



**Executive
16 September 2013**

**Report from the Director of
Regeneration and Growth and the
Chief Executive of Brent Housing
Partnership**

Wards affected:
All

Residential leasehold property strategy

1.0 SUMMARY

- 1.1 This report recommends the use of the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993 by the Council to carry out a rolling programme of enfranchisements in line with the Council's draft HRA Asset Management Strategy, utilising the enfranchisement pot to fund the programme.
- 1.2 Enfranchisement is the process by which the Council can seek to buy the freehold interest outright or purchase an extended lease term in relation to residential leasehold properties which the Council owns for a defined period of time under long leases.

2.0 RECOMMENDATIONS

- 2.1 That Members approve the proposed residential leasehold enfranchisement strategy, under the approach set out in paragraphs 3.31 to 3.34, which recommends a combination of options for dealing with the Council's fixed term residential leasehold interests.
- 2.2 That Members approve 'in principle' the recycling of capital receipts arising from the disposal of leasehold properties that are surplus to requirement into the enfranchisement pot.
- 2.3 That Members also approve 'in principle' that where the Council is the freeholder and where the leaseholder is exercising his or her enfranchisement rights to buy the freehold or a lease extension, that these capital receipts are also recycled into the enfranchisement pot.

- 2.4 That Members approve 'in principle' that where the available funding in the enfranchisement pot potentially delays or prevents the Council being able to carry out enfranchisements, that such costs be met directly from HRA Resources.
- 2.5 That Members note that Officers shall produce a report for the Executive on individual property transactions where the prescribed delegated authority limit of the Operational Director of Property and Projects is exceeded.
- 2.6 Members to note that the Council owns the leasehold interest in two large blocks consisting of approximately 65 flats. The lease has 54 years remaining and Officers are investigating the option of extending the lease. A separate report will be produced for the Executive on the recommendations once the options have been considered with BHP and discussions with the parties holding superior interests have taken place.

3.0 DETAIL

Background

- 3.1 The Council currently has approximately 194 properties within its residential portfolio which it owns under long leasehold interests. A long leasehold interest is one which is granted for an original term of more than 21 years. The properties are held within the Housing Revenue Account (HRA).
- 3.2 The Council granted secure tenancies to homeless households out of its leasehold interests and Brent Housing Partnership (BHP) manage the tenancies and properties on the Council's behalf. Some of the properties are now coming close to the end of their leases.
- 3.3 When the Council's lease expires it loses its legal interest in the property and the Council is required to deliver up the property with vacant possession to the freeholder. Once the lease expires, the secure tenancy will also automatically terminate.
- 3.4 The Council can, however, preserve its legal interest in the property beyond the expiry of the existing lease by exercising its enfranchisement rights. The exercise of enfranchisement is a form of compulsory purchase.
- 3.5 The Leasehold Reform Act 1967 relates to houses and provides statutory rights to acquire the freehold (i.e. purchase the land), known as enfranchisement, or to extend the lease by a term of 50 years.
- 3.6 The Leasehold Reform, Housing and Urban Development Act 1993 relates to flats and provides statutory rights to a joint acquisition of the freehold, acting together with other leaseholders in the building, or to an individual extension of the lease by a term of 90 years (at a peppercorn rent i.e. nil rent).
- 3.7 Provided that the Council satisfies the qualification criteria, these actions can be commenced at any time during the term of the lease or after the date of expiry where the landlord has not yet served a notice to terminate the lease.

- 3.8 The valuation process required by law to determine the price to be paid for enfranchisement is complicated. Put simply, this is based on the aggregate of the capitalised value of ground rent, marriage value, the value of reversion and the remaining lease term.
- 3.9 The timing of the enfranchisement can have a significant impact on the purchase price because the cost of enfranchisement increases exponentially as the lease approaches its expiry date. In other words, the sooner the Council purchases the freehold or a new extended lease term the more cost effective it can be.

Existing arrangements

- 3.10 Over the past few years, the Council has dealt with each property on a case-by-case basis as the lease has come to an end. After enfranchisement, properties that were vacant and performing poorly, or that were surplus to requirement, were disposed of, which has resulted in a net surplus.
- 3.11 The table below shows the enfranchisements carried out between 2008 and 2013 and the resulting net surplus of £346,368.

Table 1: Enfranchisements between 2008 and 2013

Property reference	Enfranchisement price	Disposal receipt	Surplus	Year
1	-£260,048	£459,000	£198,952	2008/09
2	-£201,945	£324,273	£122,327	2008/09
3	-£231,664	0	-£231,664	2009/10
4	-£1,016	0	-£1,016	2009/10
5	-£133,439	£371,170	£237,731	2010/11
6	0	£410,000	£410,000	2011/12
7	-£186,489	0	-£186,489	2012/13
8	-£263,273	0	-£263,273	2012/13
9	£0	£22,300	£22,300	2012/13
10	0	£37,500	£37,500	2012/13
Total funds	-£1,277,874	£1,624,243	£346,368	2012/13

- 3.12 The accumulated surplus is held within an enfranchisement pot, which is being utilised to fund the enfranchisement of suitable alternative properties that are coming to the end of their fixed term leases.
- 3.13 Out of the residential leasehold portfolio, there are a number of properties that are coming close to the end of their leases, as shown in table 2. All of the properties are let to secure tenants (at the time of writing).

Table 2: Leasehold interests approaching lease expiry

Property reference	Address	Lease expiry	Beds	House/Flat
1	Boycroft Avenue NW9	2014	3	House
2	Franklyn Road NW10	2014	3	House
3	Lyon Park Avenue HA0	2014	2	House
4	Gladstone Park NW2	2016	1	Flat
5	Gladstone Park NW2	2016	1	Flat
6	Harlesden Road NW10	2023	2	Flat
7	Harlesden Road NW10	2023	2	Flat
8	Gladstone Park NW2	2023	3	House
9	Holland Road NW10	2023	4	House
10	Liddell Gardens NW10	2023	3	House
11	Liddell Gardens NW10	2023	3	House

3.14 The cost of enfranchisement for each property shown above is estimated to be in the region of £100,000-£300,000 but could be lower or higher depending on the timing of enfranchisement and the market value of the property. All other things being equal, the cost of purchasing the freehold of a house can be approximately two-thirds cheaper than purchasing a new extended lease term on a flat.

Strategic context

3.15 The objectives of the Council's Draft HRA Asset Management Strategy include:

- Stock optimisation – appraisal and selective disposal of poorly performing units;
- Stock rationalisation – disposal of leasehold and freehold-only interests and selected minority interests in order to improve management efficiency;
- Stock rebalancing – disposal of smaller units and the re-investment of resources in larger family and other homes that are under-represented in the stock.

3.16 These objectives will be achieved through a combination of strategic approaches, which for the residential leasehold portfolio will include the options below.

Options appraisal (per property basis)

Option 1: Disposal of vacant property which is surplus to requirement

3.17 The disposal option could apply to any vacant property within the residential leasehold portfolio where there is a strategic fit. The gain on the disposal of a vacant property could in certain circumstances be significant, however, voids

occur infrequently within the residential leasehold portfolio and consequently the cash that can be raised from such sales is low overall.

3.18 Alternatively, if a property is identified as being suitable for disposal but is tenanted, the Council could seek vacant possession of the property by offering alternative accommodation to the existing tenant and rehousing could take place with their consent.

3.19 A lease is a wasting asset and a property with a short lease term remaining has very little market value. Under certain circumstances, acquiring the freehold or a new extended lease term prior to disposal could significantly enhance the market value of the property. However, the enfranchisement process could delay the timing of the receipt, and this will need to be weighed against the benefits and cost of enfranchisement.

3.20 Under this option, there would be a loss of rental income to the HRA but a gain in capital receipt, which could be recycled into the enfranchisement pot for future enfranchisements.

Option 2: Do minimum (the Council's lease will expire by effluxion of time with the result that any sub tenancy will also terminate)

3.21 At the end of a lease the Council's legal ownership of the property will automatically transfer to the freeholder. This would have a number of consequences for the Council and any existing secure tenant.

3.22 The Council has an obligation to the freeholder to yield up the property with vacant possession at the end of the lease. Such an obligation requires delivering up the property free of any 3rd party occupation (including any sub leases) as well.

3.23 The secure tenant's existing right to occupy the property is time limited by the fixed term of the Council's lease. At the end of the lease the tenant will cease to be a secure tenant and will have no right to remain in their home and will become homeless and will return to the Council for rehousing.

3.24 The Council would take all reasonable steps to secure possession, such as serving the secure tenant with a notice to quit and/or offering suitable alternative accommodation, however, there is not much else the Council can do to secure vacant possession because the tenant has security of tenure and no statutory ground for possession is likely to apply.

3.25 Failure of the Council to deliver up with vacant possession on the expiry of the lease could involve the landlord in a loss for which the Council might be held liable. For example, the landlord may seek a market-level rent until such time vacant possession is delivered, and seek damages, such as for the cost of removing the tenant and for any 'terminal dilapidations', which could run into the tens of thousands of pounds.

3.26 The opportunity cost of this option is the value of the housing asset foregone and could result in the loss of a much needed family home from the stock. The investment made in the property over the past few decades will also be

lost and the Council will no longer have use of the asset or the benefit of the rental income. This option is therefore not cost-neutral to the Council. Under this option, however, there would be no enfranchisement costs.

Option 3: Enfranchise to retain the property within the social housing stock

- 3.27 Under this option the Council would exercise its enfranchisement rights to purchase the freehold or a new extended lease term to retain the property within its social housing stock.
- 3.28 Homelessness would not arise and the existing tenant would be able to continue to let their home from the Council under their existing secure tenancy.
- 3.29 There would be no loss of rental income to the HRA.
- 3.30 Enfranchisement costs would need to be met by the Council.

Methodology

- 3.31 This report recommends that the Council considers a combination of options with respect to the affected properties with BHP and report to the Executive on the preferred option for each property on a case-by-case basis.
- 3.32 In coming to a view as to which option is suitable for any given property, Officers will apply a test which takes into account a number of factors. The relevant factors include:
- Value of the property - if the property is a very high value property, this is a factor in favour of disposal;
 - Type of property - if the property is a family home, this is a factor in favour of retaining the property within the stock and, conversely, if the property is a one or two bedroom flat, this is generally a factor in favour of disposal;
 - Level of funding available - the cost of enfranchisement and the economic and social case will need to be considered;
 - Condition of the property - the level of expenditure on regular maintenance will be considered;
 - Level of occupancy - under-occupation and overcrowding will be considered;
 - Status of the property - a vacant property will yield more options than one that is tenanted.
- 3.33 The approach in each case will depend on the number of factors present and the fit with the Council's strategic objectives. Officers will aim to implement a rolling programme of enfranchisements, financed by the enfranchisement pot or directly from HRA resources as appropriate.
- 3.34 A strategic approach will ensure the portfolio is effectively managed and optimised for the longer term, helping to avoid claims for damages and dilapidation costs by the freeholder and minimising any adverse impact on the existing secure tenants.

Table 3: Summary table of options:

Option	Description	Implications
1	The Council disposes of vacant property surplus to requirement.	<ul style="list-style-type: none"> • Loss of rental income; • Gain in capital receipt, which if recycled into the enfranchisement pot, could fund the enfranchisement of alternative properties within the stock; • Loss of a housing asset; • Council may incur enfranchisement costs.
2	The Council does the minimum i.e. the lease expires.	<ul style="list-style-type: none"> • Loss of a housing asset; • Loss of rental income; • Any sub-tenancy (i.e. secure tenancy) terminates; • Existing tenant becomes homeless; • Gives rise to claims for damages and dilapidations by freeholder; • No enfranchisement costs.
3	The Council exercises its right to enfranchise and retains the property.	<ul style="list-style-type: none"> • Council acquires freehold or new extended lease term and retains the property within the residential leasehold portfolio; • No impact on the existing tenant; • Council continues to collect rent to HRA; • The Council incurs enfranchisement costs.

4.0 FINANCIAL IMPLICATIONS

4.1 The Council's Capital Programme does not make any budgetary provision for expenditure on the enfranchisement of leases beyond reflecting the individual purchases in year as approval is obtained from the Executive Committee to the extent that this expenditure can be funded from the enfranchisement pot. As such, in order to progress a strategy for leasehold enfranchisement it will be necessary to maintain the enfranchisement pot at a sufficient level through gain on disposal of vacant leasehold properties or inclusion of capital receipts arising from the compulsory disposal of the Council's freehold interests or lease extensions so that there is sufficient funding available for future enfranchisements.

4.2 If capitals receipt arising from the compulsory disposal of the Council's freehold interests or lease extensions are ringfenced to the enfranchisement pot, this impacts upon the level of receipts that pass to the overall funding of the Capital Programme via the Capital Disposals Programme. Capital receipts foregone to the Capital Programme through the process of ringfencing could impact on the Council's requirement to undertake unsupported borrowing in order to produce a balanced Capital Programme at year-end.

- 4.3 In certain circumstances it may be beneficial to not dispose of such properties, as outlined above, but instead retain them in the HRA to meet housing need within the context of the overall HRA Asset Management Strategy. Similarly it may provide greater Value for Money to undertake enfranchisement earlier rather than later, but the available funding in the enfranchisement pot potentially delays or prevents this. In such instances consideration could be given to meeting costs directly from HRA Resources subject to competing priorities.
- 4.4 The valuation process to determine the price to be paid for enfranchisement includes consideration of the remaining lease term on the property. As such greater Value for Money can be achieved through the enfranchisement of leases with significant remaining periods on the lease. Any proposals brought forward for such long term decisions would include consideration of the net present value of the opportunity cost of monies invested against the savings achievable through an early purchase.
- 4.5 The HRA self financing settlement left the Council with a level of debt that could be supported over 30 years from the dwellings remaining in the HRA. That settlement includes these leasehold dwellings. Therefore, the debt that is associated with each dwelling would be provided for from the capital receipt to keep the HRA in line with the settlement. The sum to be provided to the HRA will be calculated on a case-by-case basis.
- 4.6 The estimated liability for the enfranchisement of the properties listed in table 2 at paragraph 3.13 above is approximately £2,120,000 under the current terms of the leases.
- 4.7 There are HRA revenue implications in terms of loss of rental income under options 1 and 2 detailed above unless the leasehold properties were retained within the stock as per option 3. Any individual proposals brought forward would include consideration of such losses in the recommended option.
- 4.8 The separate report to be produced with regard to long leasehold interest in two large blocks located above a railway line in Wembley, as outlined in paragraph 2.6 above will include consideration of the potential to fund proposals through Unsupported Borrowing on a Spend-to-Save basis.

5.0 LEGAL IMPLICATIONS

- 5.1 Under the Leasehold Reform Act 1967, where a claim has been admitted by the freeholder and offer made, the terms are determined by the Leasehold Valuation Tribunal in the absence of agreement between the parties.
- 5.2 The Council is obliged to pay the freeholder's and LVT's reasonable costs i.e., solicitors' and surveyors' fees. These include those relating to considering and assessing the Council's statutory claim and generally dealing with the statutory process (other than tribunal proceedings) the valuation fee and the transfer of the freehold.

- 5.3 There are two primary statutes that govern Leasehold Reform. These are the Leasehold Reform Act 1967 (the 1967 Act) and the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act).
- 5.4 The Borough Solicitor has confirmed that pursuant to the Council's constitution Part 4, Paragraph 4.3, the Operational Director, Property and Projects has the delegated authority to approve the terms of the transactions, being less than the prescribed £150,000 Delegated Authority Limit or less than £250,000 Delegated Authority Limit in conjunction with the Lead Member.
- 5.5 The Council will need to obtain the secure tenant's agreement to being re-housed given the protected status of secure tenants under the Housing Act 1985. There are also statutory consultation requirements to engage with tenants pursuant to this Act in respect of any re-housing proposals under schedule 3A and 105 of the Housing Act 1985.

6.0 DIVERSITY IMPLICATIONS

- 6.1 An Equality Analysis has been completed.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 None

8.0 Background Papers

None

9.0 Appendices:

Appendix 1: Equality Analysis

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