

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

HOUSING AND COMMUNITIES SELECT COMMITTEE

LEASEHOLD MAJOR WORKS CHARGES

The report describes the process of capital works being carried out to the Council dwellings managed by Housing Management, leading up to the point at which major works invoices are raised for leaseholders. It explains the level of detail about the work, the costs leaseholders may be charged for, and what is done to ensure that the work is delivered to a reasonable standard. The committee is requested to review and comment on the process and to recommend any improvements.

FOR DISCUSSION

1 EXECUTIVE SUMMARY

- 1.1 Due to large-scale investment in the Council's stock, an increasing number of buildings and estates are receiving much-needed repair and improvement work.
- 1.2 Leaseholders are charged for their contribution towards the cost of repairing and maintaining their blocks and/or estates. These charges are referred to as major works contributions. Although these charges are legally chargeable under the terms of the lease, the Landlord and Tenant Act 1985 (S19) mandates that the cost should be reasonable and that the work should be carried out to a reasonable standard.
- 1.3 The front entrance doors of leasehold flats are in the greater majority of cases demised to the leaseholder, which means it is their responsibility to repair and maintain the door. The cost is therefore not included in major works cost.
- 1.4 The report sets out how the quality of the work is assessed and assured.
- 1.5 The report also sets out the level of detail leaseholders can expect about the works throughout the process to ensure clarity about the scope of any repairs and improvements and the calculation of charges.
- 1.6 We strive to ensure that major works are affordable, and the report will touch upon the initiatives in place to affect this.

2 RECOMMENDATION

- 2.1 To consider the attached report and decide whether the Committee wishes to make any comments or recommendations to the Leadership Team regarding its contents, or any procedures or proposals contained therein.

3 QUESTIONS TO CONSIDER

- 3.1 The Committee's general comments are sought around the quality assurance process and clarity provided.

4 INFORMATION ABOUT THIS REPORT

- 4.1 The report does not relate to any key decision.

5 MAIN REPORT

- 5.1 The Housing Department within RBKC manages 9,616 dwellings of which 19 are traveller sites, 7,068 are rentable dwellings (6,713 held by the Housing Revenue Account and 355 by the General Fund) and 2,529 leasehold.
- 5.2 Leaseholders are charged on an annual basis for their contribution towards day-to-day service charges, such as caretaking, grounds maintenance, reactive repairs and buildings insurance.
- 5.3 The Council is also obligated by the Housing Act and leases and the terms and conditions of the leasehold agreements to maintain the fabric and structure of the buildings and estates; in turn, a charge can be made for such services. Any minor repair and maintenance costs are included in the day-to-day service charges. However, if the costs are above the level where any leaseholder will be required to contribute £250, these works are referred to as 'major works'. Major works could include things such as the replacement of a roof, window renewals, external painting and decorating, upgrading a door entry system, replacing the lateral mains, etc.
- 5.4 The charges to leaseholders, for major works, are made on an ad-hoc basis as and when works complete on site.
- 5.5 The private sector and some housing associations would usually administer sinking funds. The aim is to enable contributions from leaseholders towards the costs of works to be spread more evenly over a longer period as opposed to the full amount being demanded in one go. There is an administrative cost to this service which is recovered from leaseholders as part of their service charges. Our leases, however, do not allow for sinking funds. Legal advice sought in 2021 confirmed that the leases would formally have to be varied, a costly and time consuming process, to enable this.
- 5.6 The charges to leaseholders are driven by the capital investment undertaken in the housing stock. The capital programme, which includes major work projects is well underway after the Council committed to an ambitious multi-year Capital Programme in 2018/19. A high number of schemes have been completed and many are underway, with £59m investment realised in

2022/2023, then £75m in 2023/2024 across the Housing Capital Programme, which includes the Lancaster West Estate refurbishment.

- 5.7 Due to high levels of investment in the stock, we will also see an increase in the recharges made to leaseholders. Covenants within standard leases between the Council and the leaseholder usually state that the leaseholder will need to contribute to any major works to the building/estate.
- 5.8 Most of the older leases only allows for the cost associated with repairs to be recharged to leaseholders. Repairs are usually one-off fixes that help keep the property habitable and in good working condition. It would include installing double glazing or the replacement of a roof. The newer leases, usually those entered into since 2019, also allow for cost associated with improvements to be recharged. Improvements can loosely be defined as the installation of a new item, such as a new lift where there was not one before, or an upgrade, such as the installation of triple glazing.
- 5.9 The interpretation of which works are to be seen as ‘repairs’ or ‘improvements’ are the subject of many court and tribunal cases.
- 5.10 Leaseholders cannot opt out of works as it is the Landlord’s responsibility to keep the buildings in good repair and condition. The Council has however agreed a policy where some leaseholders can opt out of window works in a limited set of circumstances, i.e. the flat must be in a building of four storeys or less, not be in a conservation area or listed. The leaseholder will have to agree to a Deed of Variation to the lease where the ownership will be transferred from the Council to the leaseholder and the leaseholder will be responsible for the payment of all the fees.
- 5.11 The leaseholder would then be responsible for the upkeep of the windows within the flat and must apply for a license to alter from the Council, and where needed seek planning permission, before any work is undertaken.

Summary of charges made to date:

- 5.12 The table below provides a summary of the charges made to leaseholders for each financial year since 2020/21, when the Council started raising invoices for major works:

Financial Year	Number of schemes billed to leaseholders	Cost incurred by the Council	Total recharged to leaseholders	Number of leasehold bills
2020/21	2	£684,185	£250,083	38
2021/22	5	£5,885,383	£1,212,054	174
2022/23	7	£3,511,719	£672,901	136
2023/24	16	£9,855,234	£2,191,930	678
2024/25	9	£8,956,220	£2,492,642	329
TOTAL	29	£20,652,800	£5,534,310	1079

- 5.13 Some of the above schemes were undertaken by the former TMO but only billed after the Housing Department was incorporated with the Council.
- 5.14 Charges for major works are made after completion of schemes on site, but leaseholders are consulted about the work well in advance both informally and through a statutory process prescribed by S20 of the Landlord & Tenant Act 1985, as amended.

Consultation undertaken before works start.

- 5.15 The informal consultation starts well before any statutory notices are issued and depending on the scheme could happen over an extended period.
- 5.16 Prior to the commencement of formal leaseholder consultation, initial resident engagement will take place via Residents Associations/Compacts, on the proposed works and proposed approach in communicating this to residents. Following this and the feedback received, correspondence will then be sent to all residents, seeking views on the scope of works and resident engagement going forward.
- 5.17 The assigned Project Manager and Resident Liaison Officer from the Major Works team will write to residents, introducing themselves and seeking initial feedback from residents regarding the block or estate to assist with identifying areas of focus that are required, with this information being referred to when further condition surveys and scoping work is undertaken.
- 5.18 The project team will continue to engage with residents throughout the pre-construction phases of the project, where the nature of engagement is tailored to suit the feedback received from residents and it may mean that meetings are held on-line, in person or on a hybrid basis. The engagement aims to ensure that residents are aware of the project status and what is being considered.
- 5.19 The nature of the project will influence whether additional engagement and consultation is required, with recent examples including sessions undertaken for the major project being delivered at Silchester Estate, where a range of project team specialists are in attendance to listen to residents and answer queries that are raised.
- 5.20 Statutory S20 consultation is required for any works where it is anticipated that a leaseholder would be charged more than £250. Depending on the duration and type of contract between one and three notices may be required. The usual process is for a Notice of Intention to be issued listing the anticipated work and reasons the Council believes it is required. It requests leaseholders to make written observations to which the Council must have regard. At this point, a leaseholder could, for example, ask that work outside the proposed scheme be undertaken as part of the contract, or challenge why some elements of the planned works have been included.

- 5.21 After the Council has considered all the observations, the contract is tendered. This process is complex and detailed, with contractors being scored based on price and quality. The evaluation process allows residents to be involved in the review and scoring of the quality submissions, of which leads to the recommended contractor. Once the recommended contractor is identified, a Notice of Proposal is issued advising the leaseholder of the preferred contractor, the tendered price for the contract and the estimated cost to the leaseholder. A breakdown of the anticipated charge is also included.
- 5.22 Leaseholders then have another opportunity to make further observations, which the Council must consider. At this stage leaseholders also have the opportunity to inspect the tender documents. Arrangements would be made to identify a suitable venue where this could take place. Alternatively, a SharePoint site can be created for online viewing if it is required. The Council can only enter into the contract when it has had due regard to all the observations.
- 5.23 Depending on the type of contract, and where appropriate, meetings are arranged with the affected leaseholders either face to face or via an online platform during the S20 process. These meetings provide an opportunity for leaseholders to meet the Project Manager and relevant officers from Home Ownership so they can ask any questions they may have about the work or the available payment options.
- 5.24 Some leaseholders may expect to face significantly costly major works invoices as their contribution towards the work carried out to maintain and repair their buildings' and or estate's' fabric. Representatives from the capital programme, project management and Home Ownership teams are always available to either meet leaseholders on site or at the Town Hall to discuss any aspect of the works or charges. We also have payment options (refer to par 5.48) in place to assist all leaseholders in the payment of the invoices.

Quality assurance once on site

- 5.25 It is vital that works are carried out to a reasonable standard as it is in everyone's interest to obtain value for money ensuring that the work will last until the next cycle of work.
- 5.26 Monitoring of work throughout the construction phase of a Major Work project is an important part of quality assurance and this requires on-going vigilance to ensure the Contractors provide a quality product in line with the specification and expected standard. The Capital Delivery Project Manager for each scheme is in place to represent the Council and in fulfilling their function, they play an important role in holding parties involved with the contractor to account through various interventions. These interventions include convening meetings and walk arounds with contractors and consultants, visiting resident

homes and listening to concerns raised that are then taken up with the Contractor, challenging contractor performance and general oversight of works.

- 5.27 Monitoring quality of work being delivered involves a number of touch points from the start of the works through to the end. This includes initial pre-start meetings with the appointed Contractor to discuss the scope of works, expectations for quality, process for presenting works for sign off and general quality assurance throughout the life of the project. These meetings are chaired by the Contract Administrator, however the Capital Delivery Project Manager coordinates internal stakeholders and others to ensure attendance and participation in these important initial meetings.
- 5.28 The Project Manager and Resident Liaison Officer for each Major Work project aims to establish a resident working group for the construction phase of the project, where the group of resident volunteers meet with the RBKC Project Manager and Contractor representatives periodically throughout the life of the project and discuss project progress and other matters, including quality items. Where issues of quality are raised during these meetings, the project team are to ensure appropriate investigation and action is taken.
- 5.29 Contained within each Major Work contract is a document referred to as the Preliminaries, which outlines a range of requirements that the Contractor is to adhere to as part of the delivery of the works. Within, Quality Standards/ Control are outlined in detail – including requirements concerning the quality of products, workmanship skills, compliance and inspections. Evidence of completion must be provided, which may include certificates, declarations and/ or photographic evidence. These contractual requirements are enforced throughout the life of the project by the Contract Administrator.
- 5.30 Once works are completed, sign off needs to be agreed by the Contract Administrator appointed for the project in line with the form of contract used, which is typically the Joint Contract Tribunal (JCT) Intermediate Contract; however the project team aim to ensure in-person walk arounds are undertaken with residents and Ward Councillors to ensure views are taken and provided to the project Contract Administrator to consider whether any elements identified in the walk around are considered in need of rectification before issuing Certification of Practical Completion.
- 5.31 After works are considered completed in line with the contract specifications, the Contract Administrator will issue Certification of Practical Completion and the project will enter into a period of known as the 'Defects Liability Period' (DLP) or 'Rectification Period', which will typically last for 12 months for Major Work projects. A sum of retention money (typically 5%) is held for a project, with half being released at Practical Completion and the remaining at the end of the Defects Liability Period.

- 5.32 During this period, any defects that arise are required to be rectified by the Contractor within a reasonable time and where residents or other stakeholders notify the Capital Delivery Project Manager or Resident Liaison Officer of any observed defects, these will be reported promptly to the Contractor for rectification.
- 5.33 At the end of the DLP or Rectification Period and after all identified defects are rectified, a certificate of making good defects is issued and the remaining retention money is released.

Billing major works

- 5.34 The Contract Administrator/Quantity Surveyor (external consultant under Our JCT Contract) prepares the final account with the contractor at conclusion of the work. It then progresses to the RBKC team where a quantity surveyor and project Manager would scrutinise the account. Once any queries have been resolved the account is passed to Home Ownership who would calculate the recharges to the individual leaseholders.
- 5.35 The Service Charge Accountants would spend time identifying the non-rechargeable elements of work, such as work carried out within tenanted flats, whilst calculating the charges. There are several steps to follow, such as ensuring that the policy of no leaseholder receiving a final bill more than 20 per cent greater than the estimate is adhered to and that any funding arrangements are clearly accounted for. In future close attention will also be paid to any work which may be done as a result of the Building Safety Act to ensure that the recharges adhere to the new regulations.
- 5.36 Leaseholders receive letters from Home Ownership two to three weeks before the bill is raised as prior notice that it is to be issued imminently and that they can contact the team with any queries.
- 5.37 The invoice is accompanied by a summary breakdown of the charges. More detail, such as a copy of the final account and payment certificates, is provided upon request.

Challenges on major works

- 5.38 Leaseholders may have several queries about the invoice or the works, and those are dealt with in the normal way in writing or on the phone. Where any query is received about the work, such as a dispute about the quality of work the Project Manager would become involved to provide the technical detail that may be required.
- 5.39 It is always the Council's goal to issue invoices and resolve any queries as soon as possible after completion of the work, as all the detail is still fresh in all parties' minds and easier to come to an agreement.

- 5.40 Where quality assurance issues are raised on historic schemes previously undertaken by the former TMO the current Delivery Team aim to review existing documentation stored on the Council's data base to understand any investigations undertaken to date, including project documentation stored at the time. Once a desktop assessment of the historic project is completed, officers assigned will need to visit site and form a view on the dispute raised then discuss matters with the individual(s) who have raised concern. If any reductions in the invoice is needed the Delivery Team will work closely with Home Ownership to make the changes.
- 5.41 Leaseholders can also make use of the Informal Challenge Resolution Process or the Formal Complaints Process. The former aims to provide transparency around how challenges are addressed, and the steps taken to resolve them swiftly, avoiding legal action. This procedure was developed with a working group of leaseholders in June 2021.
- 5.42 Where possible challenges are resolved locally, to avoid the need for external involvement. The process is designed to:
- Minimise the effort to leaseholders in reaching a consensus.
 - Ensure that we do not charge for any service erroneously.
 - Reach a resolution quickly, consistently, transparently and in a fair manner.
 - Create confidence in our service with leaseholders and stakeholders, and encourage participation in shaping our services.
 - Mitigate risk (including reputational damage).
 - Minimise legal challenges or other external referrals to the First-tier Tribunal or Court.
 - Minimise legal costs.
 - Put things right where something is wrong.
- 5.43 In the first instance the aim is to resolve the issue informally by engaging with the leaseholder. Should the leaseholder not be satisfied with the response they can progress the matter to the informal challenge resolution process. A dedicated Home Ownership Officer or Service Charge Accountant will be appointed to investigate the issue.
- 5.44 They will meet with all the internal stakeholders and depending on the type and nature of the concerns the investigating officer may offer to meet the leaseholder(s), either in person or virtually. A site visit may also be carried out if required, which can be attended by any other officer who may assist in resolving the issue. If similar disputes are received from several leaseholders in the same building the case will be discussed at the Dispute Panel before the decision is finalised. The Investigating Officer must keep the leaseholder updated with progress and timescales.

- 5.45 The outcome is communicated to the leaseholder and if the response does not meet with their approval they can progress the matter via the Formal Complaints process.
- 5.46 Although every effort is made to ensure quality and provide value for money, things sometimes do go wrong. Common themes may include issues around quality or quantity of works undertaken, compliance with the consultation regulations, calculation errors or a misunderstanding about the terms and conditions of the lease.
- 5.47 Between Home Ownership and Capital Projects, we received 19 formal complaints from leaseholders about major works in 2023/24. Of this seven were escalated to Stage 2 and three to the Ombudsman.

Payment options

- 5.48 Extended payment options were agreed by the Leadership Team in October 2021 in anticipation of the increase in major works billing. The aim was to ensure that the offer was affordable, sustainable and to minimise hardship for leaseholders. At the same time, the Council needs to collect payments in an efficient and timely manner to protect the Housing Revenue Account and to ensure the continued viability of the capital works programmes.
- 5.49 Following benchmarking with other London Boroughs and consulting with a group of leaseholders a range of payment options for major works invoices were developed (see Appendix B). All leaseholders are incentivised to pay their invoice in full, where possible, with a prompt payment discount of 5 per cent. Depending on invoice value payment terms between two and 20 years are available. For payment terms of five years and below no interest is charged. For the longer payment terms of 10 and 20 years, interest is only charged during the latter half of each period. There is also a cap on leaseholder contributions of £500 per month which means that a leaseholder will be permitted to pay over a period of longer than 20 years, if necessary to keep their monthly instalments below that threshold.
- 5.50 If paying over an extended period and the invoice is over £15k, the debt needs to be secured to the property by way of a charge. This means that if the property is eventually sold at some point in future, any debt outstanding to the Council linked to Major Works will be payable upon its sale, of the Property (following which the charge against the property will be released). Usually, a charge on a property will take second priority against a lenders charge.
- 5.51 If the lessee is subletting their property, repayment terms are less favourable but still provide up to 36 months to pay higher value invoices.
- 5.52 Where leaseholders are struggling to pay, officers will firstly explore all options and where more specialist advice is required, we will fast track referrals with

the local Citizens Advice Bureau. Aside from this we will more proactively promote all welfare and benefits agencies with whom we interact.

- 5.53 Despite the payment options, there may still be leaseholders who experience hardship, particularly the elderly or those with additional needs. In such situations, we would engage to consider all the available options and referrals to meet individual needs. We would also consider securing invoices to the property by way of a charging order. This would mean that the invoice would not need to be settled immediately but only upon change of ownership.
- 5.54 Home Ownership would always encourage leaseholders to contact them to discuss their personal circumstances and the available options to find the most suitable solution.

6 TIMESCALE FOR CONSIDERATION

N/A

7 FURTHER INFORMATION

Appendix A – Major works consultation workflow

Appendix B - Payment options

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Background Papers used in the preparation of this report: N/A

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Appendix B

<u>Major Work Scheme Payment Options</u>	
Prompt payment discount:	5%
	Applies if invoice is paid in full 12 weeks from invoice date

Available Payment Plans:				
<u>Customer Type - Resident</u>				
	Up to 2 years interest-free	Up to 5 years interest-free	Up to 10 years, interest bearing between years 6 and 10 (months 60-120)	Up to 20 years, interest bearing between years 6 and 20 (months 60-240)
Months	24	60	120	240
Condition 1			Charge must be at least £10k	Charge must be at least £20k
Condition 2		Must be your only home		
Condition 3		If the invoice is £15k or above a legal charge must be registered on your property. You will have to pay an admin fee (currently £240) and at a later date you will need to pay another fee to remove the council's charge.		
<u>Customer Type - Non resident</u>				
	Up to 2 years interest-free	Up to 3 years, interest bearing months 25-36		
Condition	If the invoice is £15k or above a legal charge must be registered on your property. You will have to pay an admin fee (currently £240) and at a later date you will need to pay another fee to remove the council's charge.			
Interest rate:	Bank of England rate plus 1%			

