



**Cabinet**  
6<sup>th</sup> February 2023

**Report from  
Corporate Director, Resident  
Services**

## **New Repayment Framework for Major Works billing for Leaseholders in Brent**

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	Four Appendix 1: Current and proposed leaseholder repayment options Appendix 2: Benchmarking Appendix 3: Getting to know you and your home survey
<b>Background Papers:</b>	None
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### **1.0 Purpose of the Report**

- 1.1 Brent Council is freeholder / landlord to 3850 leaseholders. With an average of 30 Council tenants invoking the Right to Buy each year, this number will continue to steadily rise.
- 1.2 This report is to provide Cabinet with an overview of recent changes in legislation relating to leasehold management and to advise on what these mean for leaseholders in Brent.
- 1.3 This report also presents Cabinet with both new and improved existing offers for leaseholders when they receive service charges/major works bills from the

Council. These will increase repayment options and flexibility, and market the current option to Buy Back leasehold homes. The improved options respond to the current economic landscape, particularly as we commence major refurbishment of our high-rise blocks and will bring Brent's offer in line (or ahead of), other Local Authorities (Appendices 1&2).

- 1.4 This paper also outlines additional service improvements.

## **2.0 Recommendations**

- 2.1 That Cabinet agree the following:

- 2.1.1 To extend the interest free periods in respect of major works for resident leaseholders from 2 years (currently) to 5 years.

- 2.1.2 The repayment offer as set out in 8.0

- 2.1.3 To promote the option to all resident leaseholders (in those blocks scheduled for major works as set out in 5.1) for the Council to 'Buy Back' their home at market value (reduced to 75% of market value, if they choose to become secure tenants), and for non-resident leaseholders of those same blocks to have the option for the Council to buy back their leasehold property at 100% of the market value.

## **3.0 Context**

- 3.1 There are two types of home ownership in the United Kingdom, the first is freehold which means an individual/ organisation owns a building and the land it sits on outright. The second form of ownership (which also applies to products such as shared ownership) is leasehold. Leasehold is where an agreement i.e. a lease, sets out a fixed period that an individual/ organisation will own a property for.

- 3.2 However, a leaseholder does not own the building structure nor the land; this remains under the ownership of the freeholder. The Lease Agreement sets out the legal rights and responsibilities between a leaseholder and a freeholder, including the financial contributions leaseholders are required to pay a freeholder.

- 3.3 Brent Council's charges to its leaseholders fall under two categories. The first is known as a service charge. Service charges are calculated on an annual basis and usually paid for in monthly instalments and cover the cost of day-to-day services required for the management and upkeep of the building and land. This may include small scale communal repairs, cleaning services, concierge and grounds maintenance. An example of a service charge would be caretaking services in Council owned blocks, where a leaseholder is charged £116.68 per year, including BHM Management fees.

- 3.4 The second category is known as 'Major Works' or sometimes 'Qualifying Works'. 'Qualifying Works' for the purposes of the Landlord and Tenant Act

1985 (as amended) (requiring s20 consultation in accordance with the 2003 Regulations) are major works amounting to more than £250.00 per leaseholder and this is a one off charge. Major works charges a leaseholder is required to contribute towards are typically for large repairs and maintenance works to the fabric of the building such as roof replacement, window replacements, brick or concrete repairs, redecoration, lift replacement and boiler works.

- 3.5 For any major works amounting to more than £250.00 per leaseholder, a Landlord is legally required to carry out consultation through a process prescribed under s.20 of the Landlord and Tenant Act 1985 (as amended), and the Service Charges (Consultation Requirements) (England) Regulations 2003 (commonly referred to as 'Section 20' consultation). There are time limits stipulated in the regulations which need to be followed. This includes issuing a Notice of Intention to carry out works (commonly referred to as a Section 20 Notice) which includes the following information:
  - 3.5.1 A description of the proposed works
  - 3.5.2 Reasons for the works
  - 3.5.3 Estimated cost of the works
  - 3.5.4 Details for how a leaseholder can submit their comments (also known as observations)
- 3.5.5 The deadline for submitting observations
- 3.6 Landlords are then required to respond to any observations received before works can commence.
- 3.7 The above demonstrates that the relationship between leaseholders and freeholders/landlords is largely a financial exchange and therefore the main driver of satisfaction among leaseholders is a perception of good value for money for service charges and major works costs.
- 3.8 The Housing Revenue Account (HRA) and funds in it determine the future capital works that the Council can deliver. Council tenants are charged service charges in line with their tenancy agreement terms, and their rent is invested in improving Council housing for tenants, and this is considered to include major works.
- 3.9 Leaseholders receive service charge demands (charged in line with the terms of their lease) for major works as well as general services such as cleaning or grounds maintenance.
- 3.10 Leaseholders are charged their full share towards the costs of all works and services (including major works) and the HRA does not provide any subsidy. The costs of major works and services must therefore be reasonable and reasonably incurred. The collection of these costs and the payment terms, which the Council offers, must consider the affordability to the leaseholder, with

a view to helping minimise the risk of leaseholders accruing debts that they are unable to pay.

- 3.11 Our aim is to provide a new repayment structure which is fair; minimises the risk of bad debts; improves the ability of resident leaseholders to make payments and sustain their leasehold residency, while balancing the need to recover charges as efficiently as possible.

#### **4.0 Legislative changes**

- 4.1 From 28 June 2022, the leaseholder protections on building safety costs in England have come into effect. For the purpose of this report, it should be noted that the term ‘qualifying leaseholder’ refers to a leaseholder who owns a property in a building above 11 metres (or 5 storeys) and on 14 February 2022:

4.1.1 The property was their main home, or

4.1.2 They owned no more than three UK residential properties in total.

- 4.2 Following the tragedy at Grenfell Tower, a national debate started between Government, Building Owners and leaseholders on who is responsible for paying for fire safety costs, particularly if a building had been clad in aluminium composite material (ACM). The Building Safety Act 2022 (“the Act”), which came into effect in June 2022 has solidified the Government’s position on this debate, introducing new financial protections for qualifying leaseholders.

- 4.3 The aim of the Act is to ensure those who built defective buildings cover the costs for remediation works. Under the Building Safety Act 2022, qualifying leaseholders are exempt from being charged for the remediation of any cladding system. In addition, any costs to rectify historical building defects have been firmly capped for buildings above 11 metres or five storeys with historical safety defects.

- 4.4 In addition the Leasehold Reform (Ground Rent) Act 2022 became law on 30th June 2022. This prohibits ground rent payments on new residential long leases, i.e. leases for over 21 years, and this Act has abolished ground rent payments on informal lease extensions.

#### **5.0 Major works repayment for leaseholders - reasoning for change**

- 5.1 Brent has an ambitious plan to refurbish all of our tower blocks that are being retained i.e. not identified for demolition. This is likely to cost approximately £40M over the next three years. The blocks are Kilburn Square, Lodge Court, Manor Court and Windmill Court.

- 5.2 These blocks were built in the late 1960's and whilst they have had repairs and some minor refurbishment undertaken over the last 60 years, the major elements in the blocks have now passed their useful life and require either replacement or major refurbishment, if they are to continue providing good quality housing for residents.

- 5.3 The proposed specification is comprehensive and includes repairs to the building fabric; new energy efficient cladding; new windows; roofing; upgraded heating; upgraded mechanical and electrical services; internal refurbishment of the dwellings; and refurbishment of the internal communal areas.
- 5.4 These works will ensure that the blocks have at least another 40 years life and that they offer good quality modern accommodation to residents.
- 5.5 It is acknowledged that some leaseholders are likely to face substantial major works invoices and are due to be billed significant costs with proposed works on the above estates, and other estates where similar works will be required in the future.
- 5.6 A review will need to be carried out prior to any charges being issued to leaseholders, as to what degree of the works can be recovered under the leases – typically this is anything which can be argued to amount to a ‘repair’ and nothing more.
- 5.7 The current financial situation, as a result of the cost of living crisis, emphasises the need for the Council to recognise that more leaseholders may find it difficult to pay their bills. This has prompted officers to consider if the current repayment options make it viable for resident leaseholders to be able to pay their major works bills with minimal risk of mounting debt or the need to consider alternative options.
- 5.8 The Council needs to ensure that repayment options are affordable, sustainable and minimise hardship for leaseholders; enabling them to agree repayment terms that are manageable.
- 5.9 Officers must collect payments in an efficient manner in order to protect the Housing Revenue Account. The need to collect debts must be balanced with reducing the risk of the Council incurring outstanding amounts that go unpaid because they are unaffordable, or of lengthy and costly court proceedings to recover the debt, which jeopardises future capital works.
- 5.10 It is important to note that this report proposes to differentiate between resident leaseholders who live in their homes, and non-resident leaseholders who collect an income from subletting. Non-resident leaseholders are landlords and subletting is considered a business. The Housing Revenue Account should not be used to fund non-resident leaseholders’ businesses and as such, the proposed changes outlined are to benefit resident leaseholders first and foremost. Non-resident leaseholders are already given some allowance in that they are offered 24 month repayment plans. In the context of the cost of living crisis, there is an enhanced need to protect both resident leaseholders and the Housing Revenue Account.
- 5.11 In the blocks where significant major works are due to take place at present there are:

- 63 leaseholders in total
- 23 of these are resident leaseholders.
- There are currently 6 pending Right To Buy applications for these blocks- all of whom will be advised of the works and prospective bills ahead of purchase

It has not been possible to establish if the current leaseholders have any vulnerabilities related to age or health. However, work will commence following the decisions made by Cabinet to reach out to impacted leaseholders and discuss their options with them, offering them support.

- 5.12 These terms are applied at the Council's discretion and outside the terms of the lease, which otherwise would require immediate settlement of outstanding major works charges.

## **6.0 The current offer**

- 6.1 At present Brent Council offers no distinction between resident leaseholders and non-resident leaseholders when considering re-payment options
- 6.2 Brent currently has first refusal on most leases where a leaseholder wishes to sell their home. In instances where Brent does not have first refusal it is made clear to leaseholders who wish to sell that Brent will always be interested in buying back their home, if funding is available through the HRA. In this process the leaseholder will have the option to potentially surrender the lease and revert to being a secure tenant of the property instead, with a sale back to Brent at 75% of the value, or will sell the property for 100% of the value and will move out of the home and make their own housing arrangements.
- 6.3 Additionally, Brent offers buyback services through Investment for Brent (i4B holdings), but only if certain requirements are met, and this option is currently on hold until further notice. There is no possibility for the leaseholder to become a secure tenant if the property is purchased through i4B because it is dealt with as a private sale.
- 6.4 A 5% discount on the total bill is awarded if full payment is received within 28 days of the date of the invoice.
- 6.5 An interest free offer is available to both resident and non-resident leaseholders for up to 24 months.
- 6.6 If the leaseholder cannot repay the cost within the given timeframe (1 or 2 years) there continues to be a statutory loan option for both resident and non-resident leaseholders for repayments to take place for up to 10 years- with interest of 5.05% from the start. This can only be taken out with mortgage approval as it is secured with a charge against the property.

- 6.7 A charging order protects a debt owed to the Council by a leaseholder, by securing the debt against their property. This means that if the leaseholder sells or re-mortgages their home before the debt is paid off, the charging order will be paid off with the proceeds.

## **7.0 Benchmarking**

- 7.1 Officers benchmarked with 13 other Local Authorities (see Appendix 2), noting most had updated their payment options in recent years, often to also take account of higher invoice values.
- 7.2 Officers set out to establish specifically the length of payment terms other Local Authorities offered to both resident and non-resident leaseholders, and where applicable, the interest rate they charged.
- 7.3 Both resident and non-resident leaseholders in Brent currently have less favourable options when compared to the 13 councils benchmarked against.
- 7.4 A range of additional options to those Brent currently offer were found at other councils.
- 7.5 These included the following:
- 7.5.1 Deferred payments
  - 7.5.2 Voluntary charges
  - 7.5.3 Buy-backs for residents who will remain in the property as a secure tenant
  - 7.5.4 An equity share scheme
  - 7.5.5 Longer repayment options
  - 7.5.6 Increased interest free periods
- 7.6 The most generous framework was Haringey, followed by Camden and Kensington and Chelsea Councils, the highlights of their offers are below (taken from Appendix 2):

<b>Haringey</b>	0% interest >15 years on bills +£60k	Repayment >25 years (+ interest on year 15-25)	
<b>Camden</b>	Defer repayment up to 1 year for bills +£10k	Repayment >25 years (+ interest on all years)	Buy back scheme: lessee becomes secure tenant

<b>K&amp;C</b>	0% interest >10 years on bills +£40K	Repayment >20 years (+ interest on all years)	
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## **8.0 Proposal/ New offer**

- 8.1 Please see Appendix 1 for the financial proposal in table format.
- 8.2 Currently the offer is available that properties of leaseholders can be bought back by the Council or i4B where funds allow.
- 8.3 The new offer will take this further in recognition of the potential financial strain that leaseholders may face. Officers propose to offer any leaseholder living in blocks where major works are scheduled and large bills are due (Kilburn Square, Lodge Court, Manor Court and Windmill Court), the opportunity to sell their home back to the Council if they are concerned with affordability of the scheduled works. This offer will be proactively made available to leaseholders through marketing, and direct contact with them.
- 8.4 Resident leaseholders who wish to sell will have two options - to either; surrender the lease and revert to being a secure tenant of that same property instead, with a sale back to Brent at 75% of the market value; or will sell the property for 100% of the market value back to the Council and will move out of the home and make their own housing arrangements.
- 8.5 The reasoning for the 75% of the value sale for those leaseholders who wish to return to being secure tenants is that those secure tenants would still be able to invoke the Right to Buy again in future should they choose, and still have access to a discount. Additionally as a secure tenant the resident would have access to subsidised rents (35% of the market value of private rents), and would receive the improved access to services that social tenants enjoy- such as repairs, maintenance, improvements and housing management support.
- 8.6 Further proposed changes are as follows:
  - 8.6.1 The interest free period for resident leaseholders be increased from 2 years to 5 years for major work bills.
  - 8.6.2 Resident leaseholders (those who reside in their property, and it is their only home) are offered an increased repayment period of up to 10 years for all major works bills up to £39,999 (interest free for 5 years, and interest bearing for years 6-10).
  - 8.6.3 Resident leaseholders are offered an increased repayment period of up to 20 years for major works bills of £40,000 and over (interest free for 10 years and interest bearing for years 11-20).
  - 8.6.4 A discount of 5% is offered to all leaseholders who pay in full within 12 months for invoices over £1000.

- 8.7 This will allow time for resident leaseholders to raise finances for higher value bills. Officers have confidence that the changes may further stimulate some resident and portfolio landlords to pay in full at the outset rather than setting up payment plans.
- 8.8 From benchmarking, it is clear that the above offer would make Brent very competitive when compared with other London boroughs. It would be a demonstrable commitment to resident leaseholders that the Council recognises and values them and ensure that Brent is reacting to the Cost of Living crisis and is supporting those resident leaseholders who may be more vulnerable and less able to make payments.
- 8.9 The changes proposed in this report will ensure that the Council's payment terms are brought up to date and reflect the best payment options available for our resident leaseholders. The aim is to ensure that resident leaseholders are able to sustain their homes and manage their finances while benefitting from necessary improvement works which will see their homes increase in value, energy efficiency and modernisation.

## **9.0 Service improvements for our leaseholders**

- 9.1 In recognition of the need to improve and progress the service offer to leaseholders, officers have implemented the following:
  - 9.1.1 Using STAR (customer satisfaction survey) recommendations to improve and review the offer for leaseholders.
  - 9.1.2 The employment of a dedicated Home Ownership manager who oversees all aspects of charges, communications, leasehold management, lease extensions and the Right to Buy.
  - 9.1.3 The creation of a Home Ownership Panel. This is a dedicated platform for leaseholders to influence service delivery and provide direct feedback on our services, helping to shape future decisions and improve leaseholder choice and autonomy.
  - 9.1.4 The upcoming roll out of the Tenant Satisfaction Measures to our leaseholders. The Social Housing Regulator will soon require that Council tenants' satisfaction with their landlord is measured using a national framework. There is no requirement from the Regulator to collect the same data for leaseholders. However, we are committed to tracking and understanding the relationship between BHM and leaseholders, in order to continually improve.
  - 9.1.5 A specialised signposting service for support; recognising that leaseholders may fall in the cohort of households not used to asking for help, knowing where to find it or what is available.
  - 9.1.6 Strengthening through the continuous review of systems relating to leaseholders, how the home ownership team works with other services,

and advocating the need to be able to evidence value for money. Officers recognise that this drives satisfaction for leaseholders.

## **10.0 Consultation and engagement**

- 10.1 The below chart details the number of leaseholders who own properties in the estates likely to be impacted by the higher bills for major works.

<b>Accommodation</b>	<b>Total LH</b>	<b>Resident LH</b>	<b>Pending Right To Buy applications</b>
<b>Manor Court</b>	6	None	2
<b>Lodge Court</b>	7	None	1
<b>Windmill Court</b>	33	15	2
<b>Kilburn Square</b>	17	8	1

- 10.2 From September 2020 consultation of the proposed works at Kilburn Square has been underway. Four residents meetings have taken place to date and have been attended by the Lead Member. Additionally to this every resident in Kilburn Square, including resident leaseholders or their tenants, have been visited. A survey was carried out (Appendix 3) with them to do a household audit, establish if they had any vulnerabilities, and whether or not they will be able to remain in situ for the duration of the works. A management plan was created for each household, to ensure minimal disruption, that residents were fully supported and also that they had a detailed understanding of the works due to take place.
- 10.3 To date around 95% of residents at Kilburn Square have been visited as above, with only a small number of households not yet engaging. Kilburn Square is the first of four blocks where significant works are due to take place, and the consultation that has been described above will take place at the other three estates in due course. Officers will ensure that leaseholders are kept fully informed.
- 10.4 Consultation with leaseholders on the proposed new repayment options was carried out over a 6-week period between May – June 2022 to provide comments and further suggestions in relation to the proposed changes to the payment policy. Unfortunately, there was no response.
- 10.5 However, a Home Owners Panel was set up and the initial meeting was used to discuss the proposed changes.
- 10.6 Core membership of the Panel is open to all residents who are Brent Council leaseholders (both resident and non-resident leaseholders), who have not breached any lease obligation in the last two years
- 10.7 On September 27, 2022, the Home Owners Panel was presented with the proposal. Feedback was gathered as well as any suggestions regarding the improvements to the repayment policy.

- 10.8 The panel of leaseholders stated they wanted the options to be fair and provide sufficient time to pay without causing hardship to residents.
- 10.9 Most panel members agreed with the proposals, some non-resident leaseholders questioned why the changes did not all also apply to them. It was explained that they were considered businesses by virtue of their landlord status.
- 10.10 The Home Owners Panel will be meeting again by the end of this month to discuss the outcome of this paper.

## **11.0 Financial implications**

- 11.1 Major works to improve council owned blocks are funded through the Housing Revenue Account (HRA). Leaseholder contributions towards repairs and services are essential funding sources to help balance budgets in the HRA, currently budgeted at £1.2m for 2022/23.
- 11.2 Offering flexible payment options to leaseholders is expected to reduce the likelihood of non-payment, as it will assist leaseholders to manage debt by spreading out payment plans over a longer period compared to current options.
- 11.3 Offering discounts for prompt payment provides incentive to settle payments due sooner and helps to improve the Council's collection rates. Applying a discount means the full cost is not recovered, however it serves as a cost avoidance, when compared against the cost associated with pursuing overdue debt. Early payment also reduces the need to set aside allowances for risk of non-payment.
- 11.4 All payment options will involve some risk of non-collection. Arrears balances will be monitored and provision for bad debts will be adjusted accordingly based on collection performance.
- 11.5 Interest rates applied on payment options are proposed to be based on long-term PWLB fixed rates, as at the start of April for each financial year. This reflects borrowing costs experienced by the Council. Legal advice will also be sought with regards to drafting any repayment agreements.

## **12.0 Legal implications**

- 12.1 Section 20 of the Landlord and Tenant Act 1985 (as amended) imposes a requirement on Landlords to consult with Leaseholders in respect of qualifying works (e.g. where a leaseholder's contribution is in excess of £250) or a qualifying long term agreements (agreements entered into by the landlord for a period in excess of 12 months which result in a yearly contribution from any one leaseholder in excess of £100). Failure to comply with the consultation requirements will mean that only £250 per leaseholder can be recovered by the Landlord in respect of qualifying works and only £100 per leaseholder per financial year can be recovered by the Landlord in respect of qualifying long

term agreements. These various consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.

- 12.2 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) 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.
- 12.3 The leaseholder protections in the Building Safety Act 2022 came into force on 28 June 2022 with new financial protections for leaseholders in buildings above 11 metres or five storeys with historical safety defects. The accompanying secondary legislation came into force on 21 July 2022, providing further detail on how the measures in the Act will work and ensuring that the full range of leaseholder protections have their full effect. Qualifying leaseholders are protected from all cladding system remediation costs. Those whose property is calculated as being less than £325,000 (in Greater London) or whose building owner has a group net worth of more than £2 million per relevant building, as of 14 February 2022, are exempt from all historical safety remediation costs. The Building Safety Act 2022 ensures that any contribution required from qualifying leaseholders for non-cladding defects and interim measures (including waking watch costs) is firmly capped and spread over 10 years, with costs already paid out since 28 June 2017 counting towards the cap. If remediation costs exceed the cap, building owners must make up the difference.
- 12.4 The Leasehold Reform (Ground Rent) Act 2022 puts an end to ground rents for most new long residential leasehold properties in England and Wales in respect of leases granted on or after 30 June 2022. Exceptions to this legislation include (i) existing leases, (ii) leases granted pursuant to contracts exchanged before 30 June 2022 (iii) business leases and (iv) statutory lease extensions.

### **13.0 Equality implications**

- 13.1 The proposed enhancements are borough wide and there is no adverse impact upon any particular group of resident leaseholders. The revised payment options will be available to all resident leaseholders when their property is included in the major works programme. In addition, we will ensure that equality, diversity, and inclusion implications will be assessed when communicating the new options to leaseholders and taking feedback

**Report sign off:**

**Peter Gadsdon**  
Corporate Director Resident Services