

Executive Decision Report **A5** Revised

Decision maker(s) and the earliest date the decision will be taken	Leadership Team (Executive) Revised report dated: 24 August 2017 Key Decision Reference Number: 05104/17/K/AB	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
Report title	Housing Options for Resident and Non-Resident Leaseholders Affected by the Grenfell Tower Fire	
Reporting officer	Amanda Johnson, Head of Housing Commissioning	
Key decision	Yes	
Access to information classification	Public with Exempt Part B Appendix – not for publication by virtue of information relating to the financial or business affairs of any particular person (including the authority holding that information).	

Note: Information highlighted in yellow is what is new/different to the original report published on 16 August 2017.

Reason for General Exception

In order to provide resident and non-resident leaseholders with certainty on the financial compensation being offered by the Council to enable them to acquire new property following the fire at Grenfell Tower it is not possible to give the 28-day statutory notification of the Key Decision.

This is a response to the exceptional circumstances of the Grenfell Fire and should represent a precedent for future decisions of this Council.

1 EXECUTIVE SUMMARY

1.1 There were 17 properties owned by leaseholders in Grenfell Tower and Walk at the time of the fire. Of these 14 are destroyed totally by the fire, three are rendered uninhabitable in Grenfell Walk. These are Category A properties inside the inner cordon. (See Appendix A to Part B for property addresses)

1.2 The overriding principle is that each leaseholder affected should be, if they wish, able to live in the neighbourhood in a property of their choosing on terms as similar to those they enjoyed before the fire. It also recognises that leaseholders had no need or wish to sell before the fire. It is a practical and transparent way to give effect to the council's obligation to reinstate the building which cannot be done in a timely manner. The basis of valuation will be that the properties are in excellent condition and that leaseholder is not under any pressure to sell. A

payment of 10% of the agreed value will be paid in addition to the sale price up to £58,000.

- 1.3 The proposal is to offer a framework of three options to resident leaseholders: A. to acquire another property using their own resources, B. to acquire a property with an interest-free loan from the Council or C. to become a social tenant. Non-resident leaseholders can opt either to buy another property exclusively with their own resources or, if they wish to purchase a new property, with the assistance of an interest-free loan from the Council, i.e. options A or B.
- 1.4 The Secretary of State is strongly of the view that Notting Hill Housing Trust who own two leasehold properties should receive only the fire insurance payment on their properties.
- 1.5 Where it has not been possible to negotiate the write off the mortgage debt leaseholders will have their mortgage payments met for 12 months or until they move into a new permanent property, whichever comes sooner.
- 1.6 It is further proposed that the Council negotiates with the fire insurers to secure the best financial settlement and takes an assignment from leaseholders of their rights under the policy.
- 1.7 There will be a period of engagement and consultation with the households affected to ensure that their views and observations are reflected in way each one is treated within this framework. The options put forward may be refined in the light of this feedback.
- 1.8 The proposals contained in this report will avert, alleviate or eradicate in the Council's area or among its inhabitants some of the effects or potential effects of the Grenfell Tower fire. In addition, it is the Council's intention to come forward with a scheme to renew the Lancaster West Estate in due course. There appears to be no other prospect of the affected properties at Grenfell Tower and Walk being brought back into residential use. Suitable proposals for leaseholders are a prerequisite to implementing a scheme including the provision of housing on the estate.

2 RECOMMENDATIONS

- 2.1 It is recommended that resident and non-resident leaseholders from Grenfell Tower and Grenfell Walk be offered the following options below to secure a new property:
 - i. Acquire a property using their own resources following the Council's purchase of their property in Grenfell Tower or Walk (option A)
 - ii. Acquire a property using their own resources plus an interest-free equity loan repayable only on the sale of the property of up to 150% of the value of their home in Grenfell Tower or Walk (option B)
 - iii. Non-resident leaseholders can benefit from either of options A or B
 - iv. Resident leaseholders can opt for a secure tenancy and receive 75% of the value of their property (option C)

- v. The payment of any mortgage on their property for up to 12 months or until they secure a new property (whichever is the earlier)
- vi. The Council negotiates a settlement with the fire insurance company on behalf of all leaseholders and itself and on acquisition of properties (as in recommendation 2.2) it takes an assignment of leaseholders' rights under the insurance policy
- vii. The Council provides a package of personal support to leaseholders to help them make appropriate choices (Navigator Service).
- viii. These offers are discussed with leaseholders and their observations are reported back to the Leader and Deputy Leader for consideration and the options put forward, within this framework, are refined in the light of this feedback. It is intended that a decision be made by 15th September.

- 2.2 It is recommended that the Council acquires the fourteen leasehold properties in Grenfell Tower and the three leasehold properties in Grenfell Walk under Sections 120 and 121 of the Local Government Act 1972 and/or Section 17 in Part II of the Housing Act 1985 and the Acquisition of Land Act 1981 (See Appendix A for property addresses)
- 2.3 It is recommended that the Council enters into the relevant legal documentation to give effect to the proposals in this report and that authority be delegated to the acting Director of Housing in consultation with the Tri Borough Director of Law to negotiate final terms with owners
- 2.4 It is recommended that the Council enters into an agreement with Notting Hill Housing Trust (NHHT) to acquire their 2 properties in line with paragraph 1.3 and that authority be delegated to the (acting) Director of Housing in consultation with the Tri Borough Director of Law to negotiate final terms and sign the purchase documentation
- 2.5 It is recommended that the Council enters into an agreement with Westminster Community homes (WCH) to undertake the Navigator Service as indicated in paragraph 4 and that authority be delegated to the (acting) Director of Housing in consultation with the Tri Borough Director of Law to negotiate fair and reasonable terms and sign the agreement with WCH

3 BACKGROUND

- 3.1 The fire destroyed or made uninhabitable 17 leasehold properties that are in Category A, properties within the inner cordon.
 - Grenfell Tower 14 (1 bed – 3 bed)
 - Grenfell Walk 3 (2 or 3 bed)
 - Property sizes range from 45 square metres to 85 square metres
- 3.2 Property distribution
 - 11 are owner-occupied (in both the Tower and Walk)

- 6 are held by non-resident landlords of which 2 are owned by Notting Hill Housing Trust
- At least 2 of the non-resident leaseholders claim to have been about to return to the property as their main home
- 14 leaseholders are in the Tower where there will be a fire insurance payment between £138k - £178k
- 3 leaseholders in the Walk are not eligible for a fire insurance payment as their homes were not destroyed although they cannot be reoccupied

3.3 The Tower and Walk are insured with Ocaso by the Council as freeholder. Leaseholders pay an insurance premium through their service charge. It is proposed that the Council uses its resources and acumen to negotiate a settlement on behalf of the leaseholders and itself. The money received will be used to defray the cost of the proposals in this report rather than fund the rebuilding of the Tower. As stated above (see paragraph 1.6), this will facilitate the renewal of the estate. On acquisition of properties, all rights of leaseholders under the insurance policy, including rights to insurance payments will be assigned to the Council.

3.4 The Council is meeting payments of interest and principal on the mortgages held by the leaseholders. This is subject to the leaseholders providing evidence of their monthly payment and details of their lender so this can be verified.

3.5 The addresses affected are set out in Part B.

4 PROPOSALS AND ISSUES

4.1 The Secretary of State has suggested that leaseholders purchasing a new home receive the market value of their Grenfell property prior to the fire and the Council agrees and has the budget to do so. The proposal is based on the statutory provisions relating to compulsory purchase compensation as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law. These provisions are applicable because the Council's intention is to use its powers under Sections 120-121 of the Local Government Act 1972 and/or Section 17 of the 1985 Housing Act, and the Acquisition of Land Act 1981, to avert, alleviate or eradicate within the Council's area or among its inhabitants some of the effects of the Grenfell Tower disaster. Specifically, the Council is addressing those issues affecting leaseholders of properties at Grenfell Tower and Walk and to enable the future renewal of the estate, including the provision of housing.

4.2 An important first step will be to establish the market value of the properties as at 13th June before the fire. This requires Council to carry out an independent valuation, based on Royal Institution of Chartered Surveyor's Valuation Professional Standards, which will help to inform the two home purchase options set out in the Part B appendix. If a leaseholder disagrees with the market valuation, they can have a valuation carried out by a qualified surveyor, which will be paid for by the Council. The two surveyors will then reach an agreement as to a fair price for the property. For the avoidance of doubt, this will assume

that the properties are in first class condition and that the owner was under no compulsion to sell their property.

4.3 Property Prices and Values:

- The average price paid for a property in Grenfell Tower is £270k, which translates via property indices to an average of £430k at current prices (from Right Move).
- There are no recent transactions in Grenfell Walk but using Land Registry data for an adjacent comparable block values show an average price when acquired of £295k and current market value of £495k. The council is acquiring a property in Testerton Walk at £550k
- Mortgage data from 3 of the 6 households with an outstanding mortgage range from £60k to £277k (some lenders have written off a leaseholder's mortgage in Grenfell Tower) – the Council is meeting the payments on the remaining mortgages.
- An essential next step is to obtain valuations from a professionally qualified chartered surveyor. The Council will honour the figures agreed between its valuer and a valuer acting on behalf of the leaseholder.

5. OPTIONS

5.1 Option A - purchasing a new property

5.1.1 Under this option, the Council will buy back the leases at the agreed market price immediately prior to the fire. All leaseholders with the exception of Notting Hill will also receive an additional home loss payment of 10% of the value of the property on 13th June 2017, up to a maximum of £58,000.

5.1.2 Leaseholders will be responsible for settling any mortgage on their property from the price paid for it. The Council will ensure that a dedicated expert is available to help with the leaseholder's property search, who will take account of any requirements specified (the Navigator Service set out below). The Council will pay the associated costs of moving into a new home, including legal and surveyor's fees and Stamp Duty Land Tax. The Council will also ensure any costs of new furniture, new 'white goods' and other agreed costs are met to help leaseholders move into a new home. This is in line with commitments made by Ministers. Leaseholders can add to the money available by taking out a mortgage.

5.2 Option B - purchasing a new property making use of an interest-free equity loan

5.2.1 Under this option, the support package under Option A is available, and in addition, leaseholders may also take advantage of an interest-free equity loan from the Council for up to an additional 150% of the agreed market value of their property.

5.2.2 To take advantage of these option leaseholders will need to commit to using all the proceeds from the sale of their property. There would be no requirement to

repay any of the interest-free equity loan back until the new property was sold. Leaseholders would not pay interest on the loan. The same percentage as the equity loan represented of the purchase price of the property will need to be paid back to the Council when the property is sold. (For example, if a leaseholder received an equity loan for 33% of the purchase price 33% of the proceeds of the future sale would need to be repaid to the Council).

	2017	2025
Property price	£750,0000	£
Equity contribution	250,000	£330,000,00
Percentage	33%	33%

5.2.3 In the worked example, the Council receives £80k more (in nominal terms) than the original advance at the point of repayment (i.e. when the property is sold). Adoption of this approach is in line with practice when developing proposals for the renewal of estates and addressing homelessness arising from the fire.

5.2.4 This does not restrict the way in which leaseholders use their property, barring any terms in a lease or deed of covenant associated with the purchase. The Council would only require that the new property was a single-family property suited to the size of the household, and that the property is within the United Kingdom. The property can be left through the leaseholder's will and if the beneficiaries need the interest-free equity loan to continue to live there, it will be available to them as well.

5.3 Non- resident leaseholders

5.3.1 A non-resident leaseholder subletting a Grenfell property will be able to benefit from either option A or from option B. In addition, the Council will cover relevant costs incurred resulting from the loss of their Grenfell property on 13th June 2017, such as loss of rental income, subject to reasonable evidence being provided of the losses and including that the non-resident leaseholder has no other resources through which to pay these costs (such as contents of business insurances)

5.4 Option C - becoming a social housing tenant

5.4.1 This option provides resident leaseholders with the same opportunity as every other resident to be rehoused permanently as a tenant of either the Council or a housing association. In addition to the tenancy, leaseholders will receive 75% of the market value of their property, as set out under the Council's draft Leaseholder and Freeholder Options Policy dated March 2017

5.4.2 In addition to the tenancy and 75% market value payment leaseholders would also receive the resettlement package provided to tenants provided all rights under the insurance policy are assigned to the Council on acquisition

5.5 Navigator Service

5.5.1 This is a personalised advocacy and support service to leaseholders to assist them as necessary to:

- Understand the choices open to them
- Make an informed choice (including accepting temporary accommodation)
- Identify and negotiate for a suitable property
- Manage the acquisition process (understanding all the issues entailed – terms of leases etc.) through to completion
- Manage the moving process and ensure that all arrangements are in place for them to receive continuing support

5.5.2 This service is based on the way Westminster City Council works with leaseholders in its regeneration estates to ensure that leaseholders are able to make informed choices about their future. It is proposed to appoint Westminster Community Homes to provide this service, as they are able to gear up quickly to do the work, have the necessary resources, contacts and skills. The estimated cost (based on up to 10 days' support per household) is £58.2k.

5.5.3 This is an option for each leaseholder, to an independent advisor seeking to deliver the outcome they want. It supplements rather than replaces any other professional advice a leaseholder wishes to appoint, where this is related to the provision of a new property this is paid for by the council.

5.5.4 Like other residents in Category A leaseholders are benefiting from cancellation of Council Tax and Service charge liabilities

5.6 Consultation and engagement

5.6.1 It recognised that leaseholders and their households need time to assess their options and decide how they wish to proceed. As part of the process all leaseholders will have the opportunity to meet the Council, put forward their views having taken advice should they wish.

5.6.2 These comments will be collated and report to the relevant Scrutiny Committee to enable the Leader and Deputy Leader to either confirm the principles of this offer or bring a revised proposal to Cabinet.

6. LEGAL IMPLICATIONS

6.1 Section 138 of the Local Government Act 1972 provides that where an emergency or disaster involving destruction of or danger to life or property occurs and the Council are of opinion that it is likely to affect the whole or part of their area or all or some of its inhabitants, the Council may—

(a) incur such expenditure as they consider necessary in taking action themselves (either alone or jointly with any other person or body and either in their area or elsewhere in or outside the United Kingdom) which is calculated to avert, alleviate or eradicate in their area or among its inhabitants the effects or potential effects of the event; and

(b) make grants or loans to other persons or bodies on conditions determined by the Council in respect of any such action taken by those persons or bodies. The terms of the proposals contained in this report are intended to avert,

alleviate or eradicate within the Council's area or among its inhabitants some of the effects of the Grenfell Tower disaster, specifically those affecting leaseholders of properties at Grenfell Tower and Walk.

- 6.2 Sections 120 and 121 of the Local Government Act 1972 authorise the Council to acquire land by agreement or compulsorily for the purposes of any of their functions under this or any other enactment. Such functions include the Council's power to take action themselves (either alone or jointly with any other person or body and either in their area or elsewhere in or outside the United Kingdom) which is calculated to avert, alleviate or eradicate in their area or among its inhabitants the effects or potential effects of an emergency or disaster involving destruction of or danger to life or property (where the Council are of opinion that it is likely to affect the whole or part of their area or all or some of its inhabitants).
- 6.3 Section 17 of the Housing Act 1985 provides that the Council may acquire land compulsorily or by agreement for the provision of housing and connected purposes notwithstanding that the land is not immediately required for these purposes. In order to obtain the confirmation of a CPO for these purposes, the Secretary of State must be of the view that the land is likely to be required within ten years from the date of confirmation of the CPO.
- 6.4 The exercise and confirmation of CPO powers are subject to guidance from the Secretary of State, most importantly the *Guidance on Compulsory Purchase Process and the Crichton Down Rules for the Disposal of Surplus Land Acquired by, or Under the Threat of, Compulsion* published by DCLG in October 2015. In particular, the Secretary of State will only confirm a CPO if satisfied that there is a compelling case in the public interest.
- 6.5 The assessment of CPO compensation is provided for in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law and is also the subject of guidance issued by the Secretary State. Compulsory purchase and compensation booklet 4 provides guidance on the assessment of compensation to residential owners and occupiers.
- 6.6 Some provisions such as the offer to non-resident leaseholders are more generous than CPO legislation and guidance require but, bearing in mind the circumstances of the Grenfell Tower tragedy, the Council wishes to and has the power to settle on more generous terms. Such power is provided by section 138 of the Local Government Act 1972 and/or the general power of competence under the Localism Act 2011. Government guidance on Compulsory Purchase Process and the Crichton Down Rules (October 2015) also provides that acquiring authorities can consider all of the potential costs involved in the compulsory purchase process when assessing the appropriate payment for the acquisition of land in advance of compulsory purchase.
- 6.7 In addition, section 24 of the Local Government Act 1988 empowers the Council to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation,

improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation. Section 438 of the Housing Act 1985 (local authority mortgage interest rates) expressly does not apply to financial assistance under s.24 (1) n of the 1988 Act: see s.24 (4). The consent of the Secretary of State for such financial assistance is required under Section 25 of the 1988 Act, unless (relevantly) the assistance falls within article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002. Article 3 empowers the Council to provide financial assistance for the purpose inter alia of enabling any person to acquire living accommodation when the Council has acquired or proposes to acquire his existing living accommodation. The Council must adopt a policy for the provision of this financial assistance, give public notice of it and ensure that copies are available for inspection free of charge at its principal office and that copies may be obtained by post for a reasonable charge.

- 6.8 A loan will be exempted from regulation under the Financial Services and Markets Act 2000 and the Mortgages Directive 2014/17/EU if it is a credit agreement relating to the purchase of land, the lender is a local authority and the loan is a “restricted public loan” (RPL). This exemption is based, in domestic law, on articles 60 E (2) and 60 HA (2) (c), FSMA 2000 (Regulated Activities) Order 2001. In EU law, it is based on article 3(3) (c) of the Mortgages Directive.
- 6.9 In order to qualify as a RPL, the loan will need to satisfy the following conditions:
- (1) it is granted to a restricted public under a statutory provision with a general interest purpose; and
 - (2) ... it is: (i) free of interest ...
 - (3) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and
 - (4) any advertising of the loan is fair, clear and not misleading.
- 6.10 The Council's Council Tax write off procedure enables the Council to allow debt to be written off as a matter of urgency to compensate individuals affected by the fire without them having to apply for a discount under s13a of the Local Government Finance Act 1992.
- 6.11 The Council's write off procedure enables the Council to allow debt to be written off as a matter of urgency to compensate individuals affected by the fire.
- 6.12 The proposals contained in this report take into account the above statutory requirements, guidance and policies and officers will ensure that the delivery of the proposals complies with the further detailed requirements outlined above.

Legal matters and legal implications drafted by Matt Hutchings QC in consultation with Tri Borough Legal Services Diana Barrett and Sue Rixon.

7 FINANCIAL AND RESOURCES IMPLICATIONS

- 7.1 Until the existing properties have been valued and the options selected by all leaseholders are known, it is impossible to put a precise figure on the cost of this scheme. If all leaseholders choose Option B and properties values were as anticipated, this could cost up to £16.5m. The table below reflects a more likely mix, which would cost up to £15m. These figures are quoted net of estimated insurance proceeds.
- 7.2 Council will seek to recover some or all of the costs of this scheme from the Department for Communities and Local Government as part of its wider claim for the Grenfell tragedy. However, at this stage it would be prudent to assume that no support will be forthcoming from government for this scheme.
- 7.3 In the meantime, the Council will need to set the cost of this expenditure against its existing resources so that the offer to leaseholders can proceed in a timely manner.
- 7.4 Ultimately, in the long run it is expected that the equity loans will be cost neutral to the Council as loans are recouped. Loan repayments will be received as capital receipts. This takes into account potential capital growth from the equity held in the properties.

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Background papers used in the preparation of this report: None

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