

Item No.	Classification: Open	Date: 31 August 2022	Decision Maker: Cabinet Member for Council Homes and Homelessness
Report title:		Homeowner Repairing Liability	
Ward(s) or groups affected:		All	
From:		Head of Homeownership Services	

RECOMMENDATION(S)

1. That the Cabinet Member for Council Homes and Homelessness agrees the policy to allow leaseholders in blocks where all the properties have been sold to undertake their own repairs, subject to a surrender and regrant of their leases, as outlined in paragraphs 19 to 21 of this report.
2. That the Cabinet Member for Council Homes and Homelessness agrees the policy to allow leaseholders in street properties to be given the option to replace their windows under conditions defined within the policy as outlined in paragraph 29 to 32 of this report.
3. That the Cabinet Member for Council Homes and Homelessness agree that leaseholders in purpose built blocks should not be given the option to replace their windows for the reasons outlined in paragraphs 17 of this report.

BACKGROUND INFORMATION

Repairs/Major Works

4. Leaseholders have the option of purchasing the freehold of their block, subject to meeting certain criteria, under the Leasehold Reform and Urban Development Act 1993 (as amended by the Leasehold Reform Act 2002). The Council has had a policy in place for dealing with applications since February 2005. The policy agreed a proactive approach to selling the freehold where all of the flats in the block had been sold on long leases. The approach included writing to all the leaseholders concerned on a regular basis to offer them the opportunity to buy the freehold.
5. In 2018/19 MySouthwark Homeowners Service ran a pilot scheme promoting the sale of the freehold on a voluntary basis in cases where the block is 100% leasehold. Over two phases 95 blocks were identified, where major works were proposed in the next two years, and the leaseholders written to. Expressions of interest were received from

- 15 blocks, of which 8 were ultimately valued. The freehold sale completed on two of these blocks, with the Council's solicitor being instructed to proceed on a further 3.
6. Following the pilot MSHO now run continuous campaigns raising awareness to small batches of blocks with 100% leasehold occupation. To date of the 134 blocks written to, expressions of interest have been received from 19 with completion due on 2 of the applications.
 7. In general, interest in buying the freehold of a block arises when major works are due to be carried out which will lead to an increase in the service charge. While the freehold of a number of blocks has been sold since the policy was first introduced, the Council still retains ownership and responsibility for many more blocks (mainly converted street properties) where all the individual flats have been sold.
 9. There are a number of reasons why leaseholders may not wish to enfranchise, and to retain the Council as a landlord. The relevant blocks are usually converted street properties, which in general have very low annual service charges. Frequently the annual cost will include only buildings insurance, administration and ground rent. Ad-hoc repairs may be carried out from time to time, and in some buildings there will be communal lighting in a shared hallway and some communal electrics. Fire risk assessments are undertaken on a programmed basis. Purchasing the freehold also relies on neighbours knowing each other well and having the funds to pay for the purchase. They may also have large historic service charge debts, which they would also have to pay off as part of the purchase.
 10. Leaseholders in this situation may consider it preferable to retain the Council as a landlord. As a freeholder they would need to co-operate to arrange and pay for ad-hoc repairs, which could be difficult if one or more were non-resident landlords. The Council obtains competitive rates for ad-hoc repairs due to the size of the contracts in place, and leaseholders in turn benefit from this.
 11. Leaseholders also benefit from the bulk nature of the buildings insurance contract, which has led to a reduced price for their premiums in comparison to the private sector market. Where leaseholders purchase the freehold they become responsible for putting a buildings insurance policy in place. As with ad-hoc communal repairs this would require co-operation and agreement between the leaseholders, which can prove to be complicated, and the likelihood is that their premiums would increase.
 12. There may be neighbour disputes taking place, with one or more leaseholder preferring to retain the protection of the Council as freeholder in case action for nuisance needs to be taken under the terms of the lease.
 13. When major works do take place the Council offers very generous

payment terms, whereas if the leaseholders owned the freehold they would have to pay all costs immediately, which could be problematic where one leaseholder has the funding and another does not.

14. In the case of 'right to purchase' (which includes the right to buy) leases of flats the social landlord is not entirely free to construct the lease – it must comply with certain provisions (which are implied provisions i.e. they are deemed to be included even if the lease omits them or makes contrary provisions). These 'implied covenants' are set out in part III schedule 6 Housing Act (1985) the most important of which (paragraph 14) is that the social landlord must retain responsibility for the structure, exterior, services and installations. The structure includes the windows (e.g. *Quick v Taff Ely Borough Council*). These covenants are replicated in the Southwark Right to Buy lease, and most other leases that Southwark grants follow the same format.

Windows

15. It is common for leaseholders to request permission to install 'their own' windows, especially when the windows are in a poor state of repair, are not up to current insulation standards and are vulnerable to forced entry. In the private sector it is not uncommon (especially in street properties) for the lease to demise responsibility for maintaining the windows to the leaseholder.
16. However, in the public sector with 'right to purchase' leases there are certain statutory impediments to allowing leaseholders to install their own windows (not the least of which is that the windows are not the leaseholders' windows) even if the management implications were to be put to one side.
17. These impediments though not insurmountable are complex to overcome and have proved to be financially prohibitive to most leaseholders.
18. There is also the question of which leaseholders would be given permission to install their own windows. For those on the ground and, potentially, the first floor, it would be feasible for the leaseholders to install their own windows as access to do so would be practical. However, for leaseholders above the first floor it would become very expensive to access their windows safely from the outside in order to replace them. Replacement from the inside would likely carry health and safety risks that the council could not accept. It would not be equitable to allow some leaseholders in a block permission to install new windows, while denying this option to others based on which floor of the block the property was situated.

KEY ISSUES FOR CONSIDERATION

Repairs/Major Works

19. On 10 February 2020 a briefing note, attached Appendix 1 to this report, was presented to the cabinet member for housing, detailing options that could be made available to leaseholders should they live in a wholly sold block but not wish to purchase the freehold, while being interested in carrying out their own repairs.
20. The preferred option was to offer a surrender and re-grant of the lease allowing for different terms to be agreed relating to repairs. All leaseholders within the block would need to agree to a surrender and re-grant.
21. The statutory impediment of the schedule 6 implied covenants (referred to in paragraph 13) can be resolved by accepting a surrender of the existing 'right to purchase' lease and replacing it with a voluntary disposal lease (pursuant to part II Housing Act (1985)) where we could demise responsibility for repairs. A surrender and re-grant of the lease would allow for the clauses relating to repairs to be amended to pass responsibility to the leaseholders. This is fairly common within the private sector, particularly for converted houses.
22. A new standard lease will be drafted with appropriate safeguards to ensure that the Council can recommend or require that the leaseholders carry out essential repairs, including fire safety and health and safety work. The lease will incorporate access provisions for inspections and rights for the landlord to carry out necessary work if the leaseholders refuse to do so. The standard lease will not be negotiable with leaseholders. The costs of the surrender and re-grant will be payable by the applicant leaseholders.
23. These blocks are already part of an inspection programme for both repairs and for fire risk assessments. These should continue, but for the purpose of identifying urgent, health and safety and fire risk repairs only.
24. The Sales and Acquisitions team within the MySouthwark Homeowners Service will need to manage the surrender and renewal of the lease. The team currently manages enfranchisements, alterations and ad-hoc disposals, so have the necessary knowledge and experience, as well as processes in place similar to what will be required for the new policy.
25. The new lease will replace the original right to buy lease, and there will be no option available for the leaseholders to subsequently revert to the old lease. This will be made clear to any leaseholder before a surrender and re-grant is agreed.
26. With a surrender and re-grant the only service charges leaseholders

will be responsible for will be buildings insurance, and the costs of any communal services (such as electrical supply, caretaking or heating) other than repairs. The leaseholders will also continue to be responsible for any ground rent charged. The leaseholders will be responsible for organizing all building fabric repairs, including major works, and for paying the contractors directly. The lease will give the council the right to enforce its provisions if the leaseholders are unable to agree on a schedule of urgent, health and safety or fire safety related repairs.

27. All the leaseholders in the block will need to agree to the surrender and re-grant of their leases, and pay the legal costs involved. Where there has been a surrender and re-grant of the lease the Council will keep clear and accurate records on the housing management database to ensure that ad-hoc repairs are no longer raised for the building, and that it is no longer included in any programme of major works.
28. The leaseholders will no longer benefit from the Council's repairs service and will be responsible for procuring and managing their own contractors.
29. Our standard leases contain 'mutual enforceability' clauses which, to paraphrase, means that one leaseholder cannot cause another leaseholder nuisance/costs etc and that this must be enforced by the landlord. This will be replicated within the new lease to allow the council to take appropriate action as a last resort.

Windows

30. As stated in paragraphs 13 and 15, the Council is obliged to be responsible for windows in a right to buy lease. Under this policy the council will agree that leaseholders in converted street properties will be allowed to install windows to their own flats, subject to a surrender and re-grant of the lease giving them future responsibility for those windows.

31. The leaseholder would still be responsible for paying their fair proportion of the fixed costs relating to other repairs carried out to the building, even if the scheme also includes refenestration of the other flat(s).
32. Any window renewal will still be subject to appropriate planning permission and building control approval as necessary. The new lease would include a right for the council, as landlord, to insist on window renewal to the property in future if the windows were in disrepair.
33. The total cost of the surrender and re-grant of the lease would need to fall to the leaseholder, including the Council's legal costs.

Management Issues

34. The new lease will allow for the costs of fire risk surveys and any other inspection costs to be charged back to the leaseholders to ensure no cross-subsidy by the tenants and other homeowners in the borough. These costs are currently charged as part of the annual revenue service charge, and so will have no greater financial implication to the leaseholders.
35. The Council will need to ensure that the quality of ad-hoc and major repairs and the aesthetics of different windows or facades in a block is monitored, particularly if the condition of the block could have an impact on other Council owned dwellings or the appearance of an estate. This can be done through the normal inspection regime.
36. The Council will still be responsible for fire risk assessments, but the leaseholders will be responsible for carrying out any necessary remedial repairs. The new lease will need to allow for this to be enforceable, and the costs of such enforcement should then be borne by the leaseholders.
37. Lack of repair to one building may affect neighbouring buildings, either our own or within the private sector. The ability to enforce the leaseholders to carry out necessary repairs will be included in the new lease, and the costs of such enforcement will then be borne by the leaseholders.
38. The approvals process for permission to install new windows for street property leaseholders will comply with the standard criteria for alterations, planning consents and any general statutory requirements in place.
39. Permission to install new windows will be based on design; installation; work criteria, fire safety and health and safety requirements, etc. The cost of assessing, managing and monitoring this process will form part of the cost of application.

Policy framework implications

40. As a new policy any fully sold blocks would need to be taken into account by the Council in the overall capital programme, as would any change allowing leaseholders to take on responsibility for their windows.
41. The policy would require the block to continue to form part of an inspection and fire risk assessment regime, as described in paragraph 22, and would require for inspection to ensure that any window renewal complied with the council's quality, fire safety and aesthetic criteria. This could be timetabled within the council's current fire risk assessment regime.
42. The council's housing management system (currently i-world) will be updated to ensure that the council does not carry out any ad-hoc repairs or renewals where a surrender and re-grant for either repairs or window renewals has been agreed.

Community, equalities (including socio-economic) and health impacts

Community impact statement

43. The policy would have a limited impact on a small population of consenting leaseholders only, who will receive the benefits outlined above.

Equalities (including socio-economic) impact statement

44. Compliance with the policy outlined in this report is at the consent of the leaseholder. The policy shows no potential for discrimination against those identified as possessing protected characteristics, as outlined in the Equality Act 2010. By putting into practice Southwark's Fairer Future commitments, which includes the pledge to embed equality into all aspects of council operations, the policy will be implemented so as to make certain that all leaseholders affected are treated equally. The economic and social impact of this policy are detailed in paragraphs 19, 20 and 22.

Health impact statement

45. The council recognises the findings of the Build Back Fairer: COVID-19 Marmot Review (2020) by the UCL institute of Health Equity and the Health Foundation. Although the policy outlined in this report is not believed to have a direct impact on homeowners' health, through close monitoring of the policy the council will nevertheless work to ensure that it does not contribute to or exacerbate any existing health inequalities.

Climate change implications

46. The council have considered the impact on climate change posed by the policy outlined in this report and have deemed the potential impact to be low-level. In keeping with its strategy to become carbon neutral by 2030, the council will continue to monitor the effects of the policy, and where necessary implement strategies that will help mitigate against any further climate impact. In addition by giving leaseholders the ability to choose their own contractors it is expected that smaller businesses, located in or close to the borough will be employed. By travelling shorter distances and carrying out works on a smaller scale, such businesses would produce lower levels of carbon emissions than those associated with larger contractors often based outside the borough.

Resource implications

47. There would be limited impact on Council resources as any work associated with the policy would be carried out by officers already in place in the Sales and Acquisitions team in the mysouthwark homeowner's service. An indirect impact of the policy would be to add to the workloads of those officers, and additional resources may be required if a large number of homeowners in wholly owned blocks or street properties applied for a surrender and re-grant of their lease. However it is anticipated that there will be a limited number of applications made.

Legal implications

48. At present Southwark's leases require that the council retain responsibility for all repairs and renewals, which is also a requirement of the legislation governing right to purchase leases. However under this policy the responsibility would need to be passed over to the leaseholders.

49. The legal implications of this proposed policy are outlined in paragraph 13, 15 and 20.

Financial Implications

50. Should a new lease be granted then the only services that the Council would be responsible for providing would be buildings insurance and relevant communal services (eg lighting, caretaking). These would be service chargeable. The new lease will also provide for direct overhead costs relating to building inspections to be charged to the leaseholders in question.

51. Granting a new lease would mean that the leaseholder would no longer be eligible for the Council's service charge payment plans for major works, and would require the leaseholder to fund any repairs directly.

52. As described in paragraph 47 the policy would have limited resource implications, and therefore limited cost implications to the HRA.
53. The costs relating to the surrender and re-grant of the lease would be borne by the individual leaseholder.
54. There would be minor savings on day to day repairs and the capital expenditure budgets. Minor savings would also be made on window renewal contracts for street properties.

Consultation

55. Departmental consultation has been carried out with between Homeownership Services (Exchequer), Asset Management (Housing) and MySouthwark Homeowners (Housing). A briefing paper has also been taken to the Housing and Modernisation SMT and the Lead Member Briefing for the Cabinet Member for Council Homes and Homelessness for approval. The briefing paper was then taken to the Homeowners Forum for comment.
56. Subsequently a consultation exercise was carried out with affected leaseholders. A letter, accompanied by a question and answer sheet was issued to all leaseholders who lived in blocks where all the properties had been sold. The letter was issued on 15 November 2021, and invited the leaseholders to comment on the proposals, and to ask further questions if necessary. The consultation period was 3 weeks, closing on 3 December 2021. A copy of the consultation letter and accompanying question and answer sheet are attached to this report as appendix two.
57. 224 blocks, mainly street properties, are now wholly owned by leaseholders. This equates to 500 leaseholders. We e-mailed the letter and Q&A sheet to the 319 leaseholders we had e-mail addresses for and posted the letter to the remaining 181. 21 leaseholders responded to the consultation, which is 4.2% of the relevant population. Of these, 15 (71.43%) were in favour of the proposal. 3 (14.29%) were against the proposal and 3 (14.29%) did not express an opinion. Two replies were received outside of the consultation period, but were included in the results anyway. A precis of the comments received is included at appendix three of this report.
58. The results of the consultation indicate that there a number of leaseholders who currently don't want to, or cannot afford to buy the freehold would be in favour of entering into a new lease giving them the responsibility to undertake their own repairs. The three leaseholders who were against the policy were under the impression that a surrender and re-grant of their lease would result in them losing the right to purchase the freehold at a later date. A response has been sent to each of these leaseholders clarifying that their right to buy the

freehold would not be affected. Each of the leaseholders who replied to the consultation have received a response from the Head of Homeownership Services.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

The legal basis for the proposed policies are;-

59. All leases as granted under Right to Buy legislation require the landlord to retain responsibility for repairing the structure and exterior (including windows) of the building in which the flat is situated (para 14(1) of Part III Schedule 6 HA 1985).
60. This requirement can be varied by agreement between the landlord and the leaseholder by way of the surrender of the existing Right to Buy Lease and the grant of a replacement lease of the flat (granted under the voluntary disposal powers available pursuant to Section 32 Housing Act 1985), such that responsibility for repairs (which may either related to the building as a whole or be limited to specific items such as windows) is transferred from the landlord to the leaseholder(s). the new lease can be drafted to include the safeguards referred to in paragraph 21 of this report, such that the Council as landlord is able to ensure that essential repairs are carried out by the leaseholders, and in the case of default by the leaseholders in this respect to include powers for the Council to step-in and carry out necessary works at the cost of the leaseholders as a last resort.
61. To ensure that there is no conflict between the Council's repairing obligations to individual leaseholders within a building, and to comply with the requirements of mortgage lenders that all leases in a building should be substantially similar form, the replacement leases for all flats within a building should be granted simultaneously.
62. The proposed policy will not effect the existing rights of the leaseholders, whether to challenge or be consulted regarding any works which it is necessary for the Council to carry out under the relevant provisions of the Housing Act 1985 (and related legislation) or to collectively acquire the freehold of the building or individually claim an extended lease of their individual flat (under the relevant provisions of the Leasehold Reform Housing and Urban Development Act 1993).

Strategic Director of Finance and Governance (H&M 22/058)

63. The strategic director of finance and governance notes that there are very limited financial implications arising from the policy, related to the drafting of a new lease, which can be contained within current resources. Minor savings are anticipated in the repairs and capital expenditure budgets where the council would no longer be responsible for structural and fabric repairs.
64. Leaseholders who opt for the surrender and re-grant of their lease would be responsible for paying the council's legal costs, allowing the policy to be cost neutral.
65. Staffing is already in place to manage lease extensions and surrender and re-grants for ad-hoc disposals and it is anticipated that the limited workloads required to manage this policy will be contained within existing staffing and revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Responses to consultation	Homeownership Services, Exchequer, Finance and Governance	Louise Turff 020 7525 7558

APPENDICES

No.	Title
Appendix 1	Major works to 100% sold blocks and street properties
Appendix 2	Consultation Letter and Q&A sheet
Appendix 3	Outcome of consultation

AUDIT TRAIL

Lead Officer	Dominic Cain, Director of Exchequer	
Report Author	Louise Turff, Head of Homeownership Services	
Version	Final	
Dated	30 August 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		30 August 2022