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OXFORD CITY COUNCIL

**To:** **City Executive Board**

**Date:** **15 October 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 frameworkfor 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:** That the City Executive Board:

1. Approve the Financial Assistance Framework set out in Appendix 2 of this report. 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. Agree that where leaseholders are unable to pay a major works invoice in full within 14 days of receipt, they are entitled to apply for assistance under the Financial Assistance Framework. Applications will be assessed based on thequalifying eligibility criteria as set out in this report.

3. Delegate authority to the Head of Financeand the Head of Housing & Property to operate the Financial Assistance Framework and the assessment process.

4. Recommend that Council adopt 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 – Eligibility Scenarios
Appendix 4 –Initial Equality Impact Assessment
Appendix 5 – 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 annualservice 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. The general provisions for the recovery of service charges and major works liabilities are set out in the respective leases of individual leaseholders.

5. Sinking fund contributions are payments made by leaseholders, alongside service charges, to build up a fund to pay for major works that may occur in the future, taking into account the various replacements or renewal of major works items likely over the lifetime of a flat block. Sinking funds are more common in the housing association sector, and they are set up when

the flat block is constructed where typically the monthly contributions are between £150 - £200 per month per property.

6. The leases for Oxford City Council leaseholders, in common with most other local authorities, do not make provision for sinking fund contributions. While this means that Oxford City Council leaseholders will have lower overall bills throughout the year compared with non-Council leaseholders, it does mean that they will get larger one-off bills when major works are carried out.

7. Leaseholders are required to settle their major works bills within 14 days of invoice. Failure to comply or otherwise make an arrangement with the Council, would leave them liable for forfeiture proceedings so that the outstanding debt can be settled on re-sale of the property.

8. 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.

9. 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**

10. 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.

11. Details of the statutory scheme are set out in Appendix 1

**Payment in full**

12. 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.

13. 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.

14. 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**

15. 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.

16. 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.

17. *"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.

18. 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**

19. 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 statutoryprovisions available.

20. These are set out in Appendix 2 - The Financial Assistance Framework.

**Eligibility Criteria**

21. To qualify for assistance under the Financial Assistance Framework, leaseholders would be required to make an application to the Council, setting out their current financial circumstances, including details of income, savings and assets such as other properties they may also own.

22. If they qualify for assistance, leaseholders would be expected to use a reasonable proportion of their available cash (savings) or realisable assets to reduce their liability as part of the loan agreement.

23. How much a leaseholder will be expected to pay towards a loan each month will be based on their applicable disposable income, so that a leaseholder can retain some disposable income while making affordable loan repayments.

24. Where a leaseholder has insufficient funds or realisable assets to settle the invoice within 14 days of invoice but has equity in property or properties (excluding the property leased), the leaseholder would be expected to make arrangements to release the equity and reduce the outstanding invoice amount.

25. Each case will be considered on its own merits based on the assessment. Qualification for loan options will depend on affordability across the period of the loan. Loans are to be available on the basis of the shortest repayment time possible. Examples of scenarios are shown in Appendix 3 – Eligibility Scenarios

**Climate change/Environmental Impact**

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

**Equalities Impact**

27. There is no negative impact on equalities resulting from this report. The Initial Equality Impact Assessment is attached as Appendix 4.

**Financial Implications**

28. 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.

29. 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 settledas 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**

30. 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.

31. *"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 orthe Homes and Communities Agency.

32. 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 throughout the leasehold stock.

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 | £30,000.00 |
| Total | £31,000.00 |
| Less amount to be paid by leaseholder | £ 2,790.00 |
| **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.

10. The Council recognises that the statutory right to a loan may still provide an unaffordable solution for leaseholders with a major works invoice and the Councils Financial Assistance Framework options may be more suitable.

**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 – Eligibility Scenarios**

Example 1
A leaseholder with a major works invoice of £3,500 has no other assets or savings but has a disposable income of £140.00 per month. His applicable disposable income would be £100.00 per month that he would be expected to use for a loan. He would be entitled to a 3 year interest free loan. Repayments will be made at £97.22 per month. After the loan repayments, he would be left with a new monthly disposable income of £42.78.

Example 2
A leaseholder with a major works invoice of £3,500 has no other assets or savings but has a disposable income of £120.00 per month. His applicable disposable income would be £80.00 per month that he would be expected to use for a loan. He does not have sufficient available funds to use the 3 year interest free loan option. He will be entitled to a 5 year loan with the first 3 years interest free. Payments in the first 36 months will be £80.00 per month with loan repayments at £26.81 per month for the final 24 months. The total interest payable being £23.52 over the whole period. After the loan repayments, he would be left with a new monthly disposable income of £40.00 for the first 3 years, then £96.48.

Example 3
A leaseholder with a major works invoice of £3,500 has no other assets or savings but has a disposable income of £60 per month. His applicable disposable income would be £36.00 per month that he would be expected to use for a loan. He does not have sufficient available funds to use the 3 year interest free loan option or the 5 year option. Hewill be entitled to a 10 year loan with interest. The monthly payment will be £34.77. The total interest payable being £672.91over the whole period.After the loan repayments, he would be left with a new monthly disposable income of £25.23.

Example 4
A leaseholder with a major works invoice of £6,000 has £5,000 in savings and a disposable income of £120 per month. He would be expected to contribute a reasonable proportion ofhis savings say £3,200 and would then be entitled to a 3 year interest free loan on the outstanding £2,800. His applicable disposable income would be £80.00 per month that he would be expected to use for a loan. Repayments will be made at £77.78 per month. After the loan repayments, he would be left with a new monthly disposable income of £42.22.

Example 5
A leaseholder with a major works invoice of £35,000 has another property with £40,000 of equity. He has no other assets or savings and no disposable income. He would be expected to sell the property elsewhere and use the released equity to pay the outstanding invoice.

Example 6
A leaseholder with a major works invoice of £3,500 is on a low income with a disposable income of only £2.50 per month. He has no assets or savings. He would not be entitled to loan and at £2.50 per month, it would take over 100 years for him to repay. There is no prospect of realistic repayment unless circumstances change. In this situation, a charge would be placed on the property, based on the invoice total as a percentage of the current property value.

*Examples use an assumed interest of 3.6% for demonstration purposes only.*

*Disposable income is calculated as per CAB guidance.*

**Appendix 4 – 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 5 – Risk Register

| Title | Risk description | Opp/ threat | Cause | Consequence | Date Raised | Owner | Gross | | Current | | Residual | | Comments | Controls | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | I | P | I | P | I | P | | Control description | Action Owner |
| 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 |