

LEASEHOLD MANAGEMENT POLICY

Basildon Borough Council



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1 INTRODUCTION

Basildon Borough Council provides a wide range of services to leaseholders. This includes leaseholders who were previously tenants and bought their home under the Right to Buy, shared owners and home owners who purchased their leasehold home in a block of our flats on the open market.

The Council manages over 2100 leases with this number increasing each year as a result of the Right to Buy scheme. In addition to this the Council manage approximately 250 shared ownership properties and 100 sheltered leasehold properties.

2 EXECUTIVE SUMMARY

This policy outlines Basildon Borough Council's approach to meeting its obligations and responsibilities, as the freeholder of buildings, which are not contained within the lease but may affect their properties and the communal areas/services provided.

The Council has dedicated resources in place relating to leasehold management, to effectively manage matters including service charges, breaches of lease and conveyancing.

These obligations are contained within primary legislation and cannot be surpassed by Council policy.

This policy should be read in conjunction with the individual lease issued at point of sale along with the leaseholders' handbook. Leases vary and leaseholders should therefore refer to their individual lease for the legal position regarding both theirs, and the Council's obligations.

This policy will be reviewed regularly in order to ensure the outcomes and priorities of leasehold management are met.

3 POLICY STATEMENT

The aim of this policy is to ensure that Basildon Borough Council meet its responsibilities as the freeholder as contained in the lease between the Council and the leaseholder. This policy sets out the broad framework under which the Council will provide an efficient, customer focused leasehold management service that offers value for money. The Council is committed to providing the same standard of service and customer care to both tenants and leaseholders.

4 RELATED DOCUMENTS

- Lease Agreements,
- Leaseholder's Handbook,
- Relevant Tenancy Management policies and procedures.

5 DEFINITIONS

- **A Leaseholder:** is a tenant who has purchased a long term lease, usually lasting up to 125 years.
- **Service Charges:** are defined under Section 18 of the Landlord and Tenant Act 1985 as “an amount payable by a tenant of a dwelling as part of or in addition to the rent (a) which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord’s costs of the management and (b) the whole or part of which varies or may vary according to the relevant costs”.
- **Reserve Account:** this is only used towards Major Repairs/Planned work costs over £250.00 per repair, per resident. Each year the Reserve Account does earn interest. The Reserve Account balance stays with the property if you move home.
- **Ground Rent:** this is a standard charge and is payment for the rent of the land on which the block is situated.
- **Major works:** are usually cyclical works to the structure or fabric of the building. This may include external painting or re-roofing, where the lease allows a recharge to be made to the leaseholder to recover costs of the work.
- **Lease:** is a legal and binding contract between Basildon Borough Council and the leaseholder which outlines the rights and duties of both parties. The terms of the lease have been established in accordance with legislative requirement and cannot be altered without the express agreement and permission of the council, the leaseholder(s) and where applicable their mortgagee.
- **First-Tier Tribunal (Property Chamber):** handle applications, appeals and references relating to disputes over property and land.

6 LEASEHOLD MANAGEMENT

Leasehold Management covers the range of services provided by the council to those who own their property on a leasehold basis.

The Council will comply with legislation relating to leasehold management and service charges.

The Council expect that leaseholders will be provided with a copy of their lease by the solicitor acting on their behalf when they purchase their home. If copies are required these can be obtained from the Land Registry or from the Council. A charge is made for this service.

The Council will collect all monies due for services provided to leaseholders under the terms of their lease.

If a leaseholder is experiencing financial hardship the Council will signpost them to appropriate agencies to provide financial advice and guidance. With regards to major repairs, payment options are available.

The Council will provide all new leaseholders with a copy of the Leaseholder handbook which contains key information and advice.

The Council are committed to ensuring Leaseholders;

- receive prompt annual bills.
- are provided with an annual breakdown of repairs.
- receive an explanation of service charges with their annual statement,
- receive a statement of their annual service charge and reserve account.

The Council will comply with the requirements of Landlord and Tenant Act 1985 and Section 20 consultation notices will be sent to leaseholders where a repair is expected to cost more than £250 per resident/per repair. The notice will include a specification of the proposed work.

7 STATUTORY CONSULTATION

The Council will ensure that leaseholders are fully consulted in compliance with Section 20 of the Landlord and Tenant Act 1985 (as amended).

In addition to the council's statutory consultation obligations leaseholders will be provided with a 5 year plan of works, updated annually, to enable informal consultation to take place.

8 GETTING INVOLVED

The Council are committed to the consultation and involvement of residents with housing issues and feedback will be used to develop our policies and improve services.

The Council have a Resident Compact in place which is an agreement between Basildon Borough Council and all of our tenants and leaseholders. It supports meaningful engagement and involvement and enables residents to have a say on what is happening to their estates and properties.

9 HOME IMPROVEMENTS

The leaseholder is responsible for maintaining and repairing the internal parts of their property. The leaseholder is also responsible for the maintenance of fixtures and fittings in the property. Under the terms of their lease, leaseholders wishing

make alterations or improvements to their home must first request consent from the council and provide details of the proposed works. The Council will grant consent which may be subject to conditions such as:

- Providing plans and diagrams of the proposed work for approval.
- Seeking building regulation and/or planning permission for the proposed work from the Council where necessary
- Providing details of who will be carrying out the work.

Consent will not be withheld unreasonably. If consent is refused, the reasons for the decision will be given in writing.

Leaseholders will be responsible for reasonable administrative charges in addition to the council's legal costs, whether the matter proceeds or not and the improvement or alteration takes place.

If it is found alterations have been carried out without written consent, the leaseholder will be instructed to return the property to its original state.

10 SUBLETTING

Leaseholders are permitted to sublet their property and individual leases will provide the terms of these arrangements.

If a leaseholder chooses to sublet their property, they will become a private landlord and will be subject to the statutory and regulatory conditions imposed on landlords.

11 BREACH OF LEASE

The Council will take appropriate action, which may include taking legal action, whenever it becomes aware that a leaseholder is in breach of the terms of their lease.

12 SERVICE CHARGES AND INVOICES FOR MAJOR WORKS

The Council will comply fully with the terms of the individual leases when raising and calculating annual charges. Invoices will provide a clear explanation of the charges raised for services including: ground rent, buildings insurance, repair & maintenance, grounds maintenance, landlords lighting, communal heating, block cleaning, reserve account and management charge.

The council will not charge for works that it cannot demonstrate have been reasonably incurred, are not contained within the scope of the lease or if required, Section 20 consultation process has not been followed, unless the Council have separately contracted with a leaseholder at an agreed price.

Separate bills will be issued to leaseholders who have had Major Works completed in the previous financial year.

The Council will provide support and advice for leaseholders to enable them to pay all charges. This will include information about options to pay.

The council's approach to recovery of sums due from leaseholders will operate on the same principles as those that apply to Council tenants:

- The council's Leasehold Management Team will liaise with leaseholders over the payment of sums due and the recovery of any arrears
- Support and advice on available methods of payment will be provided
- Warning letters will be issued home visits will be made where there are arrears
- Payment agreements will be made wherever possible.

The council will respond to leaseholder service charge queries within the corporate policy and will seek to find a resolution where possible. Where resolution is not possible and payment remains outstanding, the council will take enforcement action to recover the debt.

Where leaseholders are able but unwilling to pay their charges or decline to discuss their financial position, enforcement action will be taken. The full range of enforcement mechanisms available to the council will be used, including forfeiture of the lease where this is required.

Where leaseholders are unable to pay their charges in full (even with the payment options available), they will be signposted to the appropriate debt advice and given an opportunity to act upon this advice prior to any enforcement action being instigated.

Buy back of leasehold properties may be an option in exceptional circumstances. If buy back is not possible and leaseholders remain unable to pay their charges, action will be taken to recover the charges due, which may include applying to court for forfeiture of the lease.

In the event that a leaseholder disputes a service charge, the council will provide dispute resolution mechanisms through the Leasehold Management team and the council's published complaints procedure. The aim of these processes will be to try and resolve the matter without the need for any legal action either by the Council or the leaseholder. The Council may also seek expert advice to assist decision making about charges.

13 MANAGEMENT AND ADMINISTRATION FEES

The Council reserves the right to recover the cost for managing its leasehold properties. Management and Administration Fees may vary from time to time

and will cover the costs of providing the management and general administration services on behalf of Leaseholders.

Management/administration fees for the production, administration and collection of annual invoicing is a set charge applicable to all leaseholders.

14 SUMMARY AND BALANCES OF SERVICE CHARGE ACCOUNTS

Where Leaseholders exercise their statutory right for the Council to provide a summary of their service charge account under Section 21 of the Landlord and Tenant Act 1985, the Council will provide the summary within one month.

15 SERVICE CHARGE ARREARS

Basildon Council expects all leaseholders to pay the service charge that is due under the Lease. The Council aims to create a culture where leaseholders attach a high level of importance to paying their service charge. Council staff will support this payment culture ensuring leaseholders understand their rights and responsibilities.

Arrears recovery will focus on personal contact at the earliest opportunity, ensuring high quality support and advice is readily available as well as informing leaseholders of the debt and consequences of non-payment in writing.

At all stages of the recovery process, the Council will make available as appropriate:

- Confidential face to face interviews with professional, knowledgeable, customer focussed staff.
- Awareness of options to pay
- Access to appropriate debt advice services who can help leaseholders to maximise income and assist with budgeting skills.
- Access to the Leasehold Management Team who can provide additional support for vulnerable leaseholders

Where a debt remains outstanding, enforcement mechanisms against the leaseholder will be considered. These include;

- County Court Judgement
- Attachment of Earnings
- Charging Order on the property
- Forfeiture of the lease

16 OPTIONS TO PAY

The Council recognise that the cost of major works could cause financial difficulties for some leaseholders and will pursue full cost recovery with the exception where the Government has decided to 'cap' leaseholder charges.

The Council have an approved extended payment option for leaseholders and homeowners affected by housing related work programmes and this will be reviewed periodically.

17 FURTHER ADVANCES AND POSTPONEMENT OF CHARGES

The Council have no influence over whether a leaseholder re-finances to release equity from their lease. However when a charge against a property in respect of the repayment of Right to Buy discount is in place, consent must be sought from the Council before they can apply for additional borrowing against the property. This will be dealt with in accordance with the Council's Postponement Procedures.

18 THE RIGHT TO EXTEND A LEASE/VARYING THE LEASE

When the term of the lease expires, the Council will give consideration to allowing the leaseholder to revert back to being a council tenant of the property. The leaseholder also has the right to extend the term of their lease. They can apply for a new lease at any time as long as the following conditions are met;

- There must be a long lease (over 21 years)
- The leaseholder must have held the lease for two years or more.

The terms of a lease can be varied only by specific agreement between the parties to the lease and, where appropriate, their mortgages or through an order issued by the First-Tier Tribunal (Property Chamber).

19 RIGHT TO BUY DISCOUNT RULES

If the property has been purchased under the Right to Buy scheme, re-selling can usually take place at the discretion of the leaseholder unless the property is being sold within the discount repayment period (within five years of purchase).

In these the cases will pursue repayment of the proportion of the discount.

20 SELLING THE PROPERTY

When a leasehold property is being sold, the Council will provide, upon request, all necessary information regarding service charges and any planned major works to the current and/or prospective leaseholder and their advisors. A reasonable fee for this service will be charged.

A leaseholder who is selling their property is legally obliged to notify the prospective purchaser of any notices that have been served on them or the property.

Leaseholders are not required to seek permission from the council if they wish to sell their home. However they are required to give first refusal to the Council, if they purchased it under the Right to Buy scheme, within ten years of the original conveyance.

The Council must be notified within one month of the sale, following completion, by way of formal Notice of Assignment served on the council by the purchaser's solicitors. If a Notice is not received, the original leaseholder will be liable for any charges made against the property and still named as the leaseholder on Council records.

21 GAS SERVICING

If the leaseholder sublets the property, it is their responsibility to arrange an annual gas safety check, to be carried out every 12 months by a Gas Safe Registered engineer, if the property is sublet. This is in accordance with the Gas Safety (Installation and Use) Regulations 1998.

22 COMPLAINTS AND DISPUTES

The Council will deal with any complaint about its service in accordance with its Complaints Procedure.

23 CONFIDENTIALITY/DATA PROTECTION

Basildon Borough Council complies with the principles of the General Data Protection Regulations 2018.

24 SAFEGUARDING

Where it is believed that a child or a vulnerable adult is at risk, the Leasehold Management team will make a referral to the appropriate service and will follow Basildon Borough Council's safeguarding procedures.

Basildon Borough Council will share information with other agencies, when necessary, in order to ensure compliance.

25 COUNCIL PROMISES

The table below provides a visual display of how this Policy will impact on the delivery of the corporate promises.

Corporate Promises	Levels of Impact			
	High	Medium	Low	None
A place for everyone to call home	X			
A place where everyone prospers		X		
A place to be proud of		X		

26 OUTCOMES AND PRIORITIES

This policy seeks to achieve the following Outcomes and Priorities:

Outcomes

- High quality service providing value for money
- A fair and equal service for all Leaseholders in accordance with the lease and legislation
- Protect property, assets and income
- Leaseholders involved in the development of services

Priorities

- Transparency with regard to costs
- Effective communications with all Leaseholders
- Full cost recovery
- Digital self-serve provision

27 LINKS TO OTHER CORPORATE POLICIES OR PARTNER DOCUMENTS

This policy has been written to take account of obligations imposed by legislation, other corporate policies or partner documents in particular:

- Commonhold and Leasehold Reform Act 2002
- Housing Act 1985 and 1996
- Housing (Service Charge Loans) Regulations 1992
- Landlord and Tenant Act 1985
- Housing Act 2004
- Regulatory Reform Fire Safety Order 2005
- Equality Act 2010
- Environmental Protection Act 1990
- ASB, Crime and Policing Act 2014
- General Data Protection Regulations 2018
- Basildon Council Complaints Policy
- Human Rights Act 1998
- Rent Arrears Prevention & Recovery Policy
- Extended Payment Options for Leaseholders and Homeowners affected by housing related work programmes
- Complaints, Comments & Compliments Policy 2017.