

<b>Committee:</b> Cabinet	<b>Date:</b> 9 <sup>th</sup> February 2011	<b>Classification:</b> Unrestricted	<b>Report No:</b>	<b>Agenda Item:</b>
<b>Report of:</b> Aman Dalvi Corporate Director Development and Renewal  <b>Originating officer(s)</b> Jackie Odunoye Service Head Strategy, Regeneration and Sustainability		<b>Title:</b> Leasehold policy review  <b>Wards Affected:</b> All		

<b>Lead Member</b>	Lead Member, Housing
<b>Community Plan Theme</b>	A Better Place to Live
<b>Strategic Priority</b>	Focusing on Residents – Tenant Involvement, Serving Leaseholders Well Delivering and Managing Decent Homes

## 1. **SUMMARY**

- 1.1. Members are asked to approve a new set of leasehold policies.
- 1.2. A comprehensive review of policies relating to leasehold services has been carried out. This report sets out the context within which the new policy has been written together with the new policy which is attached as appendices 1 to 4.
- 1.3. The revised policy ensures that LBTH leasehold policy complies with law and regulation, reflects the contents of the leases and improves the clarity and transparency of policy. The new policy promotes efficiency and effectiveness in service delivery.

## 2. **DECISIONS REQUIRED**

- 2.1. Cabinet is asked to approve the new Leasehold policies attached as appendices to this report.

### **3. REASONS FOR THE DECISIONS**

3.1. In the first quarter of 2010 several issues relating to leaseholders arose which required an analysis of existing policy in order to derive decisions that were aligned with policy. This demonstrated that:

- many aspects of leasehold policy had not been updated for a considerable period of time
- some aspects of policy relied on the interpretation of committee minutes over 10 years old
- in some subject areas it was not possible to locate written policy
- practice has not kept pace with case law and decisions from the Leasehold Valuation Tribunal
- leaseholders have indicated in their dealings with the Council and THH that they do not feel they have been dealt with in a fair and transparent manner. Adoption of the policies will ensure all parties are aware of the way in which issues will be dealt with and this should improve the relationship and customer satisfaction.

3.2. For these reasons it was decided to undertake a comprehensive review of Leasehold policies. Under the terms of the Management Agreement with Tower Hamlets Homes (THH) LBTH retain the responsibility for authoring policy.

3.3. The new policy contained in the appendices have been approved by Legal Services as complying with legal and regulatory requirements.

### **4. ALTERNATIVE OPTIONS**

4.1. Two key alternative options were considered in the course of the review. Firstly consideration was given to changing leases and/or transfer documents in order to deal with issues relating to ground floor leaseholders being charged for door entry systems and lifts when they are not directly served by the component. This was not practical as it would require leaseholders above ground floor to voluntarily take on extra cost and would also cause a cross subsidy as extra cost would also fall on tenants. The same was true where neighbouring freeholders have different transfer documents, one paying toward the upkeep of their estate, the other not paying.

4.2. Secondly consideration was given to waiving certain charges to ground floor leaseholders / certain freeholders. The act of waiving a charge operates as a variation to the lease and would require the agreement of all leaseholders, including those who would have to pay more. Also, again, this would operate as a cross subsidy and as such would go against the Cabinet decision in July 2010 that cross-subsidies must be eliminated.

## 5. **BODY OF REPORT: Background**

### 5.1. **Scope**

5.2. The policy review covers all the key areas of leasehold policy:

- Alterations
- Service Charge Calculation
- Major Works
- Sub-letting
- Postponements
- Insurance
- Leasebacks
- Prevention and collection of debt
- Administration Fees for additional service requests
- Freeholders

## 6. **Inputs**

6.1. The policy review took into account inputs from a number of sources which defined the key issues that were considered within the review:

- The views of members at LAB and MAB
- The views of relevant staff at THH and LBTH including operational and legal colleagues
- The draft recommendations of the Beevers and Struthers Audit

6.2. The majority of the issues raised by leaseholders and/or the Beevers and Struthers Audit are concerned with the efficiency, effectiveness or cost of the services they receive. These issues are largely outside the scope of the policy review. A robust service improvement framework is in place which ensures that THH's service improvement plans are appropriate in scale, agreed by LBTH and monitored by LBTH as they are implemented.

## **7. Value for Money and Efficiency**

7.1. The policies create a framework where the focus on efficiency and effectiveness is very clear. Section 3. of the Service Charge Methodology Policy sets a clear policy context within which services will be planned, procured and delivered.

## **8. Issues that have shaped the policies**

8.1. There are 3 key factors that have shaped the draft policies:

- The imperative that the policies comply with legal and regulatory requirements
- Changing the leases is not a practical proposition
- The Cabinet decision in July 2010 that there must be no cross subsidy (in either direction) between leaseholders and tenants

8.2. The combined effect of these 3 issues has been to ensure that policy strongly reflects the contents of the leases. This in turn means that for the most part the new policy restates the old policy. Only a small number of changes to policy are proposed.

## **9. Changes to policy**

9.1. All leaseholders with an obligation to contribute towards a door entry or lift system will have the appropriate charges levied upon them. This brings policy in line with the contents of the leases.

9.2. The Discretionary Cap which restricts to £10k the major works costs recharged to qualifying leaseholders is withdrawn as it operates as a cross-subsidy.

9.3. Costs relating to fuel will be apportioned by Boiler points (this represents no change) or an alternative system if one can be found that does not involve

cross-subsidy. Costs relating to boiler maintenance will be apportioned by GRV.

- 9.4. If a leaseholder wants to exempt a component from replacement under the major works programme (e.g. they have replaced their own windows) the leaseholders component must be in good condition and have a future lifespan of at least half that of the new component proposed under the major works programme.
- 9.5. If a leaseholder succeeds in having a component exempted from major works they will not be billed costs relating to that component in their property but will be charged their share of the preliminaries, professional and management fees arising from the major works contract.
- 9.6. A tightening up of policy around sub-letting to ensure that lessees and their sub-tenants have a very clear understanding of their respective responsibilities when a property is sub-let.

## **10. Results of Leaseholder Consultation**

- 10.1. All leaseholders were given the opportunity to comment on the new policies and almost 700 requested the papers.
- 10.2. The consultation timetable had been set up to allow this Cabinet report to contain a full summary of the comments received.
- 10.3. However it subsequently became clear that postal problems caused by the severe weather coupled with some internal administrative difficulties had impacted on the receipt and delivery of both the papers to leaseholders and the receipt of comments from leaseholders.
- 10.4. In order to ensure that we provided to leaseholders with a demonstrably reasonable period in which to make their comments we have extended the deadline.
- 10.5. The summary of comments received will be reported to the Cabinet meeting.

**11. Taking into account the recommendations of the Beevers and Struthers Audit**

- 11.1. It was vital to the policy review to take account of the findings of the Beevers and Struthers audit. The Beevers and Struthers Audit is still in draft form and hence not in the public domain. In conducting the Leasehold Policy Review we have taken full account of the 64 draft recommendations within the draft Beevers and Struthers report which were released to us.
- 11.2. We have also undertaken that when the final Beevers and Struthers report is published we will conduct an analysis of the published recommendations against the prevailing leasehold policy to determine if any further changes to policy are required.

**12. Heating Charges**

- 12.1. Our proposal is to continue with Boiler Points. This was particularly popular with the Leaseholders comprising THH's Leaseholder Service Improvement Group. Boiler points aim to reflect the extent of heating installations in the amount charged and therefore to create appropriate disparities between charges.
- 12.2. In addition we have created space within the draft policy for an alternative system of apportioning heating costs if a system can be developed that further improves the equity of the apportionment whilst not creating any cross-subsidy. THH are intending to work with the leaseholders on their Leasehold Service Improvement Group to attempt to develop such an alternative.

**13. Other landlords with the same leases**

- 13.1. There are a number of landlords who have taken stock transfers from LBTH and taken on leaseholders with the same leases as those which are the subject of this review. Members asked for information on how other landlords are interpreting the leases in relation to ground floor leaseholders and charging for lifts/door entry.
- 13.2. In the limited time available we have managed to gather the information in the table below:

East End Homes	Charge ground floor leaseholders for lifts and door entry where relevant  Bill all costs allowable under the leases.
Poplar HARCA	Charge ground floor leaseholders for lifts and door entry where relevant  Bill all costs allowable under the leases.
THCH	Do not charge original RTB Lessees  Do charge all subsequent Lessees
Old Ford HA	Do not charge original RTB Lessees  Do charge all subsequent Lessees

#### **14. Ground floor leasehold numbers**

- 14.1. There are 2264 leaseholders with ground floor properties.
- 14.2. The total value of costs not charged to these customers for lifts/door entry in 2010/11 is £36k. Although these costs are low it is important to note that any future replacement programmes will considerably increase this amount.
- 14.3. These costs were not passed on to any leaseholders. Therefore the costs fell back on the HRA and were effectively met by reducing reserves and the budget for services to tenants. This practice is not sustainable in the current financial climate and other sections in this report make it clear that the Council is open to challenge if it continues with this practice.
- 14.4. It is worth noting that of 2264 ground floor leaseholders:
- 648 are known to be sub-let
  - 1111 were purchased on the open market
  - 1153 are occupied by the original purchaser

**15. Robust action with regard to sub-letting**

- 15.1. Members raised the subject of the importance of robust action relating to sub-letting. We fully understand the importance of this issue. We are confident that the policy related to sub-letting gives THH sufficient powers to be able to robustly manage problems that arise when a property is sub-let.
- 15.2. Whether or not THH manage sub-letting problems robustly is a service delivery issue and as such is beyond the scope of the policy review. However the council's client team expects to see THH managing robustly in this area and will make spot checks to ensure that this is happening. We will also monitor complaints received by THH to see whether any complaints of poor performance in this area are received and substantiated.

**16. Communicating the outcome to leaseholders**

- 16.1. An explanation of the amended service charge calculation will be enclosed with estimated bills. In addition customer facing staff in Leasehold Services will be thoroughly briefed on the amended calculation in order to deal effectively with enquiries from leaseholders on receipt of their estimated bills.

**17. Conclusion**

- 17.1. Within the scope of the review we have endeavoured to create a set of policies which are as simple and transparent as possible and which create a policy framework which seeks to push forward the issues of service improvement, efficiency and effectiveness.
- 17.2. This policy review is not the vehicle which will deliver most benefit to leaseholders in terms of improving services or reducing costs. Service improvement, improved value for money and reduced costs are all being pursued by THH via a range of initiatives beyond the scope of this policy review. A number of leaseholders are actively engaged with THH on service improvement issues.
- 17.3. This policy review has clarified and brought to the fore that we can not consider changing the leases nor can we waive elements of charge (including, but not restricted to occasions when to do so gives rise to cross-subsidy). These 2 factors taken together define the boundaries within which the policy review has operated.



- 17.4. The policies that are proposed are aligned to the Cabinet decision in July 2010 that lease/freeholders must not subsidise tenants nor vice-versa.

**18. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 18.1. Cabinet is asked to consider the outcome of the review of leaseholder service charges and agree the policies set out in appendices 1 to 4. The changes that are recommended impact only on the distribution mechanism for existing means of determining what leaseholders are charged for. In that regard they are cost and income neutral. However, any changes to the means for charging categories of leaseholders (i.e. what they are, or are not charged for) would have significant financial implications for other leaseholders and the Housing Revenue Account. Any reductions in service charges to a specific category of leaseholder would have to be offset both by increased service charges to other residents and a reduction in the level of service provided and paid for through tenant's rents.

**19. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE(LEGAL SERVICES)**

- 13.1 The legal rights and obligations of the Council and the leaseholders or freeholders are set out in the right to buy documentation. As leaseholders or freeholders purchase their properties they obtain independent legal advice on those rights and obligations, even where they are not the original purchasers. It would be very difficult and costly to change that documentation once a sale transaction has been completed as the documents create mutual obligations between all of the owners in the block or on the estate. Each party would need legal representation as would any mortgagee and the Council would be asked to recompense all parties for the legal fees increasing the cost of the project. Also if only one of the owners refused to sign the new documentation the change would fail and the Council could be left with abortive costs.
- 13.2 The Council is under an obligation to fulfil its legal obligations or it could face challenges through the courts or the Leasehold Valuation Tribunal. If the Council failed to collect sums due under the Lease from a particular leaseholder or category of leaseholders that shortfall would need to be met from another source. This would not be considered reasonable and would create a risk of challenge from those adversely affected
- 13.3 The proposed policies reflect the rights and obligations in the leases and transfer documents. They also seek to create a clear and transparent system

for the administration of the properties so leaseholders and freeholders can have confidence they have been treated correctly

## **20. ONE TOWER HAMLETS CONSIDERATIONS**

- 20.1. The proposed policies ensure that the relationship with leaseholders is rooted in the content of their leases. There will be issues of vulnerability for individual leaseholders. The policy directs LBTH/THH to be supportive of vulnerable residents. Broader policies such as Customer Access create a clear framework within which vulnerable customers will be supported to enable appropriate interactions in their relationship with LBTH/THH.
- 20.2. An Equality Impact Assessment – Test of Relevance Screening has been conducted and its findings approved by the Equalities team.
- 20.3. The EQIA ToR concluded that the potential impact of the new policy was low and as such a full EQIA was not required.
- 20.4. In summary the EQIA ToR found that the legislative and regulatory environment meant that there was little discretion available to address potential negative impacts by changing the policy. However the mechanisms, support and sign-posting available to leaseholders addresses potential impacts where possible.
- 20.5. An action plan has been drawn up to address 5 areas of weakness identified.

## **21. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 21.1. There are no direct SAGE implications for these policies.

## **22. RISK MANAGEMENT IMPLICATIONS**

- 22.1. The major risk that arises is that the policies could be subject to successful challenge at the Leasehold Valuation Tribunal. This risk applies to both the existing policy framework and the proposed new policy framework. In terms of the new policy we have managed this risk in three ways:
  - The project has had close involvement from senior colleagues in LBTH and THH with relevant expertise in strategic and service delivery issues relating to leasehold services.
  - The policies have been influenced by best practice amongst a range of 2 and 3\* housing providers.

- Legal advice has been taken and this shows that the draft policies represent a strong and defensible position.

**23. CRIME AND DISORDER REDUCTION IMPLICATIONS**

23.1. There are no implications relating to crime and disorder arising from this report.

**24. EFFICIENCY STATEMENT**

24.1. Efficiency is of key importance to leasehold customers as they pay the full cost of providing the leasehold service. These policies aim to promote efficiency by creating a single, clear and transparent service charge calculation.

**Local Government Act, 1972 Section 100D (As amended)  
List of “Background Papers” used in the preparation of this report**

Brief description of “back ground papers”	Name and telephone number of holder and address where open to inspection.
<b>None</b>	F <b>Jon Slade ext 2141</b>

**18. APPENDICES**

- Appendix 1 – Alterations Draft Leasehold Policy V0.8
- Appendix 2 – Major Works Draft Leasehold Policy V0.10
- Appendix 3 – Methodology Draft Leasehold Policy V0.8
- Appendix 4 – Various Draft Leasehold Policy V0.7