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Teams Affected:	Leasehold Team Energy Sustainment Team Property Services Team Development Team Asset Management Team

1.0 INTRODUCTION

Leaseholders that have acquired their properties under the Right to Buy scheme are obliged, under the standard terms of their leases, to contribute towards the cost of maintaining the structure of the building and common areas associated with their property. Contributions are made by paying a service charge.

Where the service charge is payable for investment or large scale works over £250, charges are usually referred to as major works charges and the Council is under a statutory obligation to consult leaseholders on the proposed works.

This document outlines how Nottingham City Council will calculate recharges and the payment options that will be available to leaseholders.

Nottingham City Council wants all leaseholders to be aware of their financial responsibilities in respect of major works before they purchase their property and these will be covered in the Right to Buy information/notice for new leaseholders acquiring from the Council.

We want to encourage potential purchasers to consider these responsibilities and for leaseholders to save towards these costs wherever possible to avoid payment problems in the future. It is assumed that the legal representatives of buyers of leasehold properties under the Right to Buy scheme provide proper advice as to the leaseholders' obligations in respect of paying service charges under the lease,

We recognise that not all current leaseholders' finances will readily accommodate major works recharges but failure to pay such charges is a breach of the lease.

As a result, we have a policy that will see the Council recover the cost of works where it is appropriate and permitted to do so in a way that fairly and realistically reflects leaseholders' means and circumstances.

2.0 STATEMENT

Nottingham City Council will ensure that the policy for recharging for major works remains fair and aligned with current regulation.

3.0 AIMS

- To set out a clear and consistent approach to assessing the amount leaseholders are recharged and the options available for repayment.
- To ensure that our procurement and consultation processes fulfil our obligations to leaseholders
- To ensure we meet legal obligations to consult with leaseholders as per of Section 20 of the Landlord & Tenants Act 1985 (as amended).
- To ensure existing and potential leaseholders are fully aware of their responsibilities towards recharge, the council's intention to recharge and the importance of planning for such occurrences.

- To signpost leaseholders to independent financial options and advice
- To fairly recover recharges from leaseholders.

4.0 LEGAL AND REGULATORY INFORMATION

The Lease is the contract between the Landlord (Nottingham City Council) and the Leaseholder (the person(s) who purchased their home from the Council or a subsequent owner) and sets out the landlord’s and the leaseholder’s responsibilities including whether they need to make payment for works to the block that contains their property.

Section 20 of the Landlord & Tenant Act 1985 (as amended by Section 151 of the Commonhold & Leasehold Reform Act 2002) describes the consultation process that must be followed in order to be able to recover monies from leaseholders.

We will also have regard to other relevant legislation and good practice guidance.

A cap of £10,000 over a 5 year period applies to recharges for major works involving central government funding, as outlined in the Social Landlord Mandatory Reduction of Service Charges (England) Directions 2014).

5.0 LIMITS ON MAJOR WORKS CHARGES

Where major works take place within a period of 5 years from the date of a Right to Buy purchase, any recharges are held to the amount specified in the offer notice issued prior to purchase.

The offer notice will contain details of any possible works and an estimate of their cost and the recharge is capped at the amount quoted in the notice (allowing for inflation). Recharges for major works taking place after the 5 years period are not limited in this way.

Recharges for improvements can only be made where there is an improvement clause in the lease. In most leases this can be found in section 2.2 “Paying Contributions to Landlord’s costs” or Section 4 “Lessee’s Covenants” in older leases.

6.0 RECOVERY OF RECHARGES FROM LEASEHOLDERS

6.1 Basic Principles

Full Recharge amount for major works will be sought except where central government funded and statutorily capped at £10,000.

Each major works project subject to a separate contract and consultation process will be recharged separately and up to the above thresholds.

Leaseholder recharges will be calculated as the total cost of works divided by the number flats in a block/group of blocks, regardless of tenure.

Leaseholder recharges will be subject to the terms of individual leases.

A range of repayment methods will be available:

Option (see details below)	Residents	Landlords
Within 30 days of invoice with 5% discount	✓	✓
Payment across 12 monthly instalments	✓	✓
Legal Charge on title of property	✓	
Buyback with vacant possession	✓	✓

1.2 Repayment Methods

Within 30 days of invoice with 5% discount: This option will be available to all leaseholders

Payment across 12 monthly instalments: Interest free across equal instalments. This option will be available to all leaseholders

Legal Charge: The leaseholder may agree to enter into a deed known as a legal charge with the Council, which allows the Council to enter a charge on the registers of title of the property at HM Land Registry, as security.

Effectively the whole amount will be recoverable (plus interest at a local authority mortgage rate) when the property is sold. Where a property changes owners without sale taking place, the charge will remain on the charges register until the property is sold. It should be noted that where a leasehold property is owned by more than one person, all of the owners must be a party to the deed and where a mortgage lender already holds a charge against the property, they may need to give consent to the legal charge, in which case lenders often charge a fee of around £100.00 for their consent.

The Council’s administration charge of up to £100 will apply for the preparation and registration of the deed. There will need to be sufficient equity in the property for the title charge to be applied.

This option will be available to resident leaseholders only.

Buyback: The Council will consider buying back the property at market value with vacant possession or in certain extenuating circumstances:

a. With vacant possession – Properties that are vacant or where any tenant has been served notice and secured an onward move. NCC will not engage with properties that have sitting tenants, where the tenant has not received notice or has not yet secured an onward move. This is available to all leaseholders.

b. Allowing the resident leaseholder to become a social tenant - where the household is assessed as being at imminent risk of priority homelessness, owed a Homelessness duty, and the property is suitable size for the household. This is available to resident leaseholders only.

All potential buybacks will require an induvial assessment to consider property value, repairs and availability of funds.

Leaseholders may opt for any of the repayment options available to them.

Leaseholders who rent their property out (landlords) will need to have a licence for their properties (Selective, Additional, Mandatory) if one is required in order to access flexible payment options of 5% discount or payment over 12 months.

Where leaseholder consultation took place under a previous version of this approach, work has commenced and the leaseholder expressed interest in a payment option that has since been removed or revised, that option will remain available to them in respect of any recharges for the works consulted on, as will any cap on the amount of recharge.

7.0 STATUORY LOANS AND ASSISTANCE

Leaseholders of properties that were purchased through the RTB up to 10 years before major works can apply for a service charge loan.

DCLG guidance (Right to Buy Service Charge Loans, May 2015) states that the leaseholder of property purchased via the RTB up to 10 years prior to major works invoice can apply to the Council for a Service Charge Loan, which effectively defers or spreads the repayment. They do not have to be the original purchaser.

To qualify for the loan leaseholders must have service charges in one accounting period totalling £1,500 or more; the loan is for any amount over £1,500 and is for charges relating to repairs and improvements.

The leaseholders may borrow between £500 and £20,000 and repay these in equal instalments as follows - over three years for loans under £1,500, over five years for loans between £1,500 and £5,000, and ten years where the loan is for £5,000 or more.

Interest will be charged at the local authority mortgage rate, a charge of up to £100 will be made for administrative expenses and the Council will take a charge on the property to protect the loan; this is in effect a mortgage.

7.1 Financial Hardship

Resident leaseholders, who occupy the property as their only and principal home and can demonstrate how all payment options would leave them in financial hardship can apply to the Council to have their recharge reduced or waived.

In considering their application, the Council, via Nottingham City Homes' Leasehold Team, will consider the following:
(a) whether the dwelling is the lessee's only or principal home;
(b) the total amount of the service charges (recharges) paid or are payable by the lessee since the purchase of the lease of the dwelling;
(c) the amount of the service charge payable in the year in which the lessee applies for the reduction because of exceptional hardship;
(d) the financial resources available to the lessee;
(e) the ability of the lessee to raise funds to pay the service charge;
(f) the ability of the lessee to pay the service charge if the landlord extended the period for payment; and

(g) any other relevant consideration.

This will require the resident household to disclose their income, outgoings, assets and interests and will only be conducted once the invoice amount has been determined.

This will be assessed by the Head of Rents, Nottingham City Homes. Appeals relating to decisions on hardship will be heard by the Director of Planning & Regeneration, Nottingham City Council or an equivalent level post within the Council.

8.0 IF PAYMENT IS NOT MADE

If the leaseholder does not make payment as agreed then we will pursue the debt in line with our leasehold arrears escalation procedure and will consider the following:

- Recovery action through the courts
- Seeking repayment by the mortgage lender (if available)
- Securing a charge on the property via the courts
- Seeking forfeiture of the lease (following a decision by the First Tier Tribunal, Property Chamber)

9.0 DISPUTES

In the event that a leaseholder disputes the major works invoice (either on grounds of the quality of the works or the reasonableness of the charge) we will respond in accordance with our complaints procedure. If this is not resolved to the leaseholders’ satisfaction the leaseholder has the right to proceed with action at their own expense to the First Tier Tribunal (Property Chamber).