

## **The Vale of Glamorgan Council**

### **Cabinet meeting: 21st January 2019**

## **Report of the Cabinet Member for Housing and Building Services**

### **Recovery of Costs from Leaseholders**

#### **Purpose of the Report**

1. To make revisions to existing repayment options for leaseholders of Council owned residential properties.

#### **Recommendations**

1. That Cabinet approves the updated range of repayment options to the Major Works Payment Options Policy (Appendix 1) and the proposed Discretionary Loan Scheme.
2. That delegated authority be granted to the Monitoring Officer/Head of Legal and Democratic Services to agree and execute the forms of agreement and supporting legal charges should they be taken out by leaseholders.

#### **Reasons for the Recommendations**

1 and 2

To ensure there is a flexible range of repayment options to enable leaseholders in financial hardship to meet the obligations of their lease, and to ensure that the Council fully maximises its income recovery for the cost of works undertaken.

#### **Background**

2. The Council manages 300 leasehold properties across the Vale in which the lease agreement for each property sets out the leaseholder's responsibilities to pay towards annual service costs and major repair costs.
3. The Council as freeholder retains responsibility for the maintenance of the structure and exterior of the buildings and needs to recover costs of 'eligible' repairs from individual leaseholders, provided that consultation is carried out in accordance with section 20 of the Landlord and Tenant Act 1985.
4. The Council has completed extensive repairs to the structure and exterior of buildings over the last few years, including the upgrade of communal areas, roofing, replacement of guttering and rain water goods etc. Given the extent of the works

some of the repayable costs for individual leaseholders are in the region of £8,000.00 each.

5. On the 15th June 2015, Cabinet approved a number of repayment options for leaseholders of residential accommodation (Cabinet minute C2798 refers). However, these options did not take account of leaseholders who may be suffering from financial hardship and consequently no provision was made at that time for leaseholder to repay the outstanding amount in instalments.

## **Relevant Issues and Options**

6. When carrying out the section 20 consultation process it has become apparent that many leaseholders had not made provision to pay large sums of money towards repair works carried out to their homes. In many instances this was because they did not have a full understanding of the terms of their lease and their obligation to pay a contribution towards the total costs.
7. Whilst some leaseholders have the financial resources to pay their bill in full, many are older people who purchased former Council owned flats sold under the Right to Buy legislation and have lived in the property for many years. They are 'asset rich' but 'cash poor' and therefore are not able to re-mortgage or to raise other funds to pay their charges.
8. A number of leaseholders maintain their service charge accounts by a making a regular monthly contribution via standing order and have started to repay the amount outstanding by increasing these payments. However, whilst the sum for these works has been applied to the service charge account, there is no provision in the current Major Works Payment Options Policy for them to pay in this way. It is therefore proposed that a financial assessment be carried out on individual leaseholders and where it is concluded they do not have the ability to pay the costs in full or be able to secure a loan, an Officer will enter into a repayment agreement with them to ensure the full cost is recovered at a rate which is affordable to the leaseholder.
9. Whilst there are statutory loans available there is a specific criterion which excludes access to nearly all leaseholders- as they must have purchased their home under the Right to Buy Scheme within the last 10 years. Further, the discretionary loan scheme is not accessible to all as it excludes those tenants on a low income with a bad financial standing who may already be in negative equity or have a second charge registered against their property.
10. There is case law in place in England which requires Councils to minimise the impact of large repair bills on leaseholders. This came about following the case of a 93 year old leaseholder, Florence Bourne, who the family say, died in shame as she had never been in debt in her life and simply could not afford to pay a £50,000 bill for work. The legislation, known as 'Florries Law' places a mandatory cap on the amount that can be charged to leaseholders and also requires Councils to offer affordable repayment terms, making it clear what help is available. Whilst the law does not apply in Wales, it would be wise to pay regard to some of the principles, in order to avoid another tragic case. The provision of an affordable monthly repayment plan would be a reasonable and proportionate way to recover payment and prevent further hardship. There is no proposal to apply a cap on the amount recharged to leaseholders.

11. A copy of the draft updated Council's Major Works Payments Options Policy is attached at Appendix 1 which sets out the updated range of payment options available.

### **Resource Implications (Financial and Employment)**

12. Providing payment options will not only ensure maximisation of income towards the cost of the improvement works but will also assist leaseholders to meet their legal obligations and minimise financial hardship.
13. The cost of managing and administering payment options will be met from existing resources.

### **Sustainability and Climate Change Implications**

14. Achievement of the Welsh Housing Quality Standard (WHQS) means that all Council owned dwellings meet the requirements in terms of climate change. In addition a decision to carry out Major Works is assessed against sustainability test criteria

### **Legal Implications (to Include Human Rights Implications)**

15. The Council is still obliged to offer statutory loans under the Housing (Service Charge Loans) Regulations 1992 (as amended) and is permitted to offer discretionary loans by virtue of Sections 450A and B Housing Act 1985. Legal input will be required to draw up any formal loan agreements and to register charges at the land registry should they be taken out by a leaseholder.

### **Crime and Disorder Implications**

16. There are no direct crime and disorder implications arising from this report.

### **Equal Opportunities Implications (to include Welsh Language issues)**

17. Council repayment options are a measure of ensuring that all leaseholders have fair access to meet their Major Works recharges in relation to the Council's requirement to meet WHQS.

### **Corporate/Service Objectives**

18. Meeting the WHQS and the Housing Improvement Programme contributes to the Council's corporate priority that Vale of Glamorgan residents have access to affordable, good quality suitable housing and housing advice and support.

### **Policy Framework and Budget**

19. This report is a matter for Executive decision by Cabinet.

### **Consultation (including Ward Member Consultation)**

20. There has been no individual Ward Member consultation as this is a Vale wide issue.

### **Relevant Scrutiny Committee**

21. Homes and Safe Communities.

### **Background Papers**

None

**Contact Officer**

Nick Jones - Housing & Strategic Projects Team Leader.

**Officers Consulted**

Committee Reports

Operational Manager Finance

Operation Manager Housing

**Responsible Officer:**

Miles Punter - Director of Environment and Housing Services

## Vale of Glamorgan Council

### Major Works Payment Options Policy

Section 20 of the Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) sets out the three-stage consultation procedure with which to follow when carrying out qualifying works to a building where the contribution from any one lessee exceeds £250, or a qualifying long-term agreement where the contribution from any one lessee exceeds £100 in one financial year.

#### Stage One

For qualifying works, under Section 20 ~~it is necessary to serve you would be required to serve~~ a "Notice of Intention to Carry Out Works" upon all lessees. The Notice must generally describe the proposed works, state the reasons for considering the proposed works, and invite leaseholders to make written observations within 30 days.

#### Stage Two

Once estimates for the works have been obtained, a notice must be served to all leaseholders detailing the costs, how to inspect them and inviting any comments.

#### Stage Three

The third and final Section 20 notice issued to Leaseholders will detail the full extent of works required and the individual liability of the lessee, based on a survey of the property. At this point the payment options available will be explained to the leaseholder, via an information leaflet.

The leaseholder will then be required to indicate whether they anticipate finding their own means of payment, or whether they will seek to formally apply for a Council loan.

Once the works have been completed and accounts finalised, those wishing to pay by their own means will be issued with an invoice for the full amount. Those wishing to enter into a formal loan agreement with the Council will receive a demand for the full amount accompanied by the appropriate formal loan agreement papers.

Any invoice or demand must be issued within 18 months of the work being completed in order to comply with Section 20b of the Landlord and Tenant Act 1985.

#### **Where the leaseholder makes their own arrangements for payment:-**

##### **Option 1 - Full payment by leaseholder - Available to all Leaseholders**

Where affordable the leaseholder can pay for works within 4 weeks of the date of invoice.

##### **Option 2 - Private Loan / Self Help - Available to all Leaseholders**

Leaseholder to make their own loan arrangements from their mortgage lender, bank or building society, and pay the full invoice amount.

**Where Options 1 and 2 are not possible:-****Option 3 - Statutory Loan Scheme 4.93% - £150 administration fee**

This is a loan governed by statute and is available only to those leaseholders that originally purchased their home under the Right to Buy Scheme in the last 10 years. This loan is only available by virtue of Section 450A of the Housing Act 1985 and Regulation 2 of the Housing [\(Service charge Loans\) \(Amendment\) \(Wales\) Regulations 2011](#).

where:-

- Any service charges made since the start of the lease are at least £2,830 and not more than £37,660.
- The minimum amount for a loan is £950.
- There will be a maximum term of 120 months (10 years).
- Equal monthly repayment installments of principal and interest combined are required.
- An administration fee of £150 can be added to the loan amount or paid in full when signing the agreement.
- Interest is chargeable for the term of the loan at a variable rate, which is calculated in accordance with schedule 16 of the Housing Act 1985, (currently 4.93% for this Council). The loan will be secured against the property; this involves placing a charge via Land Registry.

Invoice Value (governed by law, based on RPI January 2018)	*Maximum monthly repayment period available with interest at 4.93%
£950 - £2,829.99	36 months
£2,830 - £9,419.99	60 months
£9,420 - £37,660	120 months

\*Or, at the request of the borrower, a shorter period

**Option 4 - Discretionary Loan Scheme - 4.93% - £150 administration fee - Available to owner occupiers only.**

The council is able to provide discretionary loans to owner occupiers only.

- There will be minimum term of 12 months (1 year) and a maximum term of 120 months (10 years).
- The loan may be made on terms with no requirement to charge interest.
- Monthly repayment installments are required.
- The loan will be secured against the property; this involves placing a charge via Land Registry.
- The administration fee of £150 can be added to the loan amount or paid in full when signing the agreement.

Invoice Value	Monthly repayment period available with interest at 4.93%
£250 - £1,999.99	12, 24, 36 months
£2,000 - £5,999.99	12, 24, 36, 48, 60 months
£6,000 and above	12, 24, 36, 48, 60, 72, 84, 96, 108, 120 months

### **Option 5- Affordable Monthly Repayment Plan**

Where leaseholders claim they do not have the resources to pay in full a financial assessment will be carried out of individual leaseholders and an affordable monthly repayment plan will be agreed. The cost of Major Work has been written on to the service charge account therefore monthly payments will be applied in the same way to reduce this debt over time. The Council will reserve the right to take appropriate recovery action should the monthly repayments not be maintained.

### **Option 6 - Voluntary Charge - £150 administration fee [\(under the Housing \(Purchase of Equitable Interests\) \(Wales\) Regulations 2011\)](#)**

Only available to owner-occupiers. Where leaseholders are assessed as not being able to afford repayments on a council loan and can evidence that they cannot access a bank or building society loan, the Council is able to enter into a voluntary charge agreement whereby the charge is placed on the property via Land Registry. The Council will then be able to recover the charge when the property is sold or otherwise changes hands. However, where leaseholders have an existing mortgage or insufficient equity in their property, this option may not be possible. [This arrangement is the option of last resort where options 1-4 are unavailable.](#)

An administration fee of £150 can be added to the charge or paid in full when signing the agreement.

**Leaseholders who are letting their flat, and therefore do not qualify for options 4 or 6, can apply for the statutory loan, Option 3, provided they meet the eligibility criteria.**

