



Executive
13th February 2006

**Report from the Director of
Housing and Community Care**

For Action

Wards Affected:
ALL

**Leasehold service charges capping proposal for
Leaseholders in South Kilburn**

Forward Plan Ref: HSG&CS-05/06-08

1.0 Summary

- 1.1 This report seeks Member's agreement to cap leaseholder service charges for major works to specific properties in South Kilburn.

2.0 Recommendations

- 2.1 That Members note the South Kilburn New Deal for Communities Board recommendations approved on 9th January 2006 (paragraph 8).
- 2.2 That Members agree the principle of a cap for leaseholders' service charges in South Kilburn subject to identifying external funding for the shortfall.
- 2.3 That Members delegate authority to the Director of Housing & Community Care to establish the level of capping which will be contained within the NDC contribution offered up (as per paragraph 8).
- 2.4 That Members note that the NDC contribution will be offered up in 2007/8.

3.0 Detail

- 3.1 Members will be familiar with the regeneration work being done in the South Kilburn area; Members will probably also be aware that in December 2003 Brent Housing Partnership, in conjunction with the Council, submitted a bid to the ODPM to extend the existing ALMO (Decent Homes) Programme to carry out works in that area. The bid related to 775 Council-tenanted properties that have been identified as requiring a varying amount of work to bring them to

the Decent Homes Standard, but which do not require demolition. The bid was successful and resulted in £14M of subsidised borrowing, allowing a full programme of works of £24million.

- 3.2 The majority of the 775 tenanted properties are in blocks that also include leaseholders, the nature of much of the work means that it either cannot be done on a piecemeal basis or it makes economic sense to do it en masse, and therefore those leaseholders will be liable for their share of the works. There are currently 194 leaseholders in the relevant properties who would be liable for service charges, which will include a contribution towards major works carried out to the external and communal areas of the blocks. However this is likely to rise with tenants exercising their right to buy options in the future.
- 3.3 Members will be aware that the New Deal for Communities initiative operates in the South Kilburn area. As part of the consultation carried out in regards to the New Deal for Communities proposals, a commitment was made to residents opting to remain in the blocks not being demolished that these blocks would be refurbished to the same standard as the proposed new build property. Essentially this means that in some instances works would be carried out earlier than they might otherwise be; however from a planned maintenance and refurbishment programme basis this is entirely consistent, as it makes for a more cost effective overall programme.

4. Scope of the proposed Work

- 4.1 The following is the proposed scope of works and considerations for each block or group of properties:-

Building skin - re-cladding to reduce heat loss and increase aesthetic qualities.

Roof coverings - guarantees to be provided for 25 year life expectancy.

Windows and doors - double glazing or secondary glazing.

Decoration - External decoration including replacement of defective components.

Security - security doors, CCTV and external lighting etc.

Infrastructure - cable management systems.

Recycling facilities - bin stores and waste management systems.

Sustainability - roof gardens, solar shades

Environmental improvements – including landscaping

- 4.2 Officers propose that it is the costs of those works identified above, insofar as they fall within the current programme of works that the proposed cap applies. The cap is not intended to apply to any internal works to individual homes or to the other elements of the leasehold service charge.
- 4.3 As shown in Appendix A, the cost per leaseholder varies widely in relation to the individual blocks and scope of works for each block. The works are consistent with the masterplan proposals for South Kilburn.

5. Resident Consultation

- 5.1 In January 2004 a residents steering group made up of representatives from each of the relevant blocks and residents associations was formed to facilitate the work of the project team and ensure that residents are engaged in the decision making processes affecting their homes.
- 5.2 The Steering group has 9 regular members and meets monthly to discuss all issues impacting on the refurbishment works. In addition to the residents and BHP officers, an independent tenant/resident advisor (FirstCall,) attended meetings ensuring residents had credible impartial advice on proposals. Whilst paid for and appointed by the Council, the advisor was selected through a resident panel.
- 5.3 Wider resident meetings have been held in relation to the external works programmes. Three initial meetings were held in April 2004 to advise residents in general about the scope of works and the timescale for delivery all the meetings were very well attended by tenants and leaseholders.
- 5.4 Concerns were raised mainly from leaseholders about the cost of the works to them and how much they would be expected to contribute towards the costs. Estimated costs per leaseholder per block are shown at Appendix A. This information has not been communicated to leaseholders at this stage while the council considers the implications of the charges.
- 5.5 Following on from the three general meetings a series of individual meetings on a block by block basis specifically for leaseholders followed, advising them of the outline proposals for their block, when works were likely to start and how long the work would take.
- 5.6 These meetings were also well attended but leaseholders who attended were predominantly concerned with the likely costs.

Phasing of the Works

- 5.7 Phase one comprises of the full refurbishment of the street properties on Allington Road and Kilburn Lane. The proposed cap is unlikely to be relevant to most of the leaseholders whose properties are in phase one because the anticipated cost of the works is mainly below even the lowest (£15,000) cap, as can be seen from Appendix A. Officers do not propose a cap that would assist the majority of phase one leaseholders i.e. less than £15,000, because the likely cost to them is comparable to that for similar properties across the borough, and being street properties they do not require significant changes to the external appearance to comply with the brief.
- 5.8 Phases two, three and four however are mainly 1960s purpose-built blocks that will require significant external envelope improvements in order to fully comply with the brief. This is still subject to detailed consultation with the residents of each individual block but the works are likely to include over-

cladding and insulation improvements, and the costs are likely to exceed even the higher proposed cap (£20,000) in respect of 21 properties.

- 5.9 Once the consultations are complete, it is envisaged that works will be programmed to start on site during late 2006 or early 2007.

6. Leaseholder's affected

- 6.1. Leaseholder Breakdown - Whilst this report was being drafted (August 2005) there were 191 leaseholders affected. These numbers have risen to a total of 194 Leasehold Properties which are included within this major works programme. Of these 194 properties, 129 are still owned by the original RTB applicant who represent 66%.

- 6.2 Leaseholders are required to notify the Landlord when they are subletting the property & according to leasehold management 13 of the 194 have officially notified Brent that they are subletting. However this figure is unlikely to be accurate as leaseholders often rent out their property without informing the Landlord. Full details of the Leaseholder Breakdown are shown in Appendix **B**.

- 6.3 Estimated costs per block - The projected cost to carry out the specified work to each block is shown in Appendix **A**.

- 6.4 There are currently 19 active right to buy's (RTB's) applications being processed. A breakdown is provided at appendix **C**. The potential impact on the caps being considered are:-

£15k cap – 5 additional leaseholders
£20k cap – 1 additional leaseholder.

- 6.5 It also needs to be borne in mind that there are some leaseholders that have a five (5) year limitation period where they enjoy limited charges. The impact is shown in appendix **A**

7. Considerations

- 7.1 There are basically two major options for the Council to consider. Essentially it is whether to cap or not to cap. If Members are minded to cap then the issue arises as to the amount and where that subsidy is funded from. Officers are recommending that consideration is given to capping leaseholder charges at an appropriate level to be determined by the Director of Housing & Community Care, within the level of contribution offered up by the NDC. Members are asked to give consideration to the NDC board's recommendations outlined in paragraph 8 below.

- 7.2 In the event that the NDC contributions were to be exceeded, the Director of Housing & Community Care would have to seek additional external funding from the NDC or look at ways of reducing the cost of the works to the blocks. However officers are optimistic that the cap (if members so authorise) will not be breached.

8. South Kilburn New deal for Communities Board Recommendations

- 8.1 The NDC board considered a report from officers on 12th December 2005 outlining the likely cost of refurbishment properties in South Kilburn in line with the master plan. The board was informed that in some ten cases leaseholders would have to pay service charges in excess of £40,000 and a further nine cases where the charge would be in excess of £30,000. It is accepted by officers that this is a direct result of the standards of external works specified within the master plan and far above that required to bring these properties to a decent home standard.
- 8.2 The Board was informed that the issue of leasehold charges was of major concern to the leaseholders of South Kilburn, within the borough and indeed nationally. This has been considered by officers of the Council and BHP for nearly a year. There remain three possible options to deal with this issue;
- 1) That leaseholders meet the full cost of the major works.
 - 2) To limit the works to these properties to decent home standard only with leaseholders paying the full service charge for the relevant works.
 - 3) To limit the relevant part of the leasehold service charge at a set level (£15,000 or £20,000) and find ways to absorb the amount above the agreed level.
- 8.3 The Board was informed that option (1) could lead to potential legal challenges on the basis of the need for the works and whether the costs are justified and considered to be reasonable. All leaseholders have statutory protection in that they can challenge landlords on the basis that costs claimed are unreasonable. Option (2) would mean excluding works relating to above decent home standard which tenants in particular had been promised and expecting. The final option for consideration was option (3). Officers have considered this both in terms of financial and legal implications and officers of the Council could not recommend to its Members to agree a cap if the un-recovered amount had to be financed through HRA or General fund.
- 8.4 The NDC Board was asked to consider a contribution towards the capping level (£15,000 or £20,000) and to agree to fund the un-recovered amount on the basis that works affected leaseholders in South Kilburn and were based on standards agreed in the local master plan.
- 8.5 On 9th January, The Board reconsidered this issue with a report from its officers and agreed the following recommendations;
- **Request that LBB Executive give consideration to, and approve, a policy of capping leaseholder contributions towards refurbishment costs being carried out in South Kilburn.**

- **Recommend a capping at £15,000 and agree a contribution from SKNDC to the London Borough of Brent of up to £552,000 towards leaseholders charges for refurbishment, the timing of which to be subject to the requirements of the SKNDC capital programme in Years 6 & 7.**

8.6 The NDC considered the issue of reducing the specification in order to reduce the burden on the leaseholders, but came to a view that the majority of residents likely to be living within a refurbished property would want equivalent standards as the new build. By reducing the standards sends out the wrong message to tenants – i.e. they are being penalised for not voting for demolition and are being treated as second class citizens.

8.7 The NDC is trying to achieve social cohesion and wants the majority of its resident population to take pride in where they live. It is principally for this reason that the NDC have agreed to assist the Council by agreeing to fund the excess residual debt (at a maximum of £552k) created by Decent Homes Programme in South Kilburn.

8.8 It should be noted that since the meeting of the NDC in January 2006, further information came to light about the increase in leasehold numbers. This affects the residual debt figure and hence the difference between what the NDC have agreed and the appendix presented to the Executive. It should be noted that leasehold figures will continue to change over the course of the year and this is the principal reason why the Director of Housing & Community Care should be authorised to set the capping level within the available NDC contribution agreed by the NDC.

8.9 The NDC anticipates that they will be invoiced directly by the Council. The NDC would then pay the invoice within the financial year 2007/8.

9. Reason for the proposed Cap

9.1 The scope of works for these properties has been prepared with reference to the South Kilburn Master Plan so that they will easily integrate with properties included in the Master Plan. However this approach considerably increases the service charge payable by leaseholders.

9.2 It might be considered unfair that leaseholders are required to pay for extra improvement work beyond that strictly necessary to bring the blocks up to a decent homes standard in order to meet an aspiration for the neighbourhood as a whole. It is possible that leaseholders will seek to challenge the reasoning behind the work as well as the additional cost at a Leasehold Valuation Tribunal & also at Court and even if unsuccessful this would be a costly exercise to defend. However the amounts recoverable from leaseholders are dependant upon their lease with the Council and they would not be asked to pay for more than the share for which they are liable.

9.3 Therefore the main options (if capping is thought appropriate) are:

- (a) - Cap all relevant service charges at £15,000. Given the current estimates of works this would result in un-recovered amount of around £586,622. These figures do not reflect the number of leaseholders who enjoy a “5 year limited period”. When this factor is taken into account it would result in un-recovered amount of around £433,247.43, as at the end of January 2006. The NDC has agreed to make a contribution of £552,000.
- (b) - Cap all relevant service charges at £20,000 resulting in un-recovered amount of around £337,006, as at the end of January 2006.
- (c) – Allow the Director of Housing & Community Care to set the capping level within the available funds offered up by the NDC.

Impact of Capping Charges

9.4 The impact of accepting Options (a) or (b) has been calculated & details are shown in Appendix A. It has been calculated that if option (a) is accepted & the relevant part of the service charge is capped at £15k then around 70 leaseholders would be assisted if the works were to start on site by the date of the Executive. It has been calculated that if option (b) is accepted & the relevant part of the service charge is capped at £20k then around 21 leaseholders would be assisted if the works were to start on site by the date of the Executive. These figures are projected costs and will vary depending on a number of factors:-

- The actual number of leaseholders at the start of the works
- The number of leaseholders that are within the “five year limit”
- The actual cost incurred to complete the major works.

9.5 Given that the level of service charges are based on estimated tender prices and the number of current leaseholders, it is not appropriate at this stage to recommend the level of the cap as the final tender prices could significantly change from officers estimation.

9.6 In addition the numbers of leaseholders are likely to increase as there are currently 19 right to buy's (RTB's) pending. In a worst case scenario (should all 5 active RTB's be successful as referred to in para 6.4), the level of contribution required by the Council or NDC will increase by approximately £3000 per leaseholder on current estimates.

9.7 The NDC contribution of £552,000 is not geared towards future increases as it is based on current estimates. Officers will be able to determine an appropriate cap once final tender prices have been received. It is therefore recommended that Members delegate authority to the Director of Housing to determine the cap level within the contribution offered up by the NDC.

Implications for other schemes in the Borough.

- 9.8 The proposed level of cap is significantly higher than the majority of leasehold charges raised to date and therefore officers do not believe that there would be any retrospective claim from other leaseholders that there should have been a similar cap for them.
- 9.9 Given the scale of renewal works in South Kilburn, it is unlikely that the standards set for the programme is likely to be replicated elsewhere given that South Kilburn is the last major Council estate that requires renewal.
- 9.10 Considering the immediate programme, BHP forecast that there could be similar charges for leaseholders in the future which would be most likely to result from lift renewals in small blocks. Those circumstances would probably be different in that the lift renewal is a necessary work item and leaseholders would not be able to argue that they were being disadvantaged by the improvement of an area. In any event, the Council will need to consider each situation on its merits and determine whether there are any circumstances warranting a cap on the charge at the time.

10.0 Financial Implications

- 10.1 The original report approving the ALMO Round 4 bid was predicated on works being undertaken to Council properties in South Kilburn; thus reducing the number of dwellings to be included in the main scheme (to be undertaken by an organisation other than the Council).
- 10.2 The Council receives no direct grant from government for work undertaken under the ALMO national 'Decent Homes' programme, instead it receives Housing Revenue Account Subsidy (HRAS) to cover its borrowing costs in relation to approved borrowing (£14M in this instance). The overall expenditure (approximately £24M) is funded through a combination of borrowing, the application of the Major Repairs Allowance (MRA) and other contributions from the HRA (i.e. from tenants' rents). In calculating the overall scheme costs it has been assumed that the Council will recover all costs associated with leaseholders. Therefore there is no direct budgetary provision in the HRA for non-recovery of leaseholders' charges; moreover the Council receives no direct capital or revenue grant from central government in respect of leaseholders.
- 10.3 The general 'custom and practice' regarding HRAs generally is that works to communal areas is the responsibility of the landlord (and hence the HRA) and non-recoveries from leaseholders would be a financial burden on that account. Work undertaken to an individual leaseholders' flat would not be classified as an 'HRA' cost and any non-recovery would be chargeable to the General Fund.
- 10.4 Where the Executive, if so minded to cap leaseholders charges as a matter of policy, they will need to have due regard as to whether in 'equity terms' it is a cost to be borne by Council tenants (as opposed to the community as a whole

through the General Fund). However, given that NDC has agreed to make a financial contribution of up to £552,000 means that it greatly reduces the financial implication for the Council. It is only possible to recommend the cap because a source of funding for the shortfall has been found and any future unfunded proposal is unlikely to be financially feasible.

- 10.5 The programme of works is geared for 2006/7/8 with the leaseholders being billed for actuals in 2007/8/9. The NDC have indicated that their contribution will be available within the period 2007/8. The Council will therefore not need to fund any deficit arising from this cap.
- 10.6 There is no direct provision in the HRA for capping leaseholders' service charges and therefore any non-recovery would mean less expenditure on services. If the net cost was borne by the General Fund then this account would need to make a contribution to the HRA equal to the cost of non-recovery. There is no specific provision in the General Fund for non-recovery.
- 10.7 Clearly it is an option for the Council to seek full recovery from leaseholders and thus providing the works were properly recoverable under the lease then there would be no cost to the HRA nor General Fund.

For the avoidance of doubt the Council has received no government subsidy in respect of leaseholders.

11.0 Legal Implications

- 11.1 The liability of the Council's residential leaseholders to make a financial contribution to the costs of the proposed works is determined by their lease agreement. This is the case whether the current leaseholder is the original right-to-buy leaseholder or a subsequent purchaser.
- 11.2 In relation to RTB leaseholders recovery within the first 5 years of purchase is further limited by what was notified as part of the purchase process, specifically in the offer notice. This is governed by section 125A and Schedule 6 of the Housing Act 1985.
- 11.3 All leaseholders are protected by law from paying unreasonable charges, specifically by section 19 of the Landlord and Tenant Act 1985 which states that service charges are payable only insofar as they are reasonable. A challenge to the reasonableness of service charges is made in the Leasehold Valuation Tribunal.
- 11.4 There is no legal obligation on the Council to provide a capped fee in these circumstances; however it has the power to do so under the well-being power in section 2 of the Local Government Act 2002. Any such decision must be reasonable, take into account relevant considerations and not take account of irrelevant ones; it must also be justifiable financially, taking into account the Council's fiduciary duties as a steward of public funds. Any challenge to the reasonableness of the Council's decision would be made by way of judicial review in the High Court.

- 11.5 The Social Landlord Discretionary Reduction of Service Charges (England) Directions 1997 are guidance that the Council is obliged to take into account when considering whether or not to reduce service charges. These Directions enable the Council to waive or reduce service charges when they exceed £10,000, in respect of the same dwelling in any period of 5 years; however those charges cannot be waived or reduced to less than £10,000 in respect of the same dwelling for the same period of 5 years. The Regulations require the Council to consider the following factors when considering service charge reduction:
- (i) Any estimate of the costs of the works of repair, maintenance or improvement notified to the leaseholder or any predecessor in title before purchase of the lease of the dwelling
 - (ii) Whether the purchase price paid by the leaseholder took account of the costs of the works of repair, maintenance or improvement
 - (iii) Any benefit which the Council considers the leaseholder has received or will receive as a result of the works of repair, maintenance or improvement including an increase in the value of the lease (including a reduction in the negative value of the lease), an increase in energy efficiency of the dwelling, an improvement in the security of the dwelling and an improvement in the services or facilities
 - (iv) Whether, upon receipt of an application by a leaseholder, a social landlord, having regard to the criteria regarding exceptional hardship, considers that the leaseholder would suffer exceptional hardship in paying the service charge
 - (v) Any other circumstance of the leaseholder which the social landlord considers relevant.
- 11.6 Regardless of whether a cap is applied or not all leaseholders will retain the ability to seek financial assistance by way of a loan from the council, which if given would be secured by way of mortgage against the property. The Council is obliged to offer service charge loans to some leaseholders and has discretion in relation to others; whether or not a leaseholder has a right to financial assistance from the Council she or he is not obliged to take it and can of course seek assistance elsewhere.
- 11.7 Regardless of whether Members agree to a cap or not, further specific consultation with leaseholders in respect of the proposed works is likely be required by section 20 of the Landlord and Tenant Act 1985, failure to comply with which will render the charges liable to be disallowed by the Leasehold Valuation Tribunal.
- 11.8 The proposed cap will apply not to the whole service charge but to the element that represents a leaseholder's contribution to major works arising as a direct result of the works specified in the master plan for South Kilburn, together with the management fee calculated as a percentage of that contribution. The cap will not apply to other elements of the service charge, such as grounds maintenance.

12.0 Background Information

South Kilburn Master Plan files
ALMO Decent Homes files

Anyone wishing to inspect these documents should contact:

Contact Officers

Gary Chase 0208 937 2456
Robert Johnson 0207 624 8425.

Martin Cheeseman
Director of Housing & Community Care