

# Appendix 1

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 22 October 2013	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Homeowner Improvement Plan	
<b>Ward(s) or groups affected:</b>		All Wards / All Homeowners	
<b>From:</b>		Strategic director of housing and community services	

## FOREWORD

The Independent Housing Commission carried out a thorough and in depth review of council housing in Southwark, which was followed by an intense period of consultation with the borough's residents. One of the outcomes of that review was that the cabinet should consider how an action plan could be formulated for the continued improvement of leasehold management services for the council's 15,500 homeowners living in council property.

This report sets out that improvement plan and includes a wide range of proposals: their common thread is that they directly affect leaseholders and the service that the council offers to them. As such the plan covers the extension of the existing independent advice service and the delivery of an information centre for homeowners; a review and update of the documentation offered; and a review of the arrears recovery process. It notes that an online statement facility has been developed and is ready for implementation. It also includes three significant policy items for consideration.

The implementation of a buy back scheme will help assist homeowners who have fallen into a situation of financial hardship, while the option of fixed service charges has been investigated in line with an earlier report of the Housing and Community Safety Scrutiny sub committee on service charges. Lastly, the plan recommends a policy of selling the freehold reversionary interest in certain blocks where all constituent flats have been sold, in order to simplify the council's management commitments.

## RECOMMENDATIONS

1. That the Cabinet agrees the proposed homeowner improvement plan, including all subsidiary actions and recommendations below.
2. That the Cabinet notes the introduction by the maintenance and compliance division of technical officers, in line with the extra resources agreed in a previous decision of 14 May 2013. The roles will involve pre and post inspection of communal repairs and the 'real time' monitoring of accounts.
3. That the Cabinet notes a contract variation to the existing Southwark Citizens Advice Bureaux (CAB)-run service for leaseholders to include an additional

£22,000, over and above the existing budget of £26,504, enabling the provision of one full-time worker to extend the service to all areas of the borough.

4. That the Cabinet agrees the proposal to deliver a “homeowner information centre”, in order to create greater support to the homeowners’ council and the Leaseholders Association of Southwark 2000 (LAS2000) in responding to homeowners’ needs.
5. That the Cabinet further notes that service for the information centre would be effected by the creation of a service delivery contract between LAS2000 and Leathermarket JMB, in line with the business plan prepared by an external consultant, and would be funded from the existing homeowner involvement budget (the homeowners’ fund). The one full-time and one part-time posts created under the proposal will replace the existing two involvement officer posts, currently vacant, funded from the same source.
6. That the Cabinet agrees to delegate authority to the head of specialist housing services, as budget holder for the homeowners’ fund, to negotiate the information centre budget.
7. That the Cabinet notes the delivery in July 2013 of a system to enable the online viewing of service charge accounts, including invoice breakdowns, by customers, and the expected delivery by April 2014 of online access to unitemised repairs details, subject to corporate decisions on the development of online services.
8. That the Cabinet notes the proposal to update the homeowners guide in line with current policy, primary and secondary legislation, and case law. It is proposed to appoint an external consultant to lead the process, with the appointment subject to a separate gateway report.
9. That the Cabinet notes the formation of a working group to review the current debt recovery process to ensure that it is best able to balance the requirements of the council as landlord with those of homeowners who pay service charges.
10. The Cabinet agrees to the implementation of a buy back scheme, prioritising homeowners in danger of losing their homes because of financial hardship but also taking into account the other considerations listed in paragraph 104. The scheme is to be open to all resident leaseholders (with the exception set out in paragraph 106), not just those who originally exercised their Right to Buy.
11. To instruct officers to create appropriate procedures to implement the buy back scheme, including weighting the criteria set down in paragraph 104 and with relevant input from the homeowners’ council.
12. That the repurchase price in cases where the homeowner remains in occupation be set at 40% of the vacant possession value for the reasons explained in paragraph 107.
13. That, in the exceptional cases where vacant possession is gained, the purchase price should not exceed open market value.
14. That the scheme does not extend to repurchasing on a shared equity basis.

15. In accordance with points 48 and 116, that a minimum capital budget of £500,000.00 be allocated from within HRA capital resources for buy-backs during the 2014/15 financial year and that this figure be reviewed for subsequent years once demand and resource levels can be more accurately assessed.
16. To delegate approval of purchases to the Strategic Director of Housing & Community Services.
17. That the Cabinet considers whether to develop a policy to offer all leaseholders the option to surrender their current lease for a new lease on a fixed service charge basis. This offer would be a once-only offer to be kept open for a limited period.
18. That the Cabinet notes the benefits and drawbacks of making such an offer.
19. That the Cabinet agrees a policy to allow the sale at a discount to some or all of the leaseholders of the freehold reversionary interest in blocks where all constituent flats have been sold on long leases. This policy will reflect the changes to the general consents made by the Secretary of State pursuant to Part II of the Housing Act 1985.

## **BACKGROUND INFORMATION**

### **Introduction of technical officers (communal repairs)**

20. Communal repairs are an issue of extremely high importance to leaseholders; the most common complaints received are that communal repairs were either not done correctly or were not required. Addressing these problems should result in a substantial increase in leaseholder satisfaction.
21. As part of an overall strategy for transforming repairs services (also encompassing the new long term repairs contract and in-house customer services centre) the maintenance and compliance team is to introduce a team of technical officers. By taking responsibility for handling communal repairs, they will help ensure that leaseholders get value for money from the repairs service.
22. The matter has been subject to separate Gateway reports. Resources for the posts were agreed by Cabinet on 14 May 2013, with the consultation period ending on 28 June. Budget will be drawn from the HRA base.

### **Independent advice service for leaseholders**

23. For several years the council has funded an independent advice service for leaseholders, run by the Southwark Citizens Advice Bureaux (CAB). Approved by the then Executive on 5 April 2005, it was initially launched on a referral only basis in November 2006, and began accepting direct enquiries from leaseholders in 2007.
24. The service permits leaseholders to receive *pro bono* advice from solicitors on service charges, the terms of their leases, and related matters.

25. The service has seen a high level of use. A record of referrals made by the council's service charge collection team alone shows that 94 cases were referred between 1 July 2012 and 1 July 2013; this would not include independent approaches by leaseholders and referrals from other sources. Use of the service is likely to grow as the difficult economic conditions of the past few years mean that some homeowners find it increasingly difficult to meet service charge and other financial commitments.
26. Continued provision of the service is noted in the closed Gateway 2 report to the Cabinet Member for Communities and Economic Well-being, "Community Advice Services - Award of contracts from August 2013 to July 2016", dated 19 June 2013. Specifically, it is noted that an amount of £26,504 for boroughwide leaseholder advice forms part of the overall budget provision.
27. The current provision allows for one part-time CAB worker. This necessarily limits the amount of time that can be devoted to the service, which is currently administered along with generalist advice in the east area of the Borough under the CAB's contract. A full-time post would ensure that the service can be fully extended to all areas of the borough.

#### **Homeowner information centre**

28. The council has historically taken a progressive approach to maintaining a relationship with homeowners on its estates. This has encompassed the establishment of the homeowners' council, the creation of a homeowners' fund within home ownership services' budget (drawn from an amount of £10 yearly per leaseholder within the management fee), the funding of the CAB-run advice service noted elsewhere in this report, and a variety of other consultative measures.
29. Two full time involvement officer posts were created in 2010, with budget drawn from the homeowners' fund. The remit of the involvement officer posts included developing strategies to encourage homeowner involvement; supporting the establishment of Recognised Tenants Associations (RTAs); working with providers to secure training; and supporting the homeowners council. There has also been a longer term ambition to create a permanent resource or information centre for homeowners in order to fulfill the twin aims of supporting participation and enabling access to independent advice.
30. The homeowners' council has raised concerns that the previous location of the involvement officers within the council's establishment of staff meant that they were insufficiently independent of the council to fully address homeowners' priorities.
31. It has also been noted that there is still scope to enhance the range of information, support and participation opportunities accessible to homeowners. The Housing Commission Report of October 2012 noted a low level of satisfaction amongst leaseholders with opportunities for participating in the decision-making process, albeit most were neither satisfied nor dissatisfied (para 2.4.13). On a more general level, the London Assembly's March 2012 report "Highly Charged", covering residential leasehold service charges, identified a need for advice services and welcomed the development of independent information networks "as an important mechanism for enhancing leaseholder understanding" (para 7.18).

32. It has been proposed that the degree of independence desired by the homeowners' council will be best served by establishing the resource centre. Home ownership services have therefore engaged an external consultant to produce a detailed business plan, in consultation with LAS2000 and the homeowners' council. This has identified that the initiative can be delivered by one of the borough's established Tenant Management Organisations, Leathermarket JMB.

### **Self service portal**

33. The provision of a self service facility, to enable homeowners to check details of their service charge accounts online, has been considered an integral part of fulfilling the recommendations of the independent Grant Thornton audit of service charges. As such it has been planned to introduce this facility as soon as possible after the implementation of the Billing and Accounts Receivable (BAR) system for service charges, which went live in February 2012.
34. The report of the Housing and Community Safety Scrutiny sub committee on service charges, presented in March 2012 and approved by Cabinet on 17 April 2012, also included a recommendation to make account details available on line as an extension of the BAR system.
35. An online access facility enabling viewing of leaseholders' service charge accounts and details of the invoices sent to them was bundled with the Northgate software used to deliver the BAR system, and was in fact delivered at the same time as that system. However it had not been made live pending delivery of the corporate "My Southwark" platform, as the latter was intended to link all of the accounts and online facilities available to residents using a single login.
36. A facility permitting 'real-time' inspection of repairs as they are ordered is the goal of a second phase of development. Currently leaseholders may request a full breakdown of the repairs done at the time they receive the actualised costs (around 18 months after the commencement of the financial year in question). In the event of a leaseholder complaint regarding incomplete or poor quality repairs, the fact that the repairs details are only available 18 months after the work was carried out makes it difficult for the homeowner to provide effective evidence. As such 'real-time' repairs details will reinforce the objective of securing value for money in communal repairs noted in para. 21. Whilst such a 'real-time' facility is available for tenant accounts, provision of this information for leaseholder accounts will require further scripting work by the software provider.
37. Delivery of the "My Southwark" platform, enabling integration of the Northgate software, is pending at the time of writing.

### **Homeowners guide**

38. The homeowners guide was first produced in 2006 in response to a perceived need for a single reference which set out clearly and in detail all the rights and obligations pertaining to leasehold and freehold ownership of former council properties. Sufficient numbers were printed at the time to ensure that all owners of such properties could be sent a copy.

39. Since that time, numerous changes have taken place in both primary and secondary legislation. Furthermore, developing case law and changes to policy have had a substantial effect on the way service charges are billed, while departmental restructuring has resulted in some alterations to the business units and processes described. As a result the guide is in urgent need of an update.
40. The guide contains a substantial amount of information and any complete update would be a major piece of work. The most appropriate method of delivery will also need consideration, given the shortcomings of maintaining a large paper-based document in an environment where policy is continually developing.

#### **Review of current arrears process**

41. Home ownership services staff have received some complaints from both leaseholders and Members to the effect that the current debt recovery process is too “robust”.
42. The process has already been reviewed in January 2012 by both the Scrutiny committee and by the then Director of Legal and Democratic Services; both concluded that the recovery actions were proportionate and appropriate. However, officers recognise that this is an area of continued concern and it is right that it is subject to further review. As such a further review of the process is being conducted, however this time as well as involving Members, and officers from home ownership services, the review will include homeowners themselves so that we can test the service more fully from a customer focused perspective.

#### **Buy back policy**

43. In 1995, as part of a package of assistance to local authority leaseholders, the then Department of Environment introduced a 'flat swap' scheme for Right to Buy (RTB) leaseholders which gave financial incentives for local authorities to buy back leaseholders' flats in order to sell them alternative properties. The Department of Environment, Transport and the Regions built on this principle by introducing (effective from 1 April 1999) new incentives for local authorities to buy back ex-council properties, sold under RTB, which are not linked to selling the resident owner-occupier alternative accommodation. The old 'flat swap' scheme was abolished despite it being financially more advantageous (but less flexible) for local authorities.
44. The financial incentive for housing authorities to operate a hardship repurchase scheme was increased under regulations introduced from 1<sup>st</sup> April 2004.
45. The original financial incentive was set down in Statutory Instrument 2003 No.3146 The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003. The basic incentive was that local authorities were able to pool a percentage of their annual costs, over £50,000, of administering and buying back ex council properties and offset this amount against the set aside for capital receipts. In other words, councils got to keep and reinvest more of the money received from the sale of council housing under the Right to Buy.

46. Southwark council's Executive approved a buy back policy in March 2004, under which 6 of properties were eventually repurchased. The scheme was extremely popular and funding was exhausted by the middle of 2005. Since this time, no further funding has been made available and the policy has therefore remained dormant.
47. In April 2012 the government introduced a policy of 're-invigoration' of the right to buy scheme, increasing the statutory maximum discount available to £75,000.00 from £16,000.00. This amount was further increased (in London) to £100,000.00 in March 2013.
48. RTB receipts are now subject to revised pooling arrangements. Central Government receives approximately what it would have done at the previous sale level and old 75%-25% pooling arrangement. Southwark is then able to retain the remainder of RTB receipts, split into elements for transaction costs, previous level of corporate receipts under the old 25% pooling arrangement, a set-aside for HRA debt repayment and a remainder, 6.5% based on buyback activity and 93.5%, subject to formal agreement (the 'local delivery model' in Southwark's case), able to be used to fund new build dwellings. The buyback element is currently estimated at over £700,000 in 2013/14 and over £500,000 p.a. thereafter although this is wholly dependent on the actual number of RTB sales that complete.
49. Capital receipts from the sale of council flats and houses under the RTB are set to continue to rise because of an increase in sales directly attributable to the increased maximum discount.
50. The service charge construction and collection regime continues to take effect. In 2013/14 revenue estimate service charge billing in February 2013 was £15.9 million, with £2.4 million billed for 2011/12 actuals in October 2012. Major works billing in February 2013 totalled £10.5 million. However, the proactive collection of service charge debt (£24 million in 2010/11, £23.6 million in 2011/12 and £25.7 million in 2012/13) routinely uncovers cases of leaseholders who simply cannot afford owner occupation. This spans all demographics. Members have previously indicated that they would not want to see leaseholders lose their homes as a result of (albeit proper and thorough) debt management action. Given the pressure on the housing stock there seems little sense in allowing residents who are vulnerable and will not be considered intentionally homeless, to be evicted, often by their mortgagees going into possession, with their homes being auctioned to clear the debts.
51. The council's vision for Southwark, 'A Fairer Future for All in Southwark' sets the context for how the council can better support homeowners who are currently facing financial hardship. As well as committing to 'always support and champion the most vulnerable in the borough', the Fairer Future promises include a commitment to make every council home 'warm, dry and safe'. The 5 year housing investment programme is an ambitious major works programme which will deliver the warm, dry and safe pledge. As well as improving the quality of residents' homes, for homeowners the works will increase the value of their asset. However there is a group of council homeowners, mainly elderly leaseholders, who can no longer afford owner occupation. Each year they fall further into debt and their homes more into disrepair. This situation is exacerbated by the delivery of the warm, dry and safe programme which sees service charges of over £20,000 as a regular occurrence. Indeed, on some

high investment needs estates, the bills could be much higher.

52. Previous Government advice has emphasised that authorities should use the earlier financial incentive to alleviate the 'cost of managing leasehold property with serious service charge arrears 'and in 'helping someone whom they might otherwise soon need to re-house'. It is therefore suggested that a refresh of buy-back policy, against the background of the changes to the Right to Buy detailed above, could assist homeowners in real financial difficulty and who could face the loss of their home. It is suggested that any scheme is concentrated on owner-occupiers facing financial hardship and who risk eviction and would subsequently present as homeless. This would inevitably mean resident leaseholders with substantial service charge and other debts.

### **Fixed service charges**

53. On 12 July 2011 the Housing and Community Safety Scrutiny sub committee agreed to carry out a scrutiny of 'leaseholder charging' (of the council's leaseholders) in the borough. At its meeting on 11<sup>th</sup> October 2010, the Deputy Leader and Cabinet Member for Housing had said that he wanted to ensure that leaseholders were being treated fairly and that it would be useful for the sub committee to investigate the issue. The sub committee co-opted members from Southwark's Home Owner Council and LAS (Leaseholders across Southwark) 2000 and reported in March 2012. On 17<sup>th</sup> April 2012 the cabinet approved the report including its 14 recommendations. One of these recommendations was that:

*"The sub-committee accepts that it would be sensible to investigate further offering leaseholders the option of a fixed service charge which incorporates both the annual services charge and major works service charges. The cabinet member and director should be urged to review counsel's advice already received, make a thorough assessment of the financial implications for the council, and see whether any difficulties need to be overcome in order to make this option available to leaseholders".*

54. The sub-committee further required that it or its successor should return to the subject of 'leaseholder charging' in twelve months to assess progress made on the recommendations contained within the report.
55. In the officers response it was confirmed that Home Ownership Services had held an initial meeting with the Head of Legal Services to appoint a suitably experienced counsel to discuss the feasibility of the scheme. It was agreed that if there was no impediment and the Cabinet assented, then Home Ownership Services would offer all leaseholders the opportunity to surrender and renew their lease on a fixed service charge scheme. If the scheme was to be implemented then the fixed service charge would need to encompass both the cost of providing day to day services and ad-hoc major works.

### **Sale of freehold reversionary interest**

56. The Leasehold Reform Housing and Urban Development Act 1993 ("the Act") provides leaseholders with the right to collectively purchase the freehold of the block in which they live provided certain criteria are met. However, any application made under the Act must adhere to the detailed procedures set out in the legislation. The procedure is rather complicated to the extent that it is



often necessary for leaseholders to incur professional fees at an early stage in order to submit the relevant notice in the correct form.

57. The criteria that must be met in order for leaseholders to purchase the freehold of their block under the Act are numerous and apply to both the leaseholders and the block. The most important criteria are as follows:
- At least two thirds of the flats in the block are sold on long leases.
  - The minimum number of leaseholders participating in the purchase must equal at least half the total number of flats in the block and where there are only two flats both leaseholders must participate.
  - No more than 25% of the block is commercial.
58. As an alternative to the statutory route detailed above, the Council may dispose of their freehold reversionary interests under S.32 Housing Act 1985. Under S.32 the government sets out the situations where Councils do not require the consent of the Secretary of State before disposing of Council housing stock and land. These situations are set out in the General Consents.
59. Since 1985 there have been a number of versions of the General Consents and the Council has had the power to voluntarily sell their freehold interest in a block since 1994. The General Consents 2005 provided the Council with restricted powers regarding the sale of their freehold interests as any sale had to be to all leaseholders in equal shares for the best consideration that could be reasonably obtained. If the block contained tenanted flats then the General Consents stated the tenanted flats were to be leased back to the Council on 999 year leases.
60. There are a number of issues which arise on a sale of a freehold when there are tenanted flats in the block. Firstly, the Council will be under a duty to ensure the service charges for the block, as calculated by the new freeholder, are reasonable before paying these charges. Secondly, the new freeholders may insist on a higher standard of management for the block at a greater cost to the Council. Lastly, there are a number of legal difficulties to overcome. For example, the covenants in the lease may not match the terms of the secure tenancy and this may result in the tenant breaching a covenant of the Council's lease but not being in breach of his tenancy agreement. This would put the Council at risk as the freeholders may commence forfeiture proceedings for breach of covenant but the Council having no powers to ensure the tenant complies with the lease.
61. In 2006, following the Government revising the General Consents in 2005, the Executive Member for Housing agreed delegated authority to the Director of Housing to:
- I. negotiate and agree voluntary disposals of the Council's freehold interests where all the flats in the block are sold leasehold;
  - II. adopt a proactive approach to disposing of these freeholds including writing to the leaseholders; and
  - III. only dispose of its freehold interest in blocks which contain tenanted flats when required to do so and to deny the right to enfranchise if possible for the reasons stated in paragraph. 5 above.
62. When disposing of a freehold under the General Consents there are no

requirements as to the form of notice the leaseholders must serve and no statutory time limits to meet. As a result, there is less need for leaseholders to seek professional advice prior to serving the requisite notice and costs are therefore reduced. Given the above, it is the Council's preference to, wherever possible, dispose of freeholds under the General Consents rather than requiring leaseholders to apply under the Act.

63. In accordance with the policy agreed by the Executive Member for Housing, as detailed above, the Home Ownership Unit wrote to the leaseholders of blocks which contained only leasehold flats in 2006 enquiring whether they wished to purchase the freehold of their block.
64. Despite taking a proactive approach to selling the freeholds of blocks where all the flats are leasehold there have been a limited number of sales. Between 1<sup>st</sup> April 2006 and 31<sup>st</sup> March 2013 the Council disposed of 43 freeholds of blocks solely made up of leasehold flats. This represents approximately 12% of the buildings which are solely leasehold.
65. The premiums for the freeholds sold between 2006 and 2013 ranged between £2,000 and £14,500 and the average premium was approximately £8,500. In addition to the premium, leaseholders are required to pay the Council's administration fee, which was £175 between 2006 and 2010 and is now £224, as well as legal and valuation costs for both themselves and the Council. Provided the matter is not unduly complicated the Council's legal fee is currently £314 and was £295 between 2006 and 2010. The Council's valuation fee is usually £500.
66. The premium for a freehold disposal is calculated with reference to the ground rent and the number of years remaining on the leases. If a lease has less than 80 years remaining then the leaseholder would have to pay 50% of the extra value a share of the freehold would add to the property. However, as the earliest Right to Buy leases were granted by the Council in 1980 for a term of 125 years the minimum number of years remaining will be 92 years. As a result the premium will be calculated with reference to the ground rent and the value of the reversionary interest as detailed in paragraph 12 below.
67. An example of how a premium for a freehold disposal is calculated is set out below:

Current value	£175,000	The market value of a flat without a share of the freehold
Unexpired term	100 years	The number of years remaining under the lease
Ground Rent	£10 p.a.	
Yield Rate	6%	Investment return for the rental yield
Reversion Rate	5%	The reversion rate is used to calculate the expected value of the property on the expiry of the current lease. A 2008 legal case stated the reversion rate is to be 5%.

68. Prior to the disposal of the freehold of a block the Council stands to receive rent for the next 100 years and ownership of the property when the leases

expire. The valuation calculation is designed to compensate the Council for both of these elements:

- Rent – the ground rent of £10 is deemed to be worth 6% less on a yearly basis until the expiry of the lease. These future payments of ground rent are therefore worth £166 today at the 6% yield rate.
- Reversion interest - this is calculated by discounting the value of the block, which if there were two flats in this block would be £350,000, by 5%, the reversion rate, 100 times cumulatively to represent the 100 years remaining under the leases. This gives a reversion value of £2,662.

Therefore the premium for the sale of the freehold based on the above figures would be £2,828, being £166 + £2,662.

69. One of the reasons for the low level of sales of freeholds between 2006 and 2013 was the requirement that any sale of the freehold had to be to all leaseholders in equal shares. It was often the case that whilst one leaseholder in the block wished to proceed with the purchase of the freehold, others either did not wish to do so or did not have the available funds to acquire an equal share.
70. There are a number of benefits for leaseholders from owning a share in the freehold of the block in which their flat is situated. On purchasing the freehold, leaseholders will be responsible for managing the block and determining the timing, cost and contractor when carrying out repairs and major works. In addition, once leaseholders have purchased the freehold they will no longer require the Council's consent when undertaking alterations to their flat.
71. The benefits listed above will appeal to many leaseholders who wish to make individual decisions regarding the management of their block. Many leaseholders do not wish their block to be managed by the Council and be forced to utilise the Council's repairs service for remedial works to the structure and communal areas and also be part of major works projects when the timing and cost is dictated by the Council. Leaseholders will also benefit from it being easier to obtain a mortgage on a flat which includes a share of the freehold as mortgage companies perceive there to be less risk and therefore their property is more marketable.
72. Due to leaseholders having the legal right to extend their lease for an additional 90 years it is very unlikely a leaseholder will allow their lease to expire as their property would then revert to the Council. In addition, there is no restriction on the number of times a leaseholder may extend their lease by 90 years. As a result, the Council will be required to manage blocks made up solely of leaseholders in the future despite there being little prospect of any flats reverting to the Council's ownership.
73. The Council currently owns the freehold of 313 blocks which are made up solely of leasehold flats and is responsible for managing these blocks despite the fact that the block contains no social tenants. The management of the block includes:-
  - i) Responsibility for repairs to the structure of the block and communal areas;

- ii) consulting on and undertaking major works projects for the blocks;
  - iii) carrying out fire risk assessments for the block and any necessary works;
  - iv) constructing and collecting service charges for the leaseholders;
  - v) dealing with any complaints from the leaseholders; and
  - vi) providing consent to any alterations carried out by the leaseholders
74. Although the Council is able to recover costs through the service charge provisions in the lease there are significant management costs in undertaking the responsibilities listed above.
75. The report which accompanied the Executive Member for Housing's decision in 2006, detailed above, questioned whether the Council should be managing blocks which do not contain secure tenants if they have no duty to do so. The report concluded that the Council should not be doing so for the reasons set out below.
76. The Council's primary function as a landlord is as a social landlord. The management of blocks which do not contain social housing is arguably outside the remit of a social landlord. Managing blocks with no social housing places additional strain on the Council's resources, particularly the repairs and investment teams, and the cost to the Council is often greater than the 10% management charge the Council may add to the leaseholder's service charge demands.
77. On a sale of the freehold of a block to the leaseholders, the Council is released from the management responsibilities listed in paragraph 73 above and the leaseholders become responsible for managing the block. Where the block forms part of an estate on any sale of the freehold the Transfer will allow the Council to recover a fair proportion of estate based service charges such as estate lighting and grounds maintenance from the new freeholders.
78. The income the Council foregoes on the sale of a freehold of a block is the ground rent (which in 99% of cases is £10 p.a.), income from permission requests, the management fee of 10% which is added to the service charge costs, the administration fee from arranging the insurance of the block, the premiums from any ad-hoc disposals to the leaseholders, such as lofts and basements, and premiums from for any future lease extensions.

## **KEY ISSUES FOR CONSIDERATION**

### **Introduction of technical officers (communal repairs)**

79. The key issues are covered in the separate report to Cabinet approved on 14 May 2013.
80. It should, however, be noted that the current projection is for the recruits to be in place by September – October 2013. This may be put back to December 2013 if the first round of recruitment does not identify a high calibre of applicants of the role.

### **Independent advice service for leaseholders**

### **Policy implications**

81. The support of a full-time CAB post is a continuation and extension of the council's existing policy of supporting independent advice for leaseholders.

### **Staffing implications**

82. There are no staffing or other resource implications for Southwark. The decision has involved varying the existing contract with Southwark CAB.

### **Financial implications**

83. The contract variation allows an extra £22,000 per annum over 3 years. This will be drawn from the General Fund budget.
84. It should be noted that the contract has already been varied, with agreement to make the funds immediately available. This has been carried out due to internal CAB staffing issues.

### **Homeowner information centre**

#### **Policy implications**

85. The development of a resource centre is a continuation of the council's existing policy on homeowner involvement, and will reinforce the council's objective of encouraging involvement at all levels.

#### **Staffing implications**

86. Two existing involvement officer posts within the tenant management initiatives business unit of specialist housing services will be deleted; the posts are currently vacant. Administrative duties in supporting homeowners' council will be taken over by a post created within specialist housing services.
87. Under the proposal, the remaining duties of the involvement officers will be taken over by one full-time and one part-time post administered by Leathermarket JMB.

#### **Financial implications**

88. The budget for the proposals will be sourced from the homeowners' fund, as noted under 'Background', above. The fund is intended to support homeowner involvement and its use in this matter is supported by the fund management committee.
89. The business plan has estimated that, based on the current annual budget (£142,670 in 2012/13), "about £100,000" will be available to fund the information centre costs after the fund's other commitments, largely TRA contributions, have been met. The plan also estimates that revenue costs (staffing, rent, etc) will total approximately £100,000, with capital (startup) costs of an additional £11,000.
90. The head of specialist housing services is the current budget holder. Approval is therefore sought to enable the head of specialist housing services to

negotiate the budget released for the information centre from the homeowners' fund.

### **Consultation**

91. The proposals and final business plan have been developed in close conjunction with the homeowners' council and LAS 2000.

### **Self service portal**

#### **Policy implications**

92. The provision of such a facility is a continuation of the existing policy of transparency in service charge costs, and would assist in fulfilling the recommendations of the audit of service charges conducted by Grant Thornton.
93. It would, furthermore, support the recommendations of the housing and community safety sub-committee scrutiny report of March 2012 which stated "steps should be taken [...] to make available online details of major works and annual service charges relating to individual leaseholders. Leaseholders would then be able to see an on-going calculation of the charges being levied and to hold the council and its contractors to account for works which are being charged for".

#### **Staffing and resource implications**

94. The first phase of the portal, permitting the viewing of service charge accounts and annual service charge invoices, has been developed and is ready for introduction, so no further staffing or resource issues remain. However its introduction is dependent on the "My Southwark" portal going live, so may be subject to any resource issues affecting the latter.
95. The second phase of development is partly dependent on the introduction of the technical officers (communal repairs) mentioned previously, as these staff will be responsible for investigating the repairs queries which will be generated by the ability of leaseholders to view repairs in real time. The current timescales indicate that these staff will be in place well before the introduction of this facility.
96. The second phase will also require additional development resources. However as noted above, commitment will be dependent on corporate IT infrastructure development.

### **Homeowners guide**

#### **Policy implications**

97. No specific policy implications have been identified.
98. Specialist housing services is engaging an external consultant to rework the guide and to make appropriate recommendations as to the most effective format. The work is targeted for September through October 2013.

## **Financial implications**

99. The value of the consultancy services is less than £5,000. Accordingly the Gateway 1 report on the consultants' appointment has been approved by the head of specialist housing services, in line with the council's Contract Standing Orders, with budget drawn from the HRA carry forward.

## **Review of current arrears process**

### **Policy implications**

100. No specific policy implications have been identified.
101. The remit of the working group is defined as covering the council's arrears process and letters and it will not be considering wider service charge issues. However, the group will make more general recommendations on customer service as appropriate and these may encompass both written and telephone communications. Although for technical reasons it has not been possible to record calls to specialist housing services in the past, the council is currently investigating the feasibility of achieving this using the telephony platform deployed at Queens Road Peckham.

### **Staffing and resource implications**

102. Administration of the working group will be carried out by specialist housing services and will not require any additional resources. It should, however, be noted that any potential relaxation in the arrears process could have a corresponding effect on the level of arrears.

### **Consultation**

103. It is proposed that the working group includes leaseholder representatives, representatives from homeowners council and councillors, as well as staff from specialist housing services.

### **Buy back policy**

#### **Policy implications**

104. In terms of eligibility and prioritisation, no changes to the terms laid out in the original buy back policy are proposed. The proposed scheme will be administered by the Home Ownership Unit in the Specialist Housing Services Division whose staff will identify leaseholders who are facing financial difficulty and place them on a waiting list for repurchase. Priority will be given to leaseholders in immediate danger of losing their homes but the following factors will also be taken into account in assessing relevant priority:

- age
- disability
- total debt
- income of household, including an assessment of outgoings
- future service charge liabilities
- whether or not the leaseholders were put on notice of service charge liability when they purchased

- suitability of current accommodation (overcrowding or under-occupation)
  - need for sheltered accommodation or social services care accommodation
  - length of time on the repurchase waiting list
  - mortgageability of property (value)
  - whether or not the leaseholder is in occupation
  - benefit to the Council (purchase price, size of accommodation etc).
105. It is important to note that it may not always be appropriate to wait until leaseholders are in debt to consider repurchase. Vice versa in assessing relevant priorities, action will be taken to secure outstanding debt by way of a voluntary charge on the property until relevant priorities enable a property to be repurchased.
106. Any current owner occupier can remain in the property after repurchase as a secure tenant. The parameters set out above mean the scheme will only be available to non resident owners in exceptional circumstances, for example an elderly leaseholder in care. In these circumstances additional criteria will have to be taken into consideration such as whether or not vacant possession of the premises can be obtained and whether social services have put a charge on the property in respect of their residential care costs.
107. The governments Beacon Approach to Stock Valuation for Resource Accounting, published in 2011 gives guidance on regional variations as to the value of local authority tenanted stock. The sitting tenant (ST) value of local authority stock in London has decreased from 50% of open market vacant possession value to 25% since 2000. The changing adjustment factors reflect changes in the housing market during the period in question; it should be noted that Southwark Property adheres to the relevant adjustment factors in stock valuations, and that the Government periodically reviews them.

2000 – 50% open market value  
 2005 – 37% open market value  
 2012 – 25% open market value

Government advice states that tolerable divergence runs at +/- 5%, but even at this level (max 30%) a sitting tenant buy back scheme in Southwark would be neither attractive to home owners nor in many cases feasible even if it were attractive. The sum paid by the council to the home owner has to be sufficient for the registered property title to be returned unencumbered.

SHS has considered what other local authorities do. Lambeth's buy back policy has also been unfunded for a number of years, but when in place, the price paid for buy backs was the price the home owner paid when they first purchased the property. This approach seems to disregard normal market valuation principles and particularly the Beacon Approach and would not work in Southwark 2013 for the reasons set out in the preceding paragraph.

Camden's policy remains funded. However, Camden adhere strictly to the valuation principle set out in the Beacon Approach and apply the 25% ST value rule. On average Camden has as a result completed less than one buy back per annum since 2007. Again, a different approach is needed in Southwark.



The recommendation is that in order for the scheme to be feasible, the price payable for a lease surrender under the buy back scheme is 40% of the open market vacant possession value.

108. In return for the repurchase price, Southwark will benefit from the new rental stream and the cost of the repurchase (plus the administrative cost) can be offset against RTB capital receipts. These considerations are in addition to the benefit of preventing an often elderly or vulnerable leaseholder presenting as homeless. In these circumstances it is not proposed to set any cap on the sitting tenant repurchase price. In the majority of cases capital offset and the rent will mean that repurchase will be beneficial to the HRA.
109. It is proposed that the conveyancing process is carried out by the council's external solicitors, currently Paris Smith of Southampton who are already under contract to provide this service at a unit cost per case.
110. Although the original advice from government focuses on assistance to leaseholders facing severe difficulties, it also makes it clear that the financial incentive was still applicable if buy backs were undertaken to generate an extra property for letting. When considering leaseholders who are not in financial difficulty, it needs to be borne in mind that there may be some leaseholders who are experiencing difficulty in selling on the open market because their properties are unmortgageable and that a keen price can be negotiated with vendors in these circumstances. In addition, larger properties may become available at a price below what it would cost to acquire a similar property by other routes, such as via a social landlord. Such cases would however attract a far lower priority than assisting resident home owners in immediate danger of forfeiture and/or repossession.
111. Consideration has been given as to whether or not the proposed repurchase scheme should include repurchasing only a part of the owner's equity, leaving them as shared equity owners paying rent on the repurchased portion. It is recommended that at present the scheme should not include such an option because under powers conferred by the Housing and Regeneration Act 2008, the council adopted a policy in January 2010 to offer leaseholders facing large major works bills the payment option of an Equity Loan or the sale of an Equity Share to the council.
112. The grant of a secure tenancy subsequent to the surrender of a lease or transfer does not constitute an allocation for the purpose of the council's Lettings Policy. Members have however asked whether in time an alternative model could be introduced under which the local authority effects buy backs through at 'arms length' through a mortgage rescue type organisation.
113. Senior managers in Specialist Housing Services will undertake to address this as part of a wider future proposal on using private sector finance to procure units for homelessness prevention
114. The sitting tenant from whom the council buys back (and any future secure tenants for that matter) will still have the Right to Buy. This is an area of risk because of the recent increase in RTB discount to a maximum of £100,000.00.
115. Anyone who exercises their RTB a second time has a limited discount

entitlement – it will be limited to (a maximum of) £100,000.00 less any previous discount. When the statutory maximum was £16,000 this would have more often than not meant no further discount was available. However, with the new maximum being so much greater, it is almost certain that some additional discount will be available. One mitigating factor is that the costs of buying back (acquisition) will be fully included in the cost floor determination and this should drastically reduce the discount available for ten years after repurchase.

### **Financial implications**

116. It is proposed that initially a sum of £500,000.00 be allocated from the capital resource noted in paragraph 48 above and to be agreed via the Housing Investment Board. It is anticipated that this will be sufficient capital to repurchase 6 to 8 properties. However officers will assess the demand for buyback and will report back to cabinet on the progress of the scheme after the first 6 months of operation.
117. There will be a beneficial effect on the Housing Revenue Account from the additional rent income due from properties brought back into Council ownership.

### **Staffing implications**

118. The post of Buy Back Officer (Hay 8) was not filled when last advertised in spring 2007 and was subsequently deleted under Phase 4 of the Home Ownership Services re-organisation.
119. There are two Acquisitions Officers (Hay 8) in Specialist Housing Services, whose role it is to administer the financial assessment process for home owners in the borough affected by regeneration and who have for re-housing assistance under the council's Lettings Policy. The assessment process is very resource intensive in terms of the time that must be devoted to each applicant and to verifying the details provided by applicants. These officers have the relevant skills and experience to administer a general boroughwide hardship re-purchase scheme. Having said this, a buy back scheme will need extra staffing resources.
120. The Acquisitions Officers are currently working on the live phases of the Heygate, Elmington and Aylesbury regeneration schemes. In addition an out of phase buy back scheme on the Aylesbury Estate was agreed by the Cabinet Member for Regeneration in May 2013 and will run through the 2013/14 and 2014/15 financial years. It is also likely that a further rehousing phase will commence once the Aylesbury development partnership agreement is signed in early 2014. SHS will need to re-establish the Buy Back Officer post in order to operate this general boroughwide hardship repurchase scheme. The recommendation is for a fixed-term post to be established for a period of one to two years preferably to be filled through the secondment of an appropriately experienced member of staff from within the council.

### **Regeneration implications**

121. Since the 2004 Buy Back report, the Cabinet (formerly Executive) has made a series of decisions dealing with the phased regeneration of 3 Estates (The Heygate, Aylesbury and Mid-Elmington) as well as a separate decision to

decant a tower block in Rotherhithe (Maydew House) in order to undertake extensive refurbishment works . Each of these decisions requires the re-purchase of leasehold and freehold interests from home owners.

122. The terms and the financing of re-purchase under regeneration schemes are dealt with in considerable detail by the relevant policies for each estate and accordingly it is recommended that buy backs under the scheme proposed by this paper exclude home owners affected by existing regeneration policies.

### **Community impact statement**

123. This decision will have a positive impact on local people and communities and seeks to directly address the six strands of the council's equalities agenda. Its purpose is to address financial hardship and prevent homelessness across all ages, religions, genders, ethnicities, sexual orientations and physical abilities within the council's portfolio of sold properties. It is however important to note that the number of households that will be able to be assisted through this scheme is small at between 6 and 8 per annum. The merit of individual applications will be assessed with the urgency of preventing homelessness at its core.

### **Consultation**

124. The terms of the former buy back scheme, the funding for which ended in 2005, were agreed in consultation with the Leaseholder Council (now Home Owner Council). Whilst it is proposed that a degree of input into the running of the scheme (referrals and so on) is sought from Home Owner Council and the Southwark CAB it is not recommended that a new round of consultation is carried out as the main terms of this refreshed policy are not changing.

### **Fixed service charges**

#### **Policy implications**

125. Within a ring-fenced housing revenue account it is imperative that homeowners pay their fair share of the cost of services and management, including repairs. If homeowners do not pay their fair proportion then the burden falls on the rent payers and indirectly on the general public. It is inequitable that the cost of home ownership should be subsidised by those who cannot afford owner occupation.

#### **Legal implications**

126. Specialist Housing Services obtained counsel's opinion on whether or not the council would be able to offer leaseholders the opportunity to surrender their current lease in exchange for a new lease with fixed service charges.
127. The position is in summary that there is no legislative reason as to why a fixed service charge lease could not be offered to current leaseholder, although the proposal would only be practicable if the base figure for service charges payable in year one was accurate, and the assumptions made on the scope of the service did not vary much or at all over the lifetime of the fixed charge. Further considerations are contained within the closed version of this report relating to this item.

## Financial implications

128. In Southwark there is sufficient cost history to be able to calculate an average service charge (be it an average for a service; an average for a block or a block type etc). To this could be added a unit management charge and a charge to reflect major works costs. The major works element would be set to reflect the cost life cycle of a block (ie its component elements). This is available because the council has to have a thirty year business plan. This will reflect the landlord's obligations over the length of the lease. This 'initial fixed service charge' for the flat would then be subject to inflation. It is common valuation practice to undertake discounted cash flows over long periods. The fixed service charge would be set at a level to reflect the council meeting its contractual obligations rather than not having the money to meet them. They could be set for archetypes across the stock rather than reflect the condition of each individual block and its investment profile.
129. The methodology would give the leaseholders certainty - they would know in advance what their liabilities will be. They would not be surprised by a sudden increase in fuel costs or worried by the costs of a major repairs contract.
130. For the landlord there is some payback for accepting some of the risk. Fixed service charges are far simpler to manage: they are not covered by sections 18 – 30 Landlord and Tenant Act 1985 and therefore section 20 consultation does not apply; neither does the 'reasonableness' of the service charge or application to the First Tier Tribunal.
131. It has to be stressed that the introduction of fixed service charges has to be seen as 'cost neutral' to the HRA; otherwise tenants will complain that their rents are subsidising the leaseholders. Thus the 'initial fixed service charge' must be set at a level that will recover costs over time and over the stock as a whole, levelling out extraordinarily expensive expenditure in any one year.
132. There may be instances where a leaseholder wishes to enter into an agreement to pay a fixed service charge where extensive major works, and therefore high service charges, are due in the near future. In these instances it would appear that the HRA is making an immediate loss of income. However, the income is actually being spread over a far longer period (30 years based on standard life cycle costings for most elements), which the leaseholder will be required to pay whether or not costs are actually incurred in any individual year. The proposal is to make a "once only" offer to leaseholders and therefore only a few would have major works imminent. The proximity of major works would (in cash flow terms) affect the initial fixed service charges.
133. Fixed service charges cannot be 'imposed' on existing leaseholders who have variable service charge covenants in their leases. We could offer the alternative to leaseholders which would be dealt with by a variation to their lease. Leaseholders would have to get their own independent legal advice and it would have to be made clear that there would be no opportunity to 'switch back' to variable service charge regime e.g. after major works were carried out.
134. It should be noted that there is a risk if a leaseholder with fixed service charges made an application for a lease extension, as the fixed charge might be considered "rent" for the purposes of Chapter II of the Leasehold Reform

Housing and Urban Development Act 1993, though no useful case law exists on the issue. Furthermore should a leaseholder with a fixed service charge lease subsequently apply for a lease extension the fixed service charge element would have to be capitalised as part of the purchase price. The HRA would receive a single lump sum payment for all management and maintenance costs over the lifetime of the extended lease and this sum would have to be treated as a capital receipt.

### **Sale of freehold reversionary interest**

135. As stated above, the 2005 General Consents provided the Council with restricted powers to sell freeholds as any sale had to be to all leaseholders in the block in equal shares “for the best consideration that can reasonably be obtained”.
136. In contrast to the 2005 General Consents, the General Consents 2013 allow the Council to sell the freeholds of blocks for “such consideration as the local authority consider appropriate” provided at least 50% of the flats in the block are leasehold and any tenanted flats are leased back to the Council on 999 year leases.
137. By removing the 2005 General Consents restrictions of “best consideration” and selling the freehold to “all leaseholders in equal shares”, the 2013 General Consents provides the Council with far greater freedom when disposing of their freehold interests. The Council is now free to negotiate with any prospective purchaser and may offer freeholds for sale at a discounted premium.
138. There is no requirement in the General Consents 2013 that the freehold be sold to the resident leaseholders and therefore the freeholds may be sold on the open market.
139. The Executive Member for Housing was briefed on the new powers provided to the Council under the General Consents on 19<sup>th</sup> June 2013. The Executive Member for Housing agreed that the Council would not proceed with open market sales of the freeholds of blocks which only consisted of leasehold flats. In addition the Executive Member for Housing agreed to continue with the 2006 policy for the sale of freeholds as detailed previously in this report.
140. As the Council may now dispose of freeholds at a premium they consider appropriate, the Council may offer the freehold to the leaseholders at a discount. Any discount in the premium would take in to account the Council’s future management responsibilities for the block and the respective cost as detailed above. It is proposed that the discount in the premium is to be determined on a case by case basis by the Strategic Director of Housing and Community Services.
141. If the proposal is agreed the offer letter to the leaseholders will reference the premium, the proposed discount and the Council’s fees for which the leaseholders will be responsible. The letter will also stipulate a date by which the leaseholders are to notify the Council if they wish to proceed and, if so, which of them wish to participate in the purchase of the freehold.

### **Policy implications**

142. The Council's existing policy, as agreed by the then Executive Member for Housing in 2006, is to proactively market its freehold interests in blocks to leaseholders where all the flats are leasehold.
143. The recommendations in this report are consistent with existing policy and reflect the revised powers granted to the Council under the General Consents 2013.

### **Community impact statement**

144. Although the majority of leaseholders would welcome the opportunity to acquire the freehold of their block at a possible discount, there may be issues where there is an ongoing dispute between leaseholders in a block.
145. Should the recommendations be agreed, consultation will be carried out with Homeowners Council to decide whether each leaseholder should be given the option to state that they do not wish the freehold to be sold to other leaseholders in the block.

### **Resource implications**

146. The freehold will be valued on an open market basis, irrespective of the fact that the sale will not be on the open market, and any discount would be applied to this value. Although the Council's capital receipt will therefore be reduced from that represented by the potential open market value, management costs will correspondingly reduce, as detailed below.
147. The Council incurs revenue costs in managing blocks where no tenants remain. Whilst costs are recoverable from leaseholders the administrative cost of managing converted houses may be higher than for other blocks and in excess of the 10% management charge the Council are able to recover under the terms of the lease. The proposals would reduce the number of converted houses the Council retain an interest in and therefore lessen the administrative burden.
148. The recommendation is that any discount offered to the leaseholders reflects the additional administration costs for the block.
149. Specialist Housing Services has in its structure a Disposals Officer and a Senior Disposals Officer. The additional administrative work which would result from the agreement to this proposal would not require additional staff.
150. The sale of freehold interests is a work type under the contract the Council has with external solicitors. The Council will continue to instruct external solicitors to act in the sale of the Council's freehold reversionary interests should the proposal be agreed.

### **Consultation**

151. As stated above, if the proposals are agreed the Council will consult with Homeowners Council to agree a procedure under which a leaseholder may object to the sale of the freehold to other leaseholders in the block.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Legal Services**

152. The report proposes a homeowner improvement plan including a range of actions. Some legal implications are set out in the body of the report but others may not become apparent until plans develop and will need to be identified and considered as they arise.
153. In relation to the proposed refresh of the council's buy back policy, the council has power to acquire property under section 120 of the Local Government Act 1972. Section 120(1) of the Local Government Act 1972 enables a Council to acquire by agreement any land whether situated inside or outside their area for the purposes of:
- (a) Any of their functions under that or any other enactment, or
  - (b) For the benefit, improvement and development of their area
154. Section 120(2) states that a Council may acquire by agreement any land for any purpose for which they are authorised by that or any other enactment to acquire land, notwithstanding that the land is not immediately required for that purpose and until it is required for the purpose for which is required, any land acquired under that sub-section may be used for the purposes of any of the Council's functions.
155. Recommendation 16 is for delegation of approval of purchases to the strategic director of housing and community services. Under the part 3C of the constitution acquisition of land, outside any scheme already agreed by members, where the market value is more than £100,000 is a matter reserved for collective cabinet decision making, but may be delegated by cabinet to a chief officer.
156. As to recommendation 19 (Sale of freehold reversionary interest to leaseholders and general consents), the Leasehold Reform, Housing and Urban Development Act 1993 (as amended by the Commonhold and Leasehold Reform Act 2002) confers upon qualifying tenants of flats (as defined in that Act) a right to acquire the freehold of their premises.
157. Section 32 of the Housing Act 1985 states disposal can only proceed in accordance with Section 32 of the Housing Act 1985, for which purposes the consent of The Secretary of State for the Department of Communities and Local Government is required. A number of consents were issued under the General Housing Consents 2013 ("The Consent"). The General Consent for the Disposal of Reversionary Interests in Houses and Flats 2013 states in Consent D3 that where a local authority is the landlord of a house, which is let as housing accommodation under a long lease, the authority may dispose of its interest for such consideration that the local authority consider appropriate.
158. Consent D4 provides that (except to a disposal of a body in which a local authority owns an interest) a local authority may dispose of its interest in a building containing flats for such consideration as the local authority considers appropriate.
159. The departmental guidance accompanying the Consents provides that should a

local authority decide to dispose of its reversionary interest in a flat or house, the Department would recommend that the leaseholders first be given the opportunity to purchase the freehold before the local authority invites offers from other persons.

160. The Guidance also states that where disposal includes flats occupied by secure, introductory or demoted tenants it is important that the authority negotiates appropriate terms for the transfer that includes leasing back the flats on the same terms as the current tenancy.

### **Strategic Director of Finance and Corporate Services**

161. This report sets out a range of initiatives for the improvement of services to homeowners, which have varying resource implications as detailed. The majority are either cost neutral or have specific resource approvals already agreed both within the HRA and the council's general fund. An exception is the buy back element of the report, where capital funding is required from the Housing Investment Programme to implement the policy, provisionally estimated at £500k, which will be sufficient to repurchase between 6 and 8 properties per annum.
162. The proposal to dispose of freehold interests has the potential to generate capital receipts in the short to medium-term, but at the expense of foregoing the longer-term revenue stream derived from ground rents and increase in capital value and future lease renewal premiums. However, the revenue income stream is of relatively low value and likely to be balanced out by savings generated through reductions in the management and administration of these blocks, whilst any potential future capital appreciation and renewal premiums cannot be guaranteed. With the removal of previous restrictions pertaining to the sale of freeholds, the council now has greater freedom to negotiate the most economically advantageous disposal value on a case-by-case basis which may encourage greater take-up that previously experienced.
163. The proposal for fixed service charges is one that requires further detailed work to establish the potential quantum of individual property charges across the stock. Given the necessary inclusion of major works in the service charge calculation, it is anticipated that this option may only have limited appeal to homeowners, notwithstanding the certainty that a fixed service charge provides. However, within the context of a ring-fenced HRA, it remains incumbent on the council to ensure full cost recovery over the long-term to protect against cross-subsidisation from tenants' rents, as the report acknowledges.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Draft Business Plan, Southwark Homeowner Information Centre	160 Tooley Street, SE1 2TZ	Lee Page, TMI Manager

### **APPENDICES**



<b>Appendix</b>	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Services	
<b>Lead Officer</b>	Martin Green, Head of Specialist Housing Services	
<b>Report Author</b>	Leon Boardman, Project Officer	
<b>Version</b>	v15	
<b>Dated</b>	08 October 2013	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
List other officers here		
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	28 August 2013	

## Appendix One

<b>Item No.</b>	<b>Classification:</b> Closed	<b>Date:</b> 17 <sup>th</sup> September 2013	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Homeowner Improvement Plan	
<b>Ward(s) or groups affected:</b>		All Wards / All Leaseholders	
<b>From:</b>		Martin Green, Head of Specialist Housing Services	

**Not for publication by virtue of category 5 of paragraph 10.4 of the Access to Information Procedure Rules of the Southwark Constitution.**

### **KEY ISSUES FOR CONSIDERATION: fixed service charges**

#### **Legal implications**

164. Specialist Housing Services obtained counsel's opinion on whether or not the council would be able to offer leaseholders the opportunity to surrender their current lease in exchange for a new lease with fixed service charges. Counsel's opinion was that there was no legislative reason why a fixed service charge lease could not be offered to current leaseholders, although making the point that the proposal would only work if the base figure for service charges payable in year one was accurate, and the assumptions made on the scope of the service did not vary much or at all over the lifetime of the fixed charge.
165. However, Counsel did believe that there was a substantial future risk if a leaseholder with a fixed service charge lease made an application for a lease extension. In such a case Counsel advised that the fixed charge might be considered "rent" for the purposes of Chapter II of the Leasehold Reform Housing and Urban Development Act 1993. As there is no definition of the work "rent" in the Act it is not a point on which Counsel could be definite, and there was no useful case-law that could be relied upon.
166. However, Counsel advised that if a fixed service charge is "rent" for the purposes of the Act then a lessee could buy out the liability by making a lease extension claim under the Act, because it provides that a new lease must be at a peppercorn rent. In the absence of any useful case law Counsel advised that a 1993 Act claim posed a risk to the proposal to offer a fixed service charge lease. If a fixed service charge was to be considered as "rent" then the council would need to assess how the charges should be capitalised in the event of an application to extend the lease, and how this would be accounted for in the Housing Revenue Account for future expenditure.

167. The Head of Specialist Housing Services then obtained further Counsel's advice on the specific questions of whether or not a proposal to introduce fixed service charges would be compliant with local government finance, whether the creation of a "sinking fund" as part of the proposal would offend local government finance law and whether a fixed service charge would be considered rent for the purposes of the 1993 Act.
168. Counsel believed that there was no express prohibition within local government finance law which would prevent the authority from implementing the proposal in principle, but raised similar concerns regarding the accuracy of the base service charge figure. Counsel advised that the council would have to be satisfied that it had struck the right balance between the interests of the leaseholders and the secure tenants as the result of any shortfall in a fixed service charge would result in increased rents for the secure tenants. The duty to prevent a debit balance on the HRA in any year means that the estimated expenditure and income must be based on sound projections. This duty also requires the authority to review matters from time to time in order to consider whether a deficit is likely to arise, in order to take the appropriate action. A decision to introduce fixed service charges would limit the councils ability to adjust projections throughout the year if this were to prove necessary.
169. Counsel was of the view that there was nothing in the provisions of the Local Government and Housing Act 1989 which would prohibit the creation of a surplus in the HRA, but that the HRA must be viewed as a single account with the debits and credits made in accordance with the Act. Were a sinking fund to be created from the fixed service charges then this would have to be used to bring the HRA back into balance if it was in debit.
170. On the issue of a fixed service charge being considered as "rent" for the purposes of the 1993 Act, Counsel agreed with the original opinion that this was a substantial risk. Further, Counsel advised that in this case, if a leaseholder was to buy down the fixed service charge on a lease extension claim the resulting sum would have to be treated as a capital receipt by the council. Counsel stated that the granting of a lease extension is the disposal of a capital asset. He further advised that the value of the disposal of the asset and the fixed service charge would be so intimately connected that the latter could not be viewed separately and that any sum resulting from such a transaction would be a capital receipt within the meaning of the Local Government Act 2003, and so subject to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003. The receipt would only be able to be used for specific purposes including the ability to defray capital expenditure for which leaseholders would be liable to make a contribution. However, the receipt would not be available to cover the annual management and maintenance costs of the sold property.

## BACKGROUND DOCUMENTS

Appendices	Held At	Contact
First Counsel's Opinion on the matter of Fixed Service Charges	160 Tooley Street, SE1 2TZ	Louise Turff Service Charge Construction Manager Tel: 020 7525 7558
Second Counsel's Opinion on the matter of Fixed Service Charges	160 Tooley Street, SE1 2TZ	As above

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Services
<b>Lead Officer</b>	<i>Martin Green, Head of Specialist Housing Services</i>
<b>Report Authors</b>	<i>Louise Turff, Service Charge Construction Manager; Mark Maginn, Social Homebuy Manager; Daniel Panormo, Residential Conveyancing Manager; Leon Boardman, Project Officer</i>
<b>Version</b>	<i>Draft</i>
<b>Dated</b>	9 August 2013
<b>Key Decision?</b>	No