

 <p>Brent</p>	<p align="center">Housing Scrutiny Committee 1 November 2017</p> <p>Report from the Strategic Director of Community Wellbeing</p>
<p align="right">Wards Affected: All</p>	
<p>Council's section 20 consultation process</p>	

1.0 Summary

- 1.1 This report will provide in detail the Section 20 Landlord and Tenant Act 1985 (s.20) consultation process before service charges can be collected, for both provision of services and major works, specific to major works. It also provides a list of the timescale involved for each component of the consultation. Together with details of the ways in which tenants and leaseholders are involved in the process of determining the specification of the works, recruiting contractors(s) and monitoring performance of the works. It also provides details on the payment plan options available to Leaseholders. Finally, it gives an example of a recent Leaseholder consultation on major works.

2.0 Recommendation

- 2.1 That the Housing Scrutiny Committee notes the contents of this report.

3.0 Section 20 Process

- 3.1 The procedure or steps a landlord must follow or comply with when consulting leaseholders about service charges and the cost of major works is set out under section 20 of the Landlord and Tenant Act 1985. The procedures, which may vary depending on circumstances, apply to all landlords in the residential sector seeking to recover service charges including major works. It specifies the administrative processes such as draft notices setting out the information that must be provided by landlord.
- 3.2 In essence the law requires tenants paying variable service charges to be consulted before the landlord carries out works above a certain value or enters into a long-term agreement for the provision of services or goods.

3.3 These regulations, which are formally known as Service Charges (Consultation Requirements) (England) Regulations 2003), separate the consultation procedures into four schedules, each covering different types of contractual arrangements:

- **Schedule 1** – this schedule applies when the Council is entering into a Qualifying Long Term Agreement (QLTA) for goods, services and maintenance (period more than 12 months) and no Public Notice (OJEU) is required because the cost of the contract is below the EU thresholds for works or services.
- **Schedule 2** – this schedule applies when the Council is entering into a Qualifying Long Term Agreement (QLTA) for goods, services and maintenance (period more than 12 months) and a Public Notice (OJEU) is required because the cost of the contract is above the EU threshold for works or services.
- **Schedule 3** – this schedule applies when works are required to be carried out under a qualifying long term agreement (QLTA) – e.g. major works to be carried out under the current Wates contract.
- **Schedule 4 – Part 1** – this schedule applies when works are required to be carried out which are not under a Qualifying Long Term Agreement (QLTA) (period less than 12 months) and a Public Notice (OJEU) is required.
- **Schedule 4 – Part 2** – this schedule applies when works are required to be carried out which are not under a qualifying long term agreement (less than 12 months) and a Public Notice (OJEU) is not required

4.0 What do we consult residents about?

4.1 The Council is legally obligated to consult our leaseholders before we do any of the following.

- Carry out work which will cost any one leaseholder more than £250 per annum (known as “Qualifying Works”)
- Enter into a long-term agreement (more than 12 months) with outside contractors for work, supplies or services which will cost any one leaseholder more than £100 a year (known as a “Qualifying Long Term Agreement”)
- Carry out work under a long-term agreement where the work will cost any one leaseholder more than £250

5.0 What is the Section 20 consultation process?

5.1 The Section 20 consultation process generally has three stages:

a) Notice of Intention

A notice of intention notifying leaseholders that we intend to carry out work or provide a service that leaseholders will have to pay towards. We must serve this notice on any leaseholder who will be affected by the work or will receive the service. The notice will include information about what we plan to do and why. It will also give them a time and place where further description of the works may be inspected. The notice will give leaseholders the opportunity to comment on what is being planned and also to nominate a contractor. The consultation period will last 30 days from the date of the notice. Careful consideration is given to any comments and suggestions within the consultation period. Once the consultation period has finished we will invite contractors to provide estimates for the work.

b) Notice of Estimates

After we receive estimates from contractors we must prepare two proposals. One of these must be from a contractor who is not connected with the council and we must also include the estimate from any contractor nominated by a Leaseholder.

A Notice of Estimates includes estimated costs from at least two contractors. The notice, as in the Notice of Intention, will give leaseholders a time and place where the details of the estimates can be inspected and will give them the opportunity to comment on the proposed work. Any comments received are considered within the 30 day consultation period. Comments received in response to the Notice of Intention will also be summarised in this notice together with our response to those comments.

c) Award of Contract Notice

Leaseholders will only receive this notice if we award the contract to a contractor who did not offer the lowest price or if we did not award the contract to a contractor nominated by a leaseholder.

The Award of Contract Notice provides confirmation of our reasons for awarding the contract to that contractor and provides a summary of any comments received in response to the Notice of Estimates and our response to those comments.

5.2 In what circumstances do we have to serve public notice?

5.2.1 If the total works contract is over £3,927,000 or the contract for the supply of goods or services if over £156,442 the proposed contract must be advertised by public notice in the Official Journal of European Union (OJEU).

5.3 What difference does serving a public notice make?

5.3.1 If public notice is required the opinions and views of Leaseholders must still be invited however they do not have the right to nominate a contractor for these contracts. They can however suggest that a contractor looks on the website of the OJEU and to express their interest through the official process.

5.3.2 In the Notice of Estimates we only need to give them one estimate. We will tell them the name of the contractor and the estimated costs. They will not receive an Award of Contract Notice.

5.4 Consulting leaseholders about work we do under a long-term agreement

5.4.1 We will carry out work or provide a service that is covered under a long-term agreement with a contractor, for example day-to-day repairs. We will have consulted leaseholders about the original agreement but we must consult them again if we are going to do work using a long-term agreement which will cost more than £250 per financial year for any one Leaseholder for the duration of the agreement.

5.4.2 Leaseholders will receive a Notice of Intention which will outline the planned works, advise them when and where they can inspect the plans, explain why the works are required, give the total estimated cost, invite them to make comments and give them the date the consultation period will end (30 days from the date of the notice). Any comments received will be considered and we will respond within 21 days.

5.5 What happens if we do not consult as we should?

5.5.1 If we do not follow the regulations we are limited to how much we can charge them for the work or service. The limits are £250 per item of repair work in any one financial year and £100 in any one financial year for services that we provide under a long-term agreement.

5.5.2 An application can be made to the First-Tier Tribunal (Property Chamber) for an order to dispense with the Section 20 consultation process. The Tribunal can dispense with the consultation requirements in particular cases if satisfied that it is reasonable to do so. For example in a case where emergency repairs are needed.

5.6 Appendix 1 provides a detailed outline of which schedule should be applied under which circumstances and the information required to form part of the Section 20 Notice.

5.5 An example of recent Section 20 consultations undertaken by the Council/BHP is provided as appendix 3.

6.0 Resident Involvement

6.1 Leaseholders have the right to give us their views and comments on the plans during the consultation period. Each stage lasts for 30 days. The council are obligated to take note of any comments it receives and carefully consider the comments and suggestions about the work or the long-term agreement.

6.2 Where we are planning to do major work, we hold a meeting for residents before immediately before or after they receive the S20 notice. This will give them an opportunity to hear about the work we are planning and for them to comment on that work. In addition, residents are also given the opportunity to decide on the core component of the works including colour options and type of material where practically possible.

6.3 In some circumstances, leaseholders will have the right to suggest a person, firm or contractor who they would like to tender for the work or long-term agreement. This does not apply in those schedules where we have to give a public notice.

6.4 We occasionally invite residents to form part of the procurement panel for selecting major works contractors. This isn't a consistent approach though we will be reviewing ways of increasing resident involvement in our procurement process. This is form part of the emerging Customer Strategy.

7.0 Payment Plan option

7.1 Payment is due within 28 days of the invoice date. A five percent discount is provided to leaseholders who is able to settle their bill in full within this period. If the leaseholder are unable to pay in full within 28 days, they must complete and return the payment options form we enclose with their invoice, indicating their preferred payment option. These include:

- An interest free loan for bill up to £1,000, provided payment is made within 12 and 24 months
- Loan facility for bills in excess of £1, 000 is also available. The table below provides a breakdown for the amounts and payment period.

Loan amount	Payment period
Between £1,000 and £1,999	Maximum period of 3 years
Loans between £2,000 and £6,100	Between 3 to 5 years
Loans over £6,101	5 years to 10 years

7.2 To qualify for any of the above options leaseholders must:

- Complete and return the payment options form within 28 days of the invoice date
- Repay the whole amount if they sell the property

8.0 Financial Implications

- 8.1 The current level of take up of early payment discounts on major works charge is 8.5% of leaseholders, on average this reduces income by £9k per annum. The potential impact of this offer on the Council's cash flow in the overall HRA business plan is not considered to be material. The reduction in cash flow could be mitigated by the anticipated reduced cost of managing late payment from debtors as there is an incentive to pay early.

Service charge income contributes towards achieving a balanced HRA budget through recovery of management and major works expenditures. Any reductions for income collection due to failures in consultation procedures will result in adding financial pressures to the HRA.

9.0 Legal Implications

- 9.1 Section 20 of the Landlord and Tenant Act 1985 imposes a requirement on Landlords to consult with Leaseholders in respect of qualifying works (e.g. where leaseholder's contribution is in excess of £250 p.a.) or a qualifying long term agreements (ones entered into by the landlord for a period in excess of 12 months which result in a contribution of a leaseholder in a year is in excess of £100). Failure to comply with the consultation requirements will mean that only £250 per leaseholder per financial year can be recovered by the freehold owner in respect of qualifying works and only £100 per leaseholder per financial year can be recovered by the freehold owner in respect of qualifying long term agreements during the duration of those agreements. These various consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003, which are summarised in the main body of this report.
- 9.2 In some circumstances, it will not be possible to meet all the necessary consultation requirements (e.g. very urgent works on the grounds of safety) and in those circumstances, the landlord can apply to the First Tier Tribunal (Property Chamber) to apply for dispensation from complying with the consultation requirements pursuant to section 20. The Tribunal has discretion to grant dispensation if it takes the view that it is reasonable to do so.

10.0 Equality Implications

An Equality Impact Assessment carried out when S20 Notices are served. The Council does not hold up to date Equality information for leaseholders.

11.0 Background Papers

- Breakdown of Section 20 Consultation Requirement (Appendix 1)
- Breakdown where recent S20 consultation undertaken by the Council (Appendix 2).

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