

CABINET

19 November 2013

Title: Leasehold Property Major Works Payment Options	
Report of the Cabinet Member for Housing	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Summary: The purpose of this report is to obtain Cabinet approval of payment options for leaseholders who have difficulty in paying large leasehold bills. In certain circumstances when attempting to recover money owed it is usual to have in place payment mechanisms which enable arrangements to be entered into with the debtor and by doing so assist in the recovery of the debt. Unlike the majority of local councils Barking and Dagenham does not have in place any recorded procedure for providing leaseholders with options for making payments of leasehold charges. Payment options are particularly relevant to those leaseholders with large bills where immediate payment could prove financially problematic.	
Recommendation(s) The Cabinet is recommended to : (i) Agree the introduction of payment options in respect of leasehold charges as detailed in paragraphs 3.2 to 3.6 of the report; and (ii) Agree that the payment options detailed in paragraphs 3.2 and 3.3 are limited to owner occupiers.	
Reason(s) The Council's vision and priorities are underpinned by the theme 'a well-run organisation' as set out in the corporate plan. This report ensures we support this theme and enables the Council to provide a range of payment options to its leaseholders.	

1. Introduction and Background

- 1.1 The Council as a responsible landlord is committed to keeping its homes in a good state of repair. This means that from time to time it will need to carry out major works, such as repairing the structure of a building, refurbishing a lift or replacing windows. Under the terms of the lease the Council as the freeholder, is responsible for repairing and maintaining the structure and outside of the building including any shared parts or services and to take reasonable steps to make good any faults which affect the structure and fabric of the building. The leaseholder is required to contribute their proportion towards the cost of all such works.
- 1.2 Any applicants that apply to purchase a leasehold property through the Right to Buy scheme are offered an interview with council staff. The purpose of the interview is to explain the responsibilities and obligations that come with being a leaseholder. This includes the requirement to pay their share of the costs of major works
- 1.3 The Secretary of State for Communities and Local Government has recently issued a consultation paper (Consultation on Protecting Local Authority Leaseholders from Unreasonable Charges) on limiting the amount that can be charged for carrying out specifically funded works. The consultation is on a proposal to update the Mandatory Directions to councils to include, in the programmes described in the 1997 Directions, all Central Government funding for repair, maintenance or improvement, including Decent Homes Grant from the 2013 Spending Review. The proposal is to have a £10,000 cap on leaseholder works on homes outside London, and £15,000 on homes within London.
- 1.4 If the proposals in the consultation are adopted it will affect councils which may bid for future central government assistance for works of repair, maintenance or improvement, provided by the Secretary of State or the Homes and Communities Agency. This will include those councils eligible for the 2015/16 Decent Homes funding announced as part of the Spending Round 2013. Given the level of non decent homes that Barking and Dagenham has within its housing stock it is likely that this will have some effect on this Council as a freeholder. A response to this consultation paper has been issued. However in all circumstances leaseholders will be required to pay a share of the costs of capital work.
- 1.5 In certain circumstances when attempting to recover money owed it is usual to have in place the ability to come to an arrangement with the debtor and by doing so assist in the recovery of the debt. There is no formal London Borough of Barking and Dagenham Council approved policy in relation to major works payment options. There has however been a practice within the general income team to offer payment options to customers in relation to Section 20¹ invoices.

¹ Under section 20 of the Landlord and Tenant Act 1985 (amended by section 151 of the Commonhold and Leasehold Reform Act 2002), we must consult about some of the work and services that leaseholders must pay for.

- 1.6 Barking and Dagenham does operate a reserve fund for leasehold properties. The purpose of such funds is to build up a sum of money to help cover the cost of irregular and expensive works such as structural repairs, or lift replacement. The reserve fund is held against a particular property and is built up through regular leaseholder contributions. The cost of the works is deducted from the leaseholders reserve fund account when work is carried out. Where the reserve fund balance is not sufficient to cover the cost of the works, the leaseholder is billed for the outstanding amount.
- 1.7 Currently contributions to the reserve fund are calculated using details specified in the Right to Buy offer notice (Section 125). As the landlord, the Council must tell the tenant how much the property will cost, and must also give an estimate of any service charge they will have to pay during the first five years of the lease.
- 1.8 Alongside the use of the Right to Buy offer notice (Section 125) the Home Ownership team now increase reserve fund contributions for properties where works are planned to take place. This will be based on any stock condition survey that is carried out. Currently the Council is undertaking an independent stock condition survey in tranches of 4,000 properties the result of which will be recorded on a property data base. The Home Ownership team will then use this survey data to set reserve fund contributions. This is a particularly appropriate time to look at this, as with Housing Revenue Account self financing we are now putting in place arrangements to tackle our backlog of decent homes expenditure, and will be investing significantly in our stock over the coming years, and leaseholders will be required to pay their proportion of this.
- 1.9 Given the nature of works required to some properties the costs can be very high, it would therefore be beneficial to consider introducing payment options for leaseholders to pay back the costs of major works.
- 1.10 It is acknowledged that the causes of financial difficulties vary and recovery methods should be focused accordingly. There are times when debtors can't pay and times when debtors won't pay. Any payment arrangements would sit alongside more formal recovery methods such as:
- Written reminders of the debt
 - Applications to the County Court
 - Bailiffs and Distraint
 - Charging Orders
 - Bankruptcy or Insolvency

2. Leasehold Profiles

- 2.1 The Council has 3,321 leasehold properties of which 259 currently have major work arrears.
- 2.2 The average leasehold deficit (debt) is £5,180.
- 2.3 Records show that 41% of leaseholders are subletting or not in residence – this figure reflects a similar pattern across London. The Council has also seen an increase in the number of leaseholders that own multiple properties – 288 properties are owned by multiple owners.

3. Proposal

3.1 Payment Options

- 3.1.1 By way of good practice local authorities should have arrangements in place for enabling leaseholders to make payments on any debt. Research shows that the majority of Councils have in place payment option schemes for leaseholders that have a service charge debt. Options vary from providing advice, interest free payment schemes and prompt payment discounts.
- 3.1.2 Whilst the leaseholder should be encouraged to settle the debt in a timely manner it is accepted that the leaseholder's personal circumstances could prevent them from being able to pay the amount on time and in full. It is with this in mind that Cabinet is asked to consider introducing a set of payment options for leaseholders.
- 3.1.3 When drafting this report reference was made to the Council's Debt Management Policy (Agreed at Cabinet, 18 October 2011). All the proposals detailed in this report are aligned to the Debt Management Policy.
- 3.1.4 Detailed below are the payment options that it is proposed that the Council make available to leaseholders. With regards to options 3.2 and 3.3 it is proposed that these particular options should be made available only to those leaseholders who are owner occupiers. Criteria will be drawn up to define owner occupiers for this purpose but the general principle is that a leaseholder would need to live in the property to qualify.

3.2. Prompt payment discount

- 3.2.1 For debts over £5,000 if they pay the cost in full within twelve weeks of receiving the estimated invoice they will receive a 2.5% discount. This means that they only have to pay 97.5% of the estimate up front. The potential loss of revenue in offering a 2.5% discount would be offset with improved cashflow, as leaseholders will not only be more inclined to pay, but also be inclined to pay earlier.

3.3 Payments

- 3.3.1 For debts up to £1,500 arrangements may be made for the debt to be paid in equal instalments. The length of the instalment period is decided according to the individuals circumstances and is payable over a maximum of 12 months. Interest is not charged on this arrangement.
- 3.3.2 For debts over £1,500, a deferred payment option may be offered over a 5 year term. Interest is charged in accordance with the current Council interest rate. Qualifying leaseholders should be given a period of between 3-5 years to pay off the leasehold charges depending on individual circumstances. The payment would be in equal instalments.

3.4 Statutory Service Charge Loans

- 3.4.1 Under the Housing (Service Charge Loans) Regulations 1992, leaseholders have a right to a loan under certain criteria:

- The lease is still held by the person who exercised their right to buy
- The lease is not more than 10 years old
- The loan must be for more than £500
- The maximum amount of the loan is £20,000
- The loan is secured against the property
- The council may charge a maximum amount of £100 for administration and the land registry fee
- Interest is payable on the loan.

3.5 Discretionary Voluntary Charge

3.5.1 A voluntary charge is recognition of the debt due, secured against the value of the property and redeemable when the property is sold. The charge is noted at the Land Registry and therefore the property cannot be sold without the debt being cleared. The leaseholder may be eligible for a voluntary charge if they can demonstrate that they are unable to sustain loan repayments or obtain alternative finance. This scheme involves the leaseholder paying the Council's legal costs and land registry fees.

3.5.2 A Voluntary Charge is available if:

- a) The property is the leaseholder's only or principal home and they must be living there full-time.
- b) There is sufficient equity in the home to cover the loan.
- c) The leaseholder needs to supply details of the current mortgage and any other mortgage or charge on the property.

3.6 Pre-payment option

3.6.1 This is available to all leaseholders who have received a Notice of Estimate since April 2012. It's a way to spread the payment for the cost of major work to the property. If the leaseholder received a Notice of Estimate showing the likely costs of the work to the block they would be able to start making payments towards these costs. If the work will cost less than £1,500, they could spread the payment over a maximum of 12 months. For any work costing more than £1,500, they could spread the payment over 36 months. Paying in advance is optional: the lease says we can only demand payment after we have incurred costs and we will only send the final invoice (bill) after the work is complete.

3.7 Loan from the Mortgage Lender / Bank or Building Society

3.7.1 For loans of £5,000 or above - to help to pay for large bills for major works, leaseholders would be advised to ask their mortgage lender (where present) to increase or extend any existing loan.

3.8 Other Organisations Leaseholders can contact

3.8.1 Department of Works and Pensions

If a person is in receipt of Income Support or Job Seekers Allowance, they may be eligible for extra benefit towards their service charge bill, building insurance and

ground rent. Leaseholders who qualify for extra benefit with their service charge bills will need to provide a copy of the service charge statement and invoice to the Department of Works and Pensions when they submit their application.

They may also be able to get help with the interest on a loan secured against the property for repairs or improvements. The regulations are complicated and they would need contact the Benefits Agency for more information.

3.8.2 Houseproud

Houseproud is run by a group of 'not for profit' organisations. Their sole aim is to help homeowners aged 55 and over, or households with a disabled person of any age to pay for repairs, improvements or adaptations to their home.

There are 3 main loan options:

- Capital Release loan (No repayment payments required. When the property is sold, the lender gets back the original sum plus all accumulated interest.)
- Interest only loan (Only the payment of the interest each month is required.)
- Capital and Interest Repayment loan (This works like a normal mortgage with monthly repayments covering interest and the original sum.)

3.8.3 DABD

DADB (uk) is a charity working with and supporting socially excluded people across London and the UK. One of their areas of expertise is helping leaseholders with major works bills through DWP payments to leaseholders (on means tested benefits).

4. Options Appraisal

- 4.1 The main option outside of the report's immediate proposals is not to provide any payment options and leave it to the leaseholder to identify ways of repaying the debt. This would present difficulties as it could hinder the collection of monies owed also, good practice requires local authorities to have payment options schemes in place.

5. Consultation

- 5.1 The Cabinet Member for Housing has been involved in the development of the proposals detailed in this report. Consultation has also taken place with Barking and Dagenham Leaseholders' Association through which the Council engages on leasehold related matters who welcome mechanisms for paying capital works debts. The general comment back from leaseholders related to their support for increasing the reserve fund to mitigate the impact of large capital works bills.

6. Financial Implications

Implications completed by: Carl Tomlinson, Group Finance Manager

- 6.1 Leaseholder's are required to contribute their proportion towards the cost of major works undertaken by the Council. Considering the size of some of these

payments, it is appropriate for the Council to have a formal policy in relation to major works payment options for leaseholders.

- 6.2 Payment options allow leaseholders to pay their debt in a way that is manageable, and reduces the risk of bad debt to the council. The risk of bad debt is managed initially through pre-payment arrangements such as the reserve fund for leaseholders which accumulates prior to payments being required. The subsequent payment options outlined within the report provide further mitigation of bad debt through spreading payment over a number of years.
- 6.3 Deferred payment options over 1 year attract interest. This compensates for the cost of council borrowing which the debt relates or investment interest forgone. The prompt payment discount incentivises leaseholders to settle debt sooner, therefore, reducing the councils borrowing need and associated cost of borrowing.
- 6.4 The introduction of formal payment arrangements should result in improved collection and less bad debt. The phasing and timing of payments is likely to be extended, however, the payment options include provision to offset the cost of financing these arrangements.

7. Legal Implications

Implications completed by: Jason Ofosu, Property Solicitor

- 7.1 The Deferred Payment option requires the leaseholder to pay off the leasehold charges between a period of three years and five years. The limitation period to commence a claim for recovery of money in the courts is 6 years. If a claim is commenced after the 6 year period then the leaseholder has a complete defence against such claim because the council's claim would be time barred. Therefore, it would be prudent if the leaseholder has not paid off the debts by the end of the five year period to commence court proceedings to recover the monies.
- 7.2 The Council could also decide to fund a leaseholder using a Discretionary Voluntary Charge as mentioned in paragraph 3.5 above. One drawback of doing this is that the monies are not repayable until the property is sold. Another drawback is that if the leaseholder's property is repossessed and there is insufficient equity in the property then the Council may not recover the full amount loaned to the leaseholder. The Council will have to assess the financial circumstances of the leaseholder on a case by case basis to see which option is preferable.

8. Other Implications

- 8.1 **Customer Impact** – The impact on leaseholders should be positive in relation to the proposals detailed in this paper in that they provide additional options for leaseholders to pay any debt associated with capital works.

Background Papers Used in the Preparation of the Report:

- Council's Debt Management Policy 18 October 2011

List of appendices: None