

## Background:

Flats and maisonettes that are purchased through the Right to Buy are sold to the owners on a 125 year lease. Under this arrangement, the leaseholder has responsibility for their property but the Council, as freeholder, retains responsibility for the block and where the council undertakes works to the freehold of the property; the overall block building or communal areas; leaseholders are liable to contribute towards a fair proportion of the cost of the works.

Works of £250 and under are currently added to the service charge raised against the leasehold properties and recovered as part of the annual service charge. When works are likely to cost more than this the council is required to consult on the cost and extent of works and follow legislation as outlined in Section 20 of the Landlord & Tenant Act 1985 (as amended by Section 151 of the Commonhold and Leasehold Reform Act (2002).

The terms by which a leaseholder can be recharged and for what work, are set out in the lease agreement. This covers all works to the structure of the block and may include the roof, walls, windows, gutters etc. Some early leases (pre 1987), however, do not contain the Improvement clause and good practice guidance advises that you therefore do not recover monies from leaseholders for improvements e.g. applying an external cladding to walls to improve insulation.

Council's may recharge up to any sum on works that are detailed in the lease agreement, though this is restricted to £10,000 where works are funded by central government (outside of London)

## Leaseholders in Nottingham

Nottingham City Council has just over 1,200 leaseholders, of which 55% are resident leaseholders (owner occupiers) and 45% are non-resident according to correspondence addresses, the majority letting of non-resident leaseholders will be letting their property out to a private tenant.

Ward	Leaseholders	Resident	Non Resident
Arboretum	52	25	27
Aspley	16	7	9
Basford	8	3	5
Bestwood	221	107	114
Bilborough	37	19	18
Bridge	137	73	64
Bulwell Forest	50	32	18
Bulwell	42	26	16
Clifton North	111	53	58
Clifton South	74	42	32
Dales	43	26	17
Dunkirk & Lenton	10	4	6
Leen Valley	11	9	2
Mapperley	22	13	9
Outside City (Bestwood)	20	6	14
Outside City (Sneinton)	2	0	2
Radford & Park	65	34	31
Sherwood	35	15	20
St Anns	241	167	74
Wollaton West	21	14	7
<b>Leaseholders</b>	<b>1218</b>	<b>675</b>	<b>543</b>

Of the resident owner-occupiers, 300 are the original RTB purchaser and of these records show that almost 50 of these are aged 60 years or over. Equivalent records are not immediately available for subsequent owners, though we anticipate an older age profile compared to housing stock overall and have accounted for this in the options available.

Of the non-resident leaseholders, 65% own one property, 8% own two or three properties and 27% own four or more properties, one leasehold landlord own 11 properties in one block which are rented out as short stay and another owns 16 properties in the south of the city.

### **Current Approach:**

At present, the Council does not recharge leaseholders for major works and there is no local policy approach to recharging or undertaking consultation. Leaseholders are not contributing to the costs of works and these are being borne entirely by the council; by the HRA for tenants and by the General Fund for Leaseholders.

### **Proposed approach and rationale:**

The proposed approach is to charge leaseholders for major works in accordance with the abilities afforded us by the relevant regulations and to adopt the “Major Works for Leaseholders” policy as the basis for this.

Nottingham City Council and Nottingham City Homes are committed to providing high quality and sustainable homes for tenants, but are trying to do so at a time of increasing pressure on decreasing resources.

To recharge leaseholders for major works would increase the viability of works and improvement schemes as well as bring an income into the HRA that could be recycled to support or increase housing outputs.

It would also see Nottingham’s approach move into line with many other local authorities and create fairer outcomes between people who bought their home freehold through the RTB and those who have purchased the leasehold. There is also a strong argument that council resources should not be used to subsidise private business as is the case when major works are provided to leasehold landlords at no charge.

The monies recouped will readily accommodate any increase expenditure associated with the consultation process. A range of payment options will be made available to strike the best balance between maximising recoup to the council and reasonableness towards individual leaseholders’ means.

Nottingham City Homes will implement the policy, with the exception of the loans for those in financial hardship, which would be administered by Nottingham City Council.

### **Risks and Considerations:**

There is a risk that recharging leaseholders will increase the timeframe for the delivery of works, with the addition of the consultation and the potential for appeal against payment. Factoring in the new requirement for consultation will ensure that this can be realistically accounted for in any new project timescales and following the prescribed guidance will minimise any delay via appeal.

The policy, and repayment options it makes available have considered the different circumstances that leaseholders may be in and seeks to maximise the potential for recharge to be made without placing the leaseholder in financial hardship or placing undue strain on council finances.

**Recommendation:**

That the Major Works for Leaseholders policy is adopted and implemented.

## Major Works for Leaseholders

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<b>Effective from date</b>	
<b>Date to be reviewed:</b>	
<b>Scope of Document</b>	This policy outlines what will be done when completing major works to blocks with leaseholders and how leaseholders will be recharged for works
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<b>Teams Affected:</b>	Leasehold Team Procurement Team Energy Sustainment Team Property Services Team Regeneration Team Asset Management Team

# **MAJOR WORKS FOR LEASEHOLDERS**

## **1.0 INTRODUCTION**

Leaseholders are required to contribute towards the cost of maintaining the structure of the building and common areas under the terms of their lease. Contribution is made by paying a service charge. Where the service charge is payable for investment or large scale works over £250 then these charges are usually referred to as major works charges and will be referred to as such throughout this policy.

This policy outlines our approach on behalf of the Landlord, Nottingham City Council, to recovering major works charges from leaseholders.

Nottingham City Homes wants all leaseholders to be aware of their financial responsibilities in respect of covering the costs of major works and this is outlined through the right to buy literature and process. We want to encourage leaseholders to save towards these costs wherever possible to avoid payment problems in the future.

It is recognised that large bills for major works can cause financial hardship for some leaseholders but failure to pay such charges is a breach of the lease.

Where leaseholders are unable to pay the charges for major works we will provide guidance on the options available and work with them to make sure they can pay the charges in the shortest possible time that is appropriate to their financial circumstances.

## **2.0 POLICY STATEMENT**

Nottingham City Homes will ensure that when undertaking major works projects on a block basis (on behalf of Nottingham City Council) that they will fully consult with leaseholders about the proposed works and assist them in understanding their financial obligation to contribute to the works.

We will offer a range of payment options to leaseholders to ensure that we fully recover all monies due from leaseholders who are liable to contribute to the cost of major works.

## **3.0 AIMS OF THE POLICY**

- To ensure that our procurement processes consider the presence of leaseholders in blocks and accounts for the consultation process.
- To ensure that we meet our legal obligations and consult with leaseholders, following the requirements of Section 20 of the Landlord & Tenants Act 1985 (as amended).
- To encourage leaseholders to recognise their financial responsibilities for covering the cost of major works and the importance of saving in advance of these being billed.
- To advise leaseholders to obtain independent financial advice from private lenders and government funded agencies.
- To signpost leaseholders towards a range of agencies that can give them practical debt management assistance/advice.
- To fully recover all monies due from leaseholders who are liable to contribute towards the cost of major works.

## **4.0 RESPONSIBILITY FOR THE POLICY**

The Leasehold Manager is responsible for the implementation of the policy and for informing any scheduled or significant review of the policy.

The Housing Strategy and Partnership Manager is responsible for a biennial review of the policy.

The Leasehold Manager will, in consultation with the Housing Strategy and Partnerships Manager update the policy in the advent of legislative changes or new good practice guidance. This will also include regular internal reviews to ensure continuous improvement of service delivery and that the policy compliments the strategic objectives of the HRA Business Plan.

The Leasehold Manager will ensure that this policy is adhered to by monitoring major works projects to ensure that processes included within them are in line with the policy.

## **5.0 LEGAL AND REGULATORY INFORMATION**

The Lease is the contract between the Landlord and the Leaseholder which sets out the leaseholder's responsibilities which include, among other things, to pay for works to the block where they live. In these cases these contracts are between Nottingham City Council and the person who purchased their flat from the council or a subsequent owner.

Section 20 of the Landlord & Tenant Act 1985 (as amended by Section 151 of the Commonhold & Leasehold Reform Act 2002) describes the legal consultation process that must be adhered to in order to be able to recover monies from leaseholders.

We will also have regard to other relevant legislation and good practice guidance.

We will apply a cap of £10,000 to recharges for major works involving central government funding, as outlined in the Social Landlord Mandatory Reduction of Service Charges (England) Directions 2014) and will do so in regard of both mandatory and discretionary schemes.

## **6.0 LIMITATION ON MAJOR WORKS CHARGES FOR NEW RTB LEASES**

During the first five years of a Right to Buy lease major works charges are limited to the amounts detailed in the offer notice issued prior to purchase.

- The offer notice would have contained details of possible works and an estimate of the cost.
- The limitation applies to the sum listed plus an allowance for inflation.
- The offer notice details the maximum that can be charged.
- Any major works done outside this five year period are fully chargeable.

## **7.0 RECOVERY OF MONIES FROM LEASEHOLDERS**

### **7.1 Standard Payment Method**

The standard and preferred method will be for payment in full in accordance with the lease agreement and within 30 days of invoice, which will be issued within the required timescales and within 18 months of the completion of the works.

Leaseholders who pay in full within 30 days of invoice will receive a 5% discount.

Payment can also be spread across 12 months, with no interest, via direct debit.

It is expected that the leaseholder will arrange their own finances in this respect including, if required, obtaining loan finance. We will signpost leaseholders to bodies providing independent financial advice and support.

Both options will be available to resident and non-resident leaseholders.

## **7.2 Alternative Options**

In appropriate circumstances and subject to an assessment of the leaseholder's financial circumstances, extended payment plans may be offered. These extended payment plans would only be available to resident leaseholders.

## **7.3 Financial hardship**

Where a leaseholder claims financial hardship, during the consultation, at issue of the invoice or during the course of a standard payment plan, the Council will undertake an assessment of their financial circumstances, including their ability to obtain and sustainably repay a private loan.

Where the assessment demonstrates that the leaseholder is unable to undertake one of the standard payment methods, the Council will consider offering payment over an extended term in the form of interest bearing loans, depending on the amount repayable.

The Housing (Service Charge Loans) Regulations (1992) allow Council's to make loans to resident leaseholders who purchased the property from the council via the RTB (i.e. only the original not subsequent leaseholders), though the Council can make loans or longer term payment options available to other residents

The interest will be fixed and the rate will be determined upon application and will take into account the Bank of England base rate at the time of the loan application.

Where a resident leaseholder cannot reasonably undertake the terms of council loans, the Council may also consider adding the charge to the title of the property. This will usually apply to older residents or those with disabilities or long term illness whose income or employment capacity is limited.

This charge would be the full cost of the works, plus rolled up interest and any legal costs and disbursements in administering the charge process. This would mean that the leaseholder would not be required to pay anything for the works until such time as the property is sold.

All arrangements will be subject to an administration fee that will be wrapped into the total recharge amount.

All leaseholders assessed as being in or at risk of financial hardship will be registered and their circumstances reviewed quarterly to ensure that their payment plan reflects their circumstances.

Should a property be sold by the leaseholder before major works have been paid for in full, any amount outstanding on the invoice will be payable in full upon sale completion.

Indicative payment options available:

Invoice Minimum	Payments
<b>All Leaseholders</b>	
£251	1x within 30 days with 5% discount
£1000	1 year - 12x interest free
<b>Resident Leaseholders (council loan)</b>	
£1000	2 years (24) – 12x interest free, 12x interest bearing
£2000	3 years (36) – 12x interest free, 24x interest bearing
£3000	4 years (48) – 12x interest free, 36x interest bearing
£3000	5 years (60) – 12x interest free, 48x interest bearing
£4000	6 years (72) 12x interest free, 60x interest bearing
£5000	7 years (84) 12x interest free, 60x interest bearing
£7500	10 years – Year 1 0% interest, Years 2-10 interest bearing
<b>Resident Leaseholders (title charge)</b>	
£1000	Full charge added to property title

- The interest to be charged will be fixed for the term of the loan and the rate will be 4% above the Bank of England base rate at the time of the loan application.
- There will be an administration fee charged (TBA) on loans that extend longer than 2 years.

## 8.0 BUY-BACKS

In certain circumstances, Nottingham City Council may consider it of benefit to buy-back a leasehold property at the time that major works are being planned and leaseholders are being consulted. Repurchase will be entirely at NCC's discretion and will not be made available as an open option to leaseholders. Cases will be assessed individually and purchase approval will be sought in addition.

Reasons for considering this may be to return all units in a block to social housing to ensure that any age criteria for tenants is maintained for those units that are currently leasehold, to remove the sub-letting of properties or to accommodate other pressures in the works programme.

## 9.0 SERVICE CHARGE LOANS FROM THE HOMES AND COMMUNITIES AGENCY (HCA)

A leaseholder has the right to request a loan from the HCA to cover the costs of major works to the property, provided that:

- The leasehold property was purchased under the Right to Buy scheme
- The leasehold was purchased less than ten years before the date of the invoice for the works
- The amount demanded is in respect of major works



We will be able to provide up to date information from the HCA about this facility. The HCA publishes revised thresholds for loans in March each year. The maximum loan as at March 2016 is £37,670.

## **10.0 IF PAYMENT IS NOT MADE**

If the leaseholder does not make payment as agreed then we will pursue the debt in line with our leasehold arrears escalation procedure and will consider the following:

- Recovery action through the courts
- Seeking repayment by the mortgage lender (if available)
- Securing a charge on the property via the courts
- Seeking forfeiture of the lease (following a decision by the First Tier Tribunal)

## **11.0 DISPUTES**

In the event that a leaseholder disputes the major works invoice (either on grounds of the quality of the works or the reasonableness of the charge) we will respond in accordance with our complaints procedure. If this is not resolved to the leaseholders' satisfaction the leaseholder has the right to proceed with action at their own expense to the First Tier Tribunal.