

To: City Executive Board

Date: 10 September 2014

Report of: Head of Finance and Head of Housing and Property

Title of Report: Leaseholder Payment Options for Major Works

Summary and Recommendations

Purpose of report: To establish a framework for the financial assistance options to be offered to Council residential leaseholders with regards to rechargeable major works undertaken by the Council.

Key decision: Yes (all Wards)

Executive lead member: Councillor Scott Seamons, Board Member for Housing and Estate Regeneration and Councillor Ed Turner, Board Member for Finance, Asset Management and Public Health

Policy Framework: Housing and Regeneration

Recommendations:

1. That the Financial Assistance Framework set out in Appendix 2 of this report is approved. The framework sets out the repayment options which may be offered to leaseholders being charged for major works undertaken by the Council on residential blocks of flats.
2. That delegated authority is granted to the Head of Finance and the Head of Housing and Property to determine which elements of the Financial Assistance Framework should be offered to leaseholders dependent on the amount of the major works recharge.
3. That the Council adopts the process for dealing with exceptional hardship as set out in "*The Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014*".

Appendices to report

Appendix 1 – Statutory Right to a Loan

Appendix 2 – Financial Assistance Framework

Appendix 3 – Initial Equality Impact Assessment

Appendix 4 – Risk Register

Background

1. Oxford City Council still retains legal ownership of 644 leasehold dwellings previously sold under Right to Buy (RTB) and consequently still retains obligations to maintain the structure and exterior of blocks of leasehold flats. Leaseholders have a responsibility to pay a proportion of any major structural/exterior repairs via annual service charges. The charge is based on the number of flats in the block and in cases of major works the charge may be considerable. Statutory consultation with leaseholders and other residents is undertaken before the commencement of any major works to a building.
2. Leaseholders may be resident or non-resident. Non-resident leaseholders may be an individual who rents the property out on the private rental market or they may also be an investor or investors who rent out a number of former council properties in this way. In each case the provisions of the lease together with the rights and obligations contained within would apply regardless. The number of leaseholders will continue to increase as properties are sold under the Right to Buy.
3. The Housing Revenue Account (HRA) capital programme and business plan includes provision for refurbishment and other major works on residential flat blocks throughout Oxford. Major works can also arise outside of the capital programme for instance where an unexpected major repair is needed to a block of flats, for example major roof damage in a storm.
4. Although requiring leaseholders to pay major work recharges, there is currently no policy or framework in place which sets out how the Council can assist leaseholders to meet their repayment obligations.
5. Leaseholders, as owner-occupiers, are expected to make a reasonable contribution towards repairs or improvements carried out in their flat block. The rental income from tenants should not be used to subsidise leaseholders. Repairs and improvements carried out will ultimately benefit the leaseholder as it will help to maintain the value of their asset over time.

The Statutory Right to a loan

6. The Housing (Service Charge Loans) Regulations 1992, as amended by The Housing (Service Charge Loans) (Amendment)(England) Regulations 2009, sets out details of the statutory right to a loan for leaseholders.
7. Details of the statutory scheme are set out in Appendix 1

Payment in full

8. The most preferable repayment arrangement is for the leaseholder to pay the major works invoice in full, funding the payment either from savings or by obtaining a personal loan or re-mortgage from mainstream lenders.
9. Personal loans or a re-mortgage obtained from a mainstream lender may be provided to the leaseholder at a more attractive rate of interest overall than the Council would offer over the length of the loan.
10. A payment in full would avoid the costs of setting up and monitoring any loan, repayment arrangement or property charge.

Discretionary Powers Available to the Council

11. As well as the statutory obligations, the Council has additional powers available which it can exercise and there is an expectation that social landlords will identify strategies to assist leaseholders facing large bills.
12. These discretionary powers include:
 - providing a range of repayment and loan options to leaseholders
 - the ability to purchase equity shares and offer equity loans
 - on application and in exceptional circumstances, to waive or reduce the service charge by an amount considered reasonable.
13. “*The Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014*”, was issued by the Secretary for State for Communities and Local Government on 11th August 2014, to be effective 12th August 2014. The Directions, on application by a leaseholder, give social landlords the power to waive or reduce a service charge for repair, maintenance or improvement by an amount the landlord considers to be reasonable.
14. The Directions also set out criteria which should be considered by the social landlord and factors to consider relating to exceptional hardship.

Financial Assistance Framework

15. Research undertaken by officers indicates that there are a number of different best practice options that could be considered in providing financial assistance to leaseholders facing large bills, in addition to the statutory provisions available.
16. These are set out in Appendix 2 - The Financial Assistance Framework.

Climate change/Environmental Impact

17. It is considered that there will not be any direct climate change/environmental impact as a result of these proposals

Equalities Impact

18. There is no negative impact on equalities resulting from this report. The Initial Equality Impact Assessment is attached as Appendix 3.

Financial Implications

19. The Council is required to fulfil its statutory obligations under existing legislation in offering a loan to leaseholders who are required to pay amounts in respect of major works. Any interest charged would be credited back to the Housing Revenue Account and the repayment of the works would constitute a capital receipt to be used to fund future Housing capital works, subject to the normal set aside provisions.
20. Negative budgetary implications are not anticipated. Capital works to flat blocks are carried out from existing budgets. The liabilities on leaseholders arise at that point when the leaseholder becomes a debtor. In the event of a leasehold property being sold (for any reason), all outstanding debts relating to service charges and major works charges are settled as part of the sales process. In the vast majority of cases this will cover the debt to the Council but there may be a small number where there are multiple charges against the property which exceed the sale value.

Legal Implications

21. The Council has a fiduciary duty to the Council's tenants to ensure that it recovers service charges from leaseholders, protecting the interests of tenants and the Housing Revenue Account.
22. The general provisions for the recovery of service charges and major works liabilities are set out in the respective leases of individual leaseholders.

23. *“The Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014”*, was issued by the Secretary for State for Communities and Local Government on 11th August 2014, to be effective 12th August 2014. The Directions, restrict the amount of service charges that can be recovered to £10,000 (outside London) in a five year period but only where the funding or part funding for the work is provided either from Decent Homes Backlog Funding provided in 2013 Spending Round or any other assistance for the specific purpose of carrying out works of repair, maintenance or improvement provided by any Secretary of State or the Homes and Communities Agency.

24. Oxford City Council has no current or future planned works that would have such funding arrangements and so is unaffected by these Directions at this stage.

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List of background papers: None

Appendix 1 – Statutory Right to a Loan

1. The right to a loan is only applicable to leaseholders where the property was purchased under the Right to Buy within the ten years prior to the major works service charge liability arising. At the time of writing, there are 38 leaseholders currently entitled to a statutory loan.
2. The Housing (Service Charge Loans) Regulations 1992, Paragraph 3 (1), states that the leaseholder is required to pay the first £1,500 (updated to £2,790 as at 31/01/2014) of the total of the annual service charge inclusive of the major works charge. An illustrative example of how this would work in practice is as follows :

Service Charge	£ 1,000.00
Major works Charge	<u>£30,000.00</u>
Total	£31,000.00
Less amount to be paid by leaseholder	<u>£ 2,790.00</u>
Qualifying Loan value	£28,210.00

3. Where the qualifying loan value is in excess of £37,201, The Housing (Service Charge Loans) Regulations 1992, Paragraph 5 (1 & 2) allows the Council, the discretion to make a loan for the higher value.
4. The original regulations provide for the qualifying amount of loan as follows :

Amount of the Loan	Length of the plan
Less than £500	Not eligible for loan
Between £500 and £ 1,500	36 months (three years)
Between £1,501 and £5,000	60 months (five years)
Between £5,000 and to £20,000	120 months (10 years)

5. These amounts are subject to annual RPI uplifts giving revised amounts of eligible loan as at 31st January 2014 of:

Amount of the Loan	Length of the plan
Less than £929	Not eligible for loan
Between £930 and £ £2,790	36 months (three years)
Between £2,791 and £9,314	60 months (five years)
Between £9,315 to £37,201	120 months (10 years)

6. The Housing (Service Charge Loans)(Amendment)(England) Regulations 2009 provides for the loan offer to be made on terms that:
 - do not require payment of interest or
 - require the payment of interest only on part of the loan or
 - on terms as the lender may determine

7. The Interest Rate is added to the principal sum at the “Local Average Rate” calculated in accordance with Section 438 and Schedule 16 of the Housing Act 1985 being the higher of:
 - the Standard National Rate (SNR) of interest as set by the Secretary of State after taking into account rates charged by building societies in the United Kingdom and any movement in those rates and
 - applicable local average rate, based on the Authority’s own borrowing costs. This rate is a variable rate which is reviewed every 6 months and is currently 3.6%.
8. The Council is allowed to charge administrative costs – up to a maximum of £100 under Schedule 2, paragraph 3 of the Housing (Service Charge Loans) Regulations 1992, which can either be paid immediately or added to the loan agreement.
9. All such loans act in the same way as a mortgage, and a charge will be put on the property as security for the loan, with the agreement of the leaseholder. The Land Registry would be informed that there is a debt against the property. If the property is sold the debt outstanding will be recalculated and have to be paid back to the Council from the proceeds of the sale.

Appendix 2- Financial Assistance Framework

Repayment Option	Description
Loan with interest	Variable interest rate loan as set out in appendix 1 of this report
Interest free loan (36 months)	Interest free instalment scheme over 36 months (available if payments made by Direct Debit)
5 Year payment plan	36 month interest free with 24 months at interest as set out in appendix 1 of this report (available if payments made by direct debit)
Charge on property	A charge on the property would be applied and the Councils invoice paid when the property is subsequently sold. The charge would be based on an 'equity stake',* ¹ represented by the percentage of the value of the property that the financial assistance required relates to from the date on the demand.

*1- This seems equitable since in a rising market the amount due to the Council would increase and in a decreasing market the amount due to the Council would decrease.

Appendix 3 – Initial Equality Impact Assessment

1. Within the aims and objectives of the policy or strategy which group (s) of people has been identified as being potentially disadvantaged by your proposals? What are the equality impacts?

There are no groups of persons identified as being disadvantaged by the proposals.

2. In brief, what changes are you planning to make to your current or proposed new or changed policy, strategy, procedure, project or service to minimise or eliminate the adverse equality impacts?

Please provide further details of the proposed actions, timetable for making the changes and the person(s) responsible for making the changes on the resultant action plan

No changes are required, as there are no equality impacts.

3. Please provide details of whom you will consult on the proposed changes and if you do not plan to consult, please provide the rationale behind that decision.

Please note that you are required to involve disabled people in decisions that impact on them

There is no requirement for external consultation on this issue. There are no equality impacts arising.

4. Can the adverse impacts you identified during the initial screening be justified without making any adjustments to the existing or new policy, strategy, procedure, project or service?

Please set out the basis on which you justify making no adjustments

Not applicable

5. You are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts.

Please provide details of how you will monitor/evaluate or review your proposals and when the review will take place

Not applicable

Lead officer responsible for signing off the EqIA:

Role: Senior Management Accountant

Date: 12/08/14

Appendix 4 – Risk Register

Title	Risk description	Opp/ threat	Cause	Consequence	Date Raised	Owner	Gross		Current		Residual		Comments	Controls Control description	Action Owner
							I	P	I	P	I	P			
Financial Assistance Framework not approved	CEB reject the proposals in the report	T	Failure to provide sufficient information to enable CEB to agree the Framework	The Council is unable to offer a range of repayment and loan facilities to leaseholders facing large major works bills. This would lead to the Council being unable to realise the maximum income recoverable from leaseholders. The value of the works would be irrecoverable and unrealisable for many years until the leasehold properties are re-sold.	08/08/14	Catherine Arnold	5	3	5	1	2	1	Worked closely with Lead Member to ascertain support for scheme.	Offering repayment options to leaseholders facing large major works bills	Catherine Arnold

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