

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 4 May 2021	<b>Meeting Name:</b> Cabinet Member for Council Housing
<b>Report title:</b>		Major works to 100% sold blocks and street properties	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Cabinet Member for Council Housing	

## RECOMMENDATION(S)

- 1 That the Cabinet Member for Council Housing accepts and comments on this report.
- 2 That the Cabinet Member for Council Housing agrees that a policy report is prepared for an individual member decision to allow leaseholders in blocks which are 100% sold to undertake their own repairs, subject to a surrender and regrant of their lease.
- 3 That the Cabinet Member for Council Housing agrees that the policy should also recommend that leaseholders in street properties should be given the option to replace their windows under conditions defined within the policy.
- 4 That the Cabinet Member for Council Housing agree that leaseholders in purpose built blocks should not be given the option to replace their windows for the reasons outlined in paragraphs 6.2 to 6.4.

## BACKGROUND INFORMATION

### 5 Repairs/Major Works

- 5.1 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.
- 5.2 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 has completed on two of these blocks, with the Council's solicitor being instructed to proceed on a further 3 of these, one of which is nearing completion
- 5.3 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.

- 5.4 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.
- 5.5 There are a number of reasons why leaseholders may not wish to enfranchise, and to retain the Council as a landlord. The 100% leasehold 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. 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.
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.

## **6 Windows**

- 6.1 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.
- 6.2 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.

- 6.3 These impediments though not insurmountable are complex to overcome and have proved to be financially prohibitive to most leaseholders.
- 6.4 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**

### **7 Repairs/Major Works**

- 7.1 On 10 February 2020 a briefing note was presented to the cabinet member for housing detailing a number of alternative options leaseholders could consider should they live in a 100% owned block but not wish to purchase the freehold, while being interested in carrying out their own repairs. Two of these options were deemed most advantageous to both leaseholders and the Council.
- 7.2 Option one was that the Council agree to continue to carry out ad-hoc repairs as required, but to give leaseholders the option to procure, manage and pay for their own major works. As the landlord the Council would need to ensure that all necessary repairs were carried out, and that all repairs were carried out to an acceptable standard. The Council would need to identify what essential works were required (e.g. fire risk and health and safety work), that the leaseholders would have to include in their scheme.
- 7.3 Option two was that the Council agree to a surrender and re-grant of the lease allowing for different terms to be agreed relating to repairs. The Council would need to consider what authority it would need to retain in order to ensure that the building was kept in a good state of repair and that essential fire risk and health and safety works were carried out.

### **8 Option One – Granting Leaseholders Permission to Carry Out Their Own Major Works**

- 8.1 The Council would require a structure to be in place to inspect the property both pre and post work. This is essential to ensure that all necessary, urgent and health and safety work is carried out and to a satisfactory standard. The inspection process would incur a cost, as it will require a technical officer to attend site. The cost for inspection would be calculated and added to the fees and charges for homeowners services. The Council may choose to require a letter of permission to be granted containing all relevant criteria. This would need to be properly resourced, especially if the policy proved popular.
- 8.2 The leaseholders would be responsible for the direct employment of a

competent surveyor to specify and oversee the repairs, and would be responsible for the cost of this, as well as the cost of the contractor. This would be a disadvantage for the leaseholders who would be required to pay a deposit up-front, and the full amount on completion, whereas currently they can utilize the Council's longer term payment options. The Council could offer the option to pay for the work and recharge back to the leaseholders as a service charge, although this would require the 10% administration fee to be charged to cover the cost of managing the service charge accounts. This would also put the Council at a disadvantage if one or more of the leaseholders refused to pay the charge resulting in litigation.

- 8.3 The Council would need to continue to make regular inspections of the blocks in order to identify any potential essential works required. Should any works be identified the Council would then advise leaseholders of available options on how to proceed.
- 8.4 The Council would need to be kept informed and maintain a record of any major works carried out. The Council would need to ensure that the housing management database (i-world) could hold this information and raise a flag to ensure that no repairs orders were raised where work is under guarantee.
- 8.5 The Council would continue to carry out ad-hoc repairs as required which is in line with the current lease. There could be disagreements with the leaseholders as to what constitutes an ad-hoc as opposed to a major repair, so a clearly defined criteria with costings would need to be created as part of the policy.

## **9 Option Two – Surrender and Re-grant**

- 9.1 If the Council are to offer the leaseholders in 100% sold blocks the option of doing all their own repairs, including major works, then the most practical process would be to enter into a surrender and re-grant of the lease on agreed terms. 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. The statutory impediment of the schedule 6 implied covenants could 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.
- 9.2 The Council would need to draft the new leases with appropriate safeguards to ensure that the Council could recommend or require that the leaseholders carry out essential repairs, including fire safety and health and safety work. The lease would need to incorporate access provisions for inspections and rights for the landlord to carry out necessary work if the leaseholders refuse to do so. A structure would have to be put in place to ensure that regular inspections of the

building were carried out, and resources in Resident Services and Asset Management would be required for this. Preparation of new leases is resource intensive, but a standard template would be agreed, and would not be subject for negotiation with individual leaseholders. The new lease would replace the original right to buy lease, and there would be no option available for the leaseholders to subsequently revert to the old lease. This would need to be made clear to any leaseholder before a surrender and re-grant was agreed.

- 9.3 With a surrender and re-grant the only service charges leaseholders would be responsible for would be ground rent and buildings insurance, and for any communal services (such as electrical supply, caretaking or heating). The leaseholders would be responsible for organizing all building fabric repairs, including major works, and for paying the contractors directly. This could become problematic if the leaseholders could not agree on a schedule of needed repairs, which could lead to the Council having to step in to enforce the provisions of the lease.
- 9.4 All the leaseholders in the block would 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 leases the Council must 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.
- 9.5 The leaseholders would no longer benefit from the Council's repairs service and would have to procure and manage their own contractors.
- 9.6 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 should be replicated within the new lease to allow the council to take appropriate action as a last resort.

## **10 Windows**

- 10.1 As stated in paragraph 9.1, the Council is obliged to be responsible for windows in a right to buy lease. If the council did agree that leaseholders be allowed to install windows to their own flats the council would remain responsible for maintaining those new windows in future; any variation to the right to purchase lease would be void. There are a number of problems with granting permission for leaseholders to install their own windows and these are outlined below.
- 10.2 If certain leaseholders were allowed to install 'their own' windows (e.g. those on the ground/first floors who are most vulnerable and where access is easiest) then, when the council subsequently came to refenestrate the block, the fixed costs (e.g. scaffolding, insurances, site compounds) would be divided amongst fewer flats thus increasing their service charges. The alternative would be the cost falling on the tenants (those not able to afford owner occupation subsidising leaseholders putting their own windows in). The contract would be cheaper overall because variable costs (the cost of the window units) would reduce according to the number of self installed windows but the fixed costs would remain unaltered.
- 10.3 As with repairs, the contractual impediment could be resolved by a surrender

and re-grant under the lease, which includes within the new lease a covenant to the effect that when the block was refenestrated the then current leaseholder would pay a share of fixed costs (even if their windows were not replaced), and that the council could insist that new windows were installed by the leaseholders in future. 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.

10.4 As expressed above this solution would be expensive for leaseholders if agreed.

## **11 Management Issues**

11.1 The proposals outlined above would cause problems for the council in managing different lease clauses related to communal repairs, and of maintaining different window types of different ages in our blocks. There would be an indirect cost to this which would be likely to be picked up as a general overhead charged to all but those who no longer paid the relevant repairs costs. The other alternative would be to work out the annual costs of inspection and ensure that the new lease allowed for these to be charged directly.

11.2 The Council would need to ensure that the quality of ad-hoc and major repairs and the aesthetics of different windows or facades in a block was monitored, particularly if the condition of the block could have an impact on other Council owned dwellings or the appearance of an estate.

11.3 The Council would still be responsible for fire risk assessments, but the leaseholders would be responsible for carrying out any necessary remedial repairs. The new lease would need to allow for this to be enforceable, and the costs of such enforcement should then be borne by the leaseholders.

11.4 A mechanism for recharging fire risk assessments and any other retained management responsibilities would need to be defined in the new lease.

11.5 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 would be required, and the costs of such enforcement should then be borne by the leaseholders.

11.6 Where a leaseholder is given permission to install new windows, if the existing windows are poor, then the tenants and inaccessible leaseholders would complain that we are not complying with our statutory/contractual repair obligations. The policy to allow leaseholders to install their own windows would need to be subject to a strict and agreed criteria. This would need to cover property type and the floor level at which approval would be cut off. It would be impractical to allow a leaseholder on the 15<sup>th</sup> floor of a tower block to install their own windows, so should a leaseholder on the ground floor of that block be allowed to? It is recommended that if the council adopts the policy of allowing leaseholders to install their own windows that this is limited to leaseholders in street properties only.

11.7 The best windows today will not be the best in 10-15 years' time. Permission based on design; installation; work criteria etc. are expensive to manage/monitor and enforce. The policy would need to include the requirement to comply with fire safety and health and safety requirements, and define how this would be monitored and managed in the future, along with how such management should

be recharged.

If we allow leaseholders to install their own windows then consideration should be given to whether tenants should have the same opportunity.

## **12 Repair v Renewal**

- 12.1 Frequently leaseholders ask if the council can repair building elements rather than renew because, in their view, the costs could be cheaper.
- 12.2 This consideration brings into focus the two (often opposing) perspectives of long lease tenants and landlords. Leaseholders generally take the shorter view (5-10 years given that people move once every 7 years on average – more frequently at the bottom end of the market), while landlords take the longer ‘investment’ (reversionary) view
- 12.3 This later point is critically important for local authority landlords like Southwark which, are responsible for financing their own debt (capital expenditure mainly financed by borrowing over a 30 year timescale).
- 12.4 The main issue is a ‘cost in use’ exercise when renewals are mooted i.e. is it more efficient to renew and take a 30 year life or to repair/redecorate. This needs to be weighed against the wishes of residents (not just leaseholders). Using ‘cost in use’ methodology where repairs have been found to be more cost effective can also lead to criticism from residents who would prefer to see renewal rather than repair. Allowing leaseholders in 100% owned blocks to take on major works would pass the responsibility of whether to repair or renew to those leaseholders, as the effect of short term, rather than long term, investment would impact only those leaseholders in terms of market sale or rental value. However, as mentioned in paragraph 8.3 this could lead to neighbour disputes if the leaseholders disagreed on the most appropriate repair solution.
- 12.5 A policy to allow leaseholders in street properties to replace their own windows could be put in place, as the management issues are less of an issue. This would allow those leaseholders to make their own decision on whether to repair or renew their windows. If such a policy were agreed then the leaseholders would still be required to pay a full contribution towards the cost of any fixed contract expenditure where a scheme included more than just refenestration.

## **13 Policy implications**

- 14 As a new policy any 100% owned 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.
- 15 The policy would require a process to be put in place for inspection as described in paragraphs 8.2 and 10.1, and would require for inspection to ensure that any window renewal complied with the council’s quality, fire safety and aesthetic criteria.
- 16 The policy would require i-world to 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.

## **17 Community impact statement**

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

### **19 Resource implications**

20 There would be limited impact on Council resources as any work associated with the policy would be carried out by officers already in place. 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 100% owned blocks or street properties applied for a surrender and re-grant of their lease.

### **21 Legal implications**

22 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 the 100% ownership policy this responsibility would need to be passed over to the leaseholders.

23 If the Council were to pursue the option outlined in paragraphs 7.1 then a license would be required allowing the responsibility for major repairs and renewals to be carried out by the leaseholders.

24 If the Council were to pursue the option outlined in paragraph 8.1 then the newly granted lease would need to allow for the responsibility for all repairs and renewals to be carried out by the leaseholder.

25 The legal implications of this proposed policy are outlined in paragraph 9.1.

### **26 Financial implications**

27 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 should also provide for direct overhead costs relating to building inspections to be charged to the leaseholders in question.

28 Granting a new lease would mean that the leaseholder would no longer be eligible for the Council's service charge payment plans. The only way that the possibility of a payment plan would remain open is if the Council entered an agreement with the leaseholders chosen contractor whereby the Council paid the contractor in full, and then recharged the leaseholder. This recharge would also include an additional administration fee. This would be contrary to any new lease under a surrender and re-grant.

29 As described in paragraph 18 the policy would have limited resource implications, and therefore limited cost implications to the HRA..

30 The costs relating to the surrender and re-grant of the lease would be borne by the individual leaseholder.

31 There would be minor savings on window renewal contracts for street properties.

### **32 Consultation**

- 33 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 for approval.
- 34 A report on proposals to allow leaseholders in street properties to install their own windows was taken to Homeowner Council in 2011, where the proposal was rejected as representatives wanted it to be extended to leaseholders in larger blocks.
- 35 Should the Cabinet Member for Council Housing wish to develop a policy for both repairs in 100% owned blocks and allowing leaseholders in street properties to install their own windows then further consultation with homeowners representatives should be carried out.