courts if it also took into account how any reduction of charges fits with the legislation or other rules under which it operates and, in particular, the balance between exercising its discretion to reduce service charges and its general fiduciary duty to local taxpayers and others, including its tenants.
- 4.23 Since the introduction of the Directions the council have received 4 applications for discretionary reduction in service charges from 3 leaseholders, with one being the same case which was considered twice.
- 4.24 None of the applications have been approved due to the availability of the extended payment options available to resident leaseholders.

#### **4.25 Major Works Charges**

- 4.26 The table below shows a summary of major works charges included in the 2019-2020 Certificates of Expenditure sent to leaseholders in September.

**Table 4 – Major works charges (2019/20)**

Total Major Works Charges	£2,779,289
Number of Major Works Charges	657
Average Major Works Charge	£4,230
Total Major Works Charges £10,000 - £20,000	£707,639
Number of Major Works Charges above £10,000 - £20,000	55
Average Major Works Charge £10,000 to £20,000	£12,866.17
Total Major Works Charges over £20,000	£1,121,435
Number of Major Works Charges above £10,000 - £20,000	39
Average Major Works Charge above £20,000	£28,754.76
Highest major works charge	£44,649.21

## 5. Further updates on leaseholder engagement

- 5.1 As we mobilise our new Planned and Major Works Contracts we will review how we are meeting our continued commitment to the practical measures to improve engagement with leaseholders agreed at Housing & New Homes Committee in June 2018 following an earlier leaseholder engagement review. Practical measures to improve engagement with leaseholders supported by Committee are outlined in Appendix 1.

### Leaseholder satisfaction Survey

- 5.2 The council regularly surveys leaseholders around their satisfaction with the services offered to leaseholders. The last survey was undertaken in 2013.
- 5.3 The council have worked with ARP Research to design and undertake a new survey. The survey is in line with the STAR (Survey of Tenants and Residents) survey model undertaken in the regular survey of tenants with additional specific questions for leaseholders.
- 5.4 The leaseholder satisfaction survey was posted out to leaseholders on Friday 5th March. The second postal run went out on 26 March, and the final deadline for responses was the week commencing 19 April. The report will be finalised shortly.
- 5.5 The council will produce a summary of results and share this with the Leaseholder Action Group.

### Communication with residents on Major Works

- 5.6 The council has been developing programmes for planned and major works and will be publishing these on the council website later this year. The programmes will then be updated each quarter to reflect any changes to delivery. The

programmes will also be shared with residents through the Home Service Improvement Group and the Leaseholder Action Group.

- 5.7 Details of the practical measures to improve engagement with leaseholders agreed at Housing & New Homes Committee in June 2018 following an earlier leaseholder engagement review are outlined in Appendix 1. We will keep our continued commitment to these measures under regular review. We have now introduced a procedure detailing how we will keep residents informed and engaged around major works. This includes a robust method of informing residents of proposed works and includes meetings with all residents, suitable and adequate consultation and improved methods of communication carried out to improve the engagement experience for all residents. Key commitments are set out from 5.9 below.
- 5.8 Under the new framework for major projects residents will be invited to be involved at the mini-competition stage to look at the quality aspect of the contractors' bids and to meet with the Major Works Team in the evaluation of tenders on the project for their property.

### **Managing major works**

- 5.9 As detailed above and in Appendix 1 the council will be communicating with residents before proposed major works and introducing a procedure to keep residents informed about progress throughout.
- 5.10 We have reviewed how we engage with residents before, during and after projects. We will ensure that meetings are held, that there is suitable consultation carried out and newsletters provided to improve engagement with residents. Residents will be invited to get involved at the mini-competition stage to look at the quality of the contractors' bids. Residents of the property that is the subject of the works will be invited to join the Major Works Team in the evaluation of tenders on the project for their property.
- 5.11 The council will work with Resident Inspectors on the programme to examine the quality of work throughout projects and specific council contact points will be shared with residents so any issues can be raised during projects.
- 5.12 Following completion of any major work, we will be inviting residents to carry out a post completion 'walk around' of the project. This will show the work completed and allow for the recording of any observations and will be led by council quality assurance staff.
- 5.13 Surveys will also be undertaken where all residents will have a say in identifying any issues following works to their property.
- 5.14 The council will track all issues. We will keep these under review through Key Performance Indicators which we will continue to develop in consultation with residents and regularly report as appropriate either on a scheme by scheme basis or via our more formal Performance Reports to Area Panels, Leaseholder Action Group and Housing Committee. This will include an escalation process to ensure that contractors take ownership and manage any issues through to a satisfactory conclusion, keeping residents apprised throughout the process.



- 5.15 Comprehensive reporting for planned and major works will be produced for residents through the Home Service Improvement Group which is focused around the Home and repairs, maintenance and planned works delivered by the Housing service. In addition, performance indicators will report through Area Panels and Housing Committee as part of the quarterly Housing Performance Report.

### **Lease Extensions and Home Purchase Policy**

- 5.16 Leaseholders have asked whether charges for lease extensions could be waived if there was a commitment to sell the property back to the council at some point under the Home Purchase Policy.
- 5.17 Lease extensions are governed by statute, namely the Leasehold Reform, Housing and Urban Development Act 1993, Section 42. This allows for a leaseholder to obtain a statutory 90-year extension of their existing lease. Landlords can informally agree to extend leases by the 90-year period, however, as a local authority our Legal Team only operate through the formal statutory process.
- 5.18 Lease Extensions and the Council's Home Purchase Policy are two independent processes, neither relies on the other. Of the 131 lease extensions applications received since October 2014, only two properties have ever been offered back under the policy.
- 5.19 Lease extension values are calculated in line with legislative requirements.
- 5.20 It is not viable to operate a scheme whereby lease extension fees were refunded if a property is subsequently purchased by the council under the Home Purchase Policy. In this case the valuation for the offer price under the policy would reflect the extended lease and therefore be valued accordingly. It would not then be appropriate to refund the cost of the lease extension.
- 5.21 Other South East housing providers were contacted, and 9 responses were received, all apart from one, who had not yet completed a lease extension, the others all charge not only the premium, but legal and surveying fees on top.
- 5.22 The Leasehold Reform, Housing and Urban Development Act 1993 permits the council to charge fees for lease extensions and the council is simply reclaiming expenditure it has incurred, and it is due. The charge is £1,000 per application but on occasion may reduce the fees to £800 if the same person has more than one property or where a solicitor is acting for several leaseholders at the same time.
- 5.23 The surveyor's fees which are on average about £600 are paid in addition to legal costs, if this amount is not charged then the Housing budget would need to fund this aspect.
- 5.24 Leaseholders on average have to pay a premium of around £3,000/£3,500 to extend their lease, for the financial year 2019/2020 approximately 41 lease extensions applications were made so this would potentially be a loss to the housing budget of £133,250 taking an average premium of £3,250. Extending the

length of the lease is likely to increase the value of the property to the leaseholder should they wish to sell.

## **Home Purchase Policy**

- 5.25 The council's Home Purchase Policy has proved an effective way of increasing the supply of affordable housing in support of the council's target to achieve 800 additional council owned homes by March 2023. Since the scheme began in 2017, 97 homes have been purchased with 24 additional homes purchased in support of the Next Steps Accommodation Programme which houses former rough sleepers (as at 31 March 2021). Any former council homes brought under the Right to Buy is subject to the Right of First Refusal for 10 years. This means that if the property is due to be sold it must be offered back to the council first, who will consider whether it wishes to exercise the right. The council also encourages any other owners of former council owned homes where this right doesn't apply to approach the council if they are thinking of selling their property. The council pay market prices, subject to valuation and approaching the council direct saves on agency fees. Further information on the scheme and its criteria is available on the council's website.

## **6. COMMUNITY ENGAGEMENT**

- 6.1 The extension of the current policy has been the subject of discussions with the Leaseholders Action Group who have made the following suggestions for consideration.
- Extended payment options be available to non-resident leaseholders.
  - An opportunity to mix options together.
  - Interest rates: can we review the rate and set out how it's calculated as it seems high.
  - Appropriate timing of valuations relating to equity loans – related to major works. Protections that are in place as well.
  - Some leaseholders fed back that they felt support should not be available to some cases of non-resident leaseholders operating as businesses.
  - Update on hardship policy and the use of this.
- 6.2 These issues have been considered and covered in this report.
- 6.3 A further update will be provided to the Leaseholder Action Group following this report to Housing Committee. Officers are continuing to work with the Leaseholders Action Group, Area Panels and the Home Service Improvement group on the items covered in this report.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 Extending the payment options to non-resident leaseholders who own no other properties will allow a small number of leaseholders (possibly 3-5) to access further payment options from the council. The option with the largest cost to the

council is the interest free loans for up to 60 months. Based on 5 leaseholders with loans of £20,000 each, the council is foregoing interest payments of approximately £21,000 if they were to access this interest free option rather than an interest bearing loan over 5 years. For those wishing to access the equity loan scheme, the council takes a risk for each loan of this type offered. If house prices reduce between the point of loan and sale of the property, the equity share the council receives may not cover the loan amount with a nominal interest. However, if house prices increase, the council will make a small margin on the equity loan.

*Finance Officer Consulted:* Monica Brooks, Principal Accountant  
*Date:* 14/06/2021

Legal Implications:

- 7.2 As is clear from the report, there is an unconsolidated statutory framework regulating the type of assistance local authorities may make available to leaseholders. It is essential that the council operates within that framework. Any changes to leaseholder payment options proposed following the consultation with leaseholders will be reviewed from a legal perspective.

*Lawyer Consulted:* Liz Woodley

*Date:* 14/06/2021

Equalities Implications:

- 7.3 Individual circumstances of leaseholders are carefully considered as part of the payment options process.

Sustainability Implications:

- 7.4 There are none.

Crime & Disorder Implications:

- 7.5 There are none.

Risk and Opportunity Management Implications:

- 7.6 This report considers potential revisions to the payment support options for leaseholders. As set out in 4.4 the intention of the policy is to support leaseholders where they are in genuine cases of hardship. Changes to the payment support options would need to ensure that intention was maintained and that any scheme dealt with the additional complexity. It would need to deal appropriately with considerations around how leaseholders hold a property, leaseholders with mixed portfolios of properties and a range of ownership and transfer risks.

Public Health Implications:

- 7.7 There are none.

Corporate / Citywide Implications:

7.8 There are none.

## **8. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

8.1 Payment options could remain as they are, however, this would mean that non-resident leaseholders in financial hardship could not access the payment options.

## **9. REASONS FOR REPORT RECOMMENDATIONS**

9.1 This report has been formed in consideration of potential changes to payment options that require further consultation and consideration. It also updates on leaseholder services more generally.

### **SUPPORTING DOCUMENTATION**

None

## **Appendix 1**

### **Practical measure to improve engagement with leaseholders – Details from Housing & New Homes Committee report (18 June 2018)**

Following a councillor working group on leaseholders a Leaseholder Engagement report was considered at Housing & New Homes Committee on 18 June 2018.

Committee agreed the following practical measures to improve engagement with leaseholders and supported their implementation.

- An agreed project plan for high cost works that includes engaging with tenants and leaseholders impacted by the works comprehensively from an earlier stage and which involves engagement at key stages such as project initiation, condition survey, options, consultation, pre-commencement, snagging and sign-off.
- Move to individual letters to tenants and leaseholders (both resident and non-resident) giving regular works updates and covering critical stages of projects such as condition survey, condition report, initial specification and cost, delays, commencement, alerts on scaffolding, progress, completion, snagging and the service charge.
- A named council officer for each project with the status and autonomy to resolve issues as they arise.
- The opportunity for leaseholders and tenants of blocks where high cost major works are undertaken to participate in commissioning structural surveying services, joining inspections and overseeing snagging of completed works.
- Create a new position of Leaseholder Liaison Officer to meet and spend time with leaseholders when problems arise and to improve communications. We will consult the LAG committee on the Job Description for recruitment to the post.

- Consult with LAG committee and the councillor working group on a new council leaseholders handbook.
- Consult with the LAG committee and the councillor working group on the next full leaseholders' satisfaction survey (proposed to be carried out in tandem with the next tenants' STAR survey).
- Ensure consideration of more accessible repairs information for leaseholders through the new IT system for Housing.
- Involvement of tenants and leaseholders in consideration of options for the delivery of repairs and maintenance services after 2020.
- Undertake workshops with officers, leaseholders and councillors to monitor progress. Improve the communication of the planned maintenance and investment programme that is published on the council's website to allow continuous updating and information to individual buildings.
- Include a customer service improvement element to the leasehold management training sessions that are rolled out across council staff and contractors.

