

Brentwood Borough Council

Leasehold Payment Options Policy

Draft September 2021

Introduction

Where the Council owns the freehold of the building that the flat or maisonette is in, and is responsible for the upkeep of it. Leaseholders are required to contribute towards the cost of maintaining the structure of the building and common areas under the terms of their lease.

Leaseholders pay for the smaller works (e.g. cleaning and general day-to-day repairs) as a part of their annual service charges.

Where the service charge is payable for larger scale works, these charges are commonly referred to as 'major works' charges. These kinds of work can include (but are not limited to):

- Decoration of the block.
- Window and door replacement.
- Roof replacement/refurbishment.
- Lift replacement/refurbishment.
- Insulation work.
- Communal re-wiring.
- Fire Safety upgrade works.

The Council has a duty to maintain its housing stock, and as such leaseholders are required to make a contribution towards repairs and improvements carried out in their flat block. In doing so, the Council must ensure that the full costs for works under any major works programme are fully recovered as soon as possible.

It is important that a range of payment options are available to assist leaseholders, and that any failure to pay does not unduly impact upon other residents who have paid their contributions.

In order to make sure that these costs are recovered in an efficient way, the Council has adopted a comprehensive approach to recovering costs due from leaseholders, and in doing so is committed to ensuring that all leaseholders are aware of the range of options available to them and the actions that the Council will take to recover major works contributions.

This policy:

- Covers the range of payment options for major works which will be offered on behalf of the Council.
- Recognises and reflects the need for a variety of options to assist leaseholders to pay.
- Acknowledges the importance of recovering full costs of services so as to prevent delay to future services and works programmes.
- Is compliant with the terms of the lease and the relevant legislation.
- Takes into account good practice guides.

Consultation

There is legislation in place around service charges and leasehold consultation, to ensure that landlords act reasonably at all times. Under Section 20 of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002, leaseholders must be consulted before the landlord carries out works above a certain value, and when entering into certain long term contracts for services (Qualifying Long Term Agreements).

The Council is obliged to follow these requirements and will ensure that prior to any major works proceeding; full consultation with leaseholders will take place in accordance with the regulations. Within the prescribed consultation requirements, leaseholders will receive an estimate in advance of any works starting, informing them of their likely contribution.

If leaseholders need help to pay, an officer of the Council will go through the payment options available with them.

The Council is not able to offer financial or legal advice and leaseholders should seek their own independent financial and legal advice.

Cost Recovery

The Council has a duty to collect monies for work that has been carried out. The Council is mindful of the impact on leaseholders but has an obligation to maintain the homes of its residents and to collect all monies due in respect of major works.

The Council staff will treat people with respect at all times when dealing with payments and any associated enquiries and will ensure supporting documentation is supplied upon demand or, in the case of larger documents, ensure arrangements and facilities allow customers to access and inspect these.

Leaseholders can make payments towards major works costs from the point at which a Section 20 is served. This will build a credit on their account which will be offset at the point at which the invoice is issued. The invoice will only be issued at completion of works or no later than 18 months after the initial cost is incurred by the Council, whichever is earliest.

Payment Options

The following payment options will be made available to leaseholders to repay the cost of major works.

Option 1 – Full Payment by Leaseholder

The leaseholder can pay the invoice in full within 30 days of the invoice date. This may involve the leaseholder making their own loan arrangements with their mortgage lender, bank or building society.

Leaseholders will be advised to seek independent financial and legal advice before entering into any agreement to secure a mortgage or a loan on their home. This option applies to all Leaseholders.

Option 2 – Discretionary Payment Agreement

Where leaseholders are unable to pay the full amount within 30 days of the demand for payment, the Council may, on a discretionary basis, allow deferred, interest-free payments by instalment over specified time periods, as outlined below:

- Up to 12 months (12 equal payments) on major works bills under £2,500
- Up to 24 months (24 equal payments) on major works bills over £2,500

Leaseholders wishing to pursue this payment option, should contact the Council at the earliest opportunity once demands for payment are received to prevent arrears enforcement actions. This will also enable the Council to carry out an affordability assessment and suitability for this type of arrangement on a case-by-case basis.

Where deferred payment arrangements are established, leaseholders will be required to set up Direct Debits to cover the amounts outstanding in equal monthly payments within the timescales agreed (as outlined above).

If leaseholders' circumstances change they may cancel the Direct Debit and settle the outstanding amounts in full at any time.

Where leaseholders default on payment schedules without explanation or agreement, the Council reserve the right to commence arrears recovery actions.

Option 3 – Statutory Loan Scheme (Right to a Loan)

This is a loan governed by statute and is available to those leaseholders of a lease of a home granted under the Right to Buy scheme in the last 10 years. The right to a loan is a right to leave the whole or part of the service charges outstanding. The following applies:

- When the Council sends out an invoice for major works, it will ensure that the invoice states if the Council believes that a leaseholder is eligible for a statutory loan and what he/she must do to claim it.
- The leaseholder has 6 weeks from the date of the invoice to exercise the right to a loan. The Council must then tell the leaseholder the terms of the loan and the time allowed to accept it. The leaseholder then has 4 weeks to accept the Council's offer.
- The Council is obliged to secure statutory loans by way of a mortgage.
- The mortgage will be secured on the property (whether or not the property is adequate security). This will involve placing a charge via the Land Registry.
- The Council will charge a set administrative fee to the leaseholder.
- This administrative fee is limited to £100. This may be added to the amount of the loan if the leaseholder wishes.
- Monthly repayment instalments are required via direct debit.

Option 4 - Deferred Payment Option

For resident leaseholders that are facing severe hardship and are unable to secure funding for a High Street Bank/Building Society, the Council offers a deferred payment option secured by a charge on the property for the actual amount. The loan is repaid on the sale of the property. The charge is noted at the Land Registry and the property cannot be sold unless the amount owed is redeemed. This option may be available if there is sufficient equity to cover the debt.

Option 5 - Purchase of the Leasehold Property by the Council

Options include for the Council to purchase the property and will be determined on a scheme by scheme basis. This is also subject to the availability of funds.

Option 6 - Purchase Equity share by the Council

The Council can offset major works service charges by taking an equity share in the leaseholder's property, by way of a shared ownership lease (i.e. equity share scheme). The Council would need to complete a valuation of the property to estimate the works cost as a percentage of the value.

Non-Resident leaseholders

Where leaseholders do not reside in the property, only payment options 1 and 2 are available.

Non-payment of invoice

If the leaseholder does not make payment as required and has not contacted us within 6 weeks to confirm how they will pay the invoice, the Council will pursue the debt and will consider options including:

- Recovery action as a civil debt via the courts.
- Seeking payment from the leaseholders mortgage lender.
- Securing a charge on the property via the courts.
- Seeking forfeiture of the lease.

Appeals

Where a leaseholder does not agree with the payment options offered, they can make an appeal against the decisions by placing this in writing to the Council. Another member of the housing team will review the original decision and write to the leaseholder providing the detail of the review's outcome.

Leasehold Advisory Service

For information and independent advice leaseholders are advised to contact the Leasehold Advisory Service (www.lease-advice.org.uk).