

Item No.	Classification: OPEN	Date:	Meeting Name: SMT
Report title:		Voluntary Disposal of Reversionary Interest under the General Consent for the Disposal of Reversionary Interests in Houses and Flats 2013 legislation.	
Ward(s) or groups affected:		Borough wide	
Report Author:		Fiona Buist – Head of MySouthwark Home Owners Service Ross Reddy – Sales and Acquisitions Manager	

RECOMMENDATIONS

That SMT / Members:

1. That SMT agrees to adopt the following:
 - A policy and associated criteria to consider applications from leaseholders who wish to purchase the freehold of their block using The General Consent for the Disposal of Reversionary Interests in Houses and Flats 2013.
 - To agree establishing a new process for processing applications in line with the policy below.
 - That the policy enables each individual request to purchase the freehold to be considered on its individual merits based on the criteria set out in this report.
 - That consultation process as set out in paragraph 22 is completed by external consultants at the cost of the leaseholders wishing to participate in the transaction.
 - That this policy is presented to both the Tenants Council and Homeowners Council after agreement for information.

BACKGROUND

2. In August 2007 the then Deputy Leader and Executive Member for Housing approved the following recommendations:
 - (i) that the Secretary of State be approached to ascertain if, in principle, he would accede to requests to dispose of the freehold reversionary interest of blocks (usually houses converted into flats) where some of the constituent flats were occupied by periodic tenants if (a) the periodic tenants agree and (b) their flats were subject to a 999 year leaseback and,
 - (ii) subject to such agreement, agree to the proactive marketing and disposal of such interests in houses where 60% or more of the flats are sold on long leases on terms negotiated by the Strategic Director of Regeneration.
3. It is understood the recommendations were made with the following objectives:
 - (i) to enable the council to take forward leaseholder requests to purchase the council's freehold interest in situations where, in a particular building, council leaseholders were either not entitled to exercise the statutory right of enfranchisement under the relevant legislation or were so entitled but were reluctant to be subject to the requirements of the statutory process; and

- (ii) to enable the council to proactively market the disposal of reversionary freehold interests.
4. In June 2017 the Council was approached by five leaseholders at a small block of eight units requesting to buy the freehold of their block using the sale of reversionary freehold interests policy that received approval in 2007.
 5. The leaseholders concerned do not meet the statutory requirements under the Leasehold Reform, Housing and Urban Development Act 1993¹ to buy the freehold and the leaseholders wish to explore the opportunity for them to buy the freehold on a voluntary basis.
 6. Legal advice was subsequently sought and advice is that given the passage of time since the decision in 2007, which has effectively remained dormant, and changes in the rules applicable to the council's powers to dispose of housing land, the council may wish to consider the matter afresh. This document proposes to establish a framework within which the Council can develop a policy to sell the reversionary interest for properties not captured by Leaseholder Reform, Housing and Urban Development Act 1993.
 7. This report was presented to SMT on 10 April 2019. During the discussions it was agreed the following be amended and added to the report:
 - 7.1. That consultation is completed by independent consultants in order for the Council to remain at arms length and impartial during the process. This has been addressed below.
 8. Upon completion of the amendments in 7 above it was presented to SMT on 24 July 2019 with agreement that the policy should be presented to the Homeowners and Tenants Council.

KEY ISSUES FOR CONSIDERATION

Statutory Right of Leaseholders to buy the freehold of a building

8. In certain circumstances the council must comply with a request from leaseholders to buy the freehold of the building in which they hold long leases to units. This is a statutory right to collective enfranchisement set out in the Leasehold Reform, Housing and Urban Development Act 1993 (LRHUDA93).
9. For the statutory right to apply the basic requirements are that the building comprises **two thirds** of the flats held by leaseholders and at least **50%** of the leaseholder flats in the building have to participate.
10. Where the statutory right to enfranchisement is invoked by leaseholders, the council must comply. Where there are council tenants in the building, there would be no duty to consult with those tenants as the council has no choice but to comply with statutory requirements although the council would need to inform their tenants about the application and how this will affect them as part of best practice.
11. Tenants' security of tenure and landlord arrangements with the council would not significantly change as the law requires enfranchising leaseholders to leaseback to the council units occupied by council tenants on a 999 year lease; this means the council

¹ Section 3, Leasehold Reform, Housing and Urban Development Act 1993

would remain the tenants' landlord although the council's relationship with former council leaseholders would effectively be reversed.

Situations where the statutory right does not apply

12. In situations where the statutory right of leaseholders to buy the freehold of a building does not apply, the council has the discretion to grant an option to purchase the freehold interest under Section 32 of the Housing Act 1985. This would be subject to the consent of the Secretary of State unless the situation is covered by a General Consent issued by the Secretary of State.
13. The General Consent for the Disposal of Reversionary Interests in Houses and Flats 2013 ("General Consent") enables local authorities to dispose of its interests in a building containing flats for such consideration as the local authority considers appropriate, as long as other key criteria are met.
14. The conditions referred to in D6 and D7 of the General Consent are where:
 - (i) D6: "Subject to D7, at least 50% of all the flats have been let to tenants who have been qualifying tenants for the purposes of section 5 of the Leasehold Reform, Housing and Urban Development Act 1993".
 - (ii) D7: "Where a flat in the building is occupied by a secure, introductory or demoted tenant, the disposal is subject to a contractual obligation on the buyer to grant to the local authority upon completion of the disposal, a lease of 999 years of the flat occupied by the tenant in order to maintain the landlord and tenant relationship at the time of the disposal between the local authority and tenant so as to enable the local authority to grant the tenant:
 - An under lease of the flat should the tenant proceed with an application to buy under Part V of the Housing Act 1985 (the right to buy); and
 - A tenancy on, or substantially on, the terms and conditions of the tenant's tenancy at the time of the disposal and subject to the provisions set out on paragraph 2 of Schedule 10 to the Leasehold Reform, Housing and Urban Development Act 1993 regarding the continuation of the secure tenancy".
15. D5 of the General Consent provides that the local authority must not have an interest in any management company set up to hold the freehold interest.
16. It follows that selling our reversionary interests through the General Consents no longer requires specific approval from the Secretary of State, if the other provisions are met.

Excluded Properties

17. It is accepted that the Council should use its discretion when exercising their discretion under the General Consent. There will be some properties that are considered not suitable for disposal. It is proposed that the following property types will form part of the criteria to refuse any applications:
 - 16.1. the building is part of a regeneration scheme
 - 16.2. the building is designated for a particular purpose such as the elderly or disabled
 - 16.3. the council is not the freeholder
 - 16.4. the building has shared services (for example district heating systems) in which the Council is required to have unencumbered access for maintenance and repair

- 16.5. where the Council has granted licenses or leases to utility companies or third parties for example telecommunication towers and garages.

Decision Criteria

18. Should the Council adopt a policy of disposal in line with the part D of the General Consent 2013 in line with the requirements set out in paragraphs 12 to 14 above.
19. In assessing each application it is proposed the Council should adopt a two stage criteria set out below:

Stage 1 – Initial Assessment

- (i) The building must not be an ‘excluded’ building as set out in paragraph 16 above.
 - (ii) At least 50% of all the units in the building must be let to long leaseholders. (this is a requirement of D6 of the General Consent – see paragraph 13 above)
 - (iii) At least 50% of all long leasehold flats in the building must participate in the purchase
 - (iv) There is no cogent housing management or other reason why the application should not proceed to Stage 2
20. Stage 1 above assesses whether there are any initial reasons why the application should not proceed. For example, there may be district heating or other shared communal services making the sale impractical or there a significant major works planned works for the property. If it is identified that selling the freehold would be detrimental to residents or the Council the application will not proceed and the applicants will be notified of the decision and the reasons.

Stage 2 – Consultation

21. Should an application pass the initial assessment the second stage will be to consult with both participating and non-participating residents to ensure that that the Council are engaging all residents affected by a potential sale. The proposed process for consultation is set out below.

Consultation with non participating leaseholders and tenants

25. For the purpose of consultation “non participating residents” includes leaseholders and council tenants who will not be part of the transaction.
26. In order for the Council to remain independent throughout the consultation process external consultants will complete the process as set out above. Costs for engaging the consultants will be payable by the participating Leaseholders. These costs are set out below from paragraph 32.
22. Consultation will occur with the following principles in mind:
- 21.1. to fully inform all non participating leaseholders and tenants of the application to purchase the freehold and how the applicants propose to manage the freehold of the building
 - 21.2. ensure all non participating leaseholders and tenants fully understand the implications of sale and how they are individually and collectively affected
 - 21.3. enable and ensure all non participants can make their views known to Southwark Council regarding the application to purchase the building

- 21.4. A ballot to confirm whether non-participating residents are “for or against” the sale.
23. The consultation process will proceed as laid out in the step by step process below:
- 22.1. All leaseholders and tenants in the building will be written to regarding the applicants’ proposal to purchase the freehold of the building and be invited to an open meeting to discuss the proposal.
 - 22.2. Following the initial meeting a letter is sent to all residents confirming the minutes and issues tabled.
 - 22.3. All non-participating residents will be invited to a second meeting. This is to ensure a ‘safe’ forum for non participants to raise any concerns regarding the proposed transaction.
 - 22.4. Following the second meeting any concerns tabled will be addressed by the participating leaseholders in writing to all non-participants.
 - 22.5. The final element of the consultation will be a “for or against” ballot conducted with every non-participant. The ballot will be open for 15 working days. Any ballots received after the deadline will not be counted and will be considered in favour of the sale of freehold.
 - 22.6. If the outcome of the ballot is that 50% or more of non-participants object to the transaction then the application is rejected and MSHO will notify the applicants. If the application is rejected there will be no refund of the fees paid as set out in paragraphs 30 to 34.
23. Following our discussions with consultants on the consultations process a breakdown of the estimated costs has been provided and is set out below (see paragraph 30). It is important to note that these costs will vary depending on the size of the building, complexity of issues raised during consultation, and variation in the consultants fees any given year.

Following consultation

24. If, following the consultation process above, it is agreed that the application can proceed, the applicants will be required to pay the Council’s valuation fee and proceed to valuation.
25. The Council’s Property Services team will be instructed to complete a valuation of the freehold. Upon receiving instructions a valuer will contact the applicants and arrange an inspection of the building and area for sale.
26. Following the inspection the surveyor will report to the applicants with the purchase price of the freehold. The offer will be made on a “take it or leave it” basis and there is no obligation on the Council to enter into further negotiations of the purchase price should the offer represent fair market value.
27. Once the purchase price is agreed a final report will be provided to The Strategic Director of Housing & Modernisation with a recommendation from the report author. Upon agreement of the final report external solicitors will be instructed to complete the sale of the freehold.

Fees and Charges

28. The council currently charges a fee of £280.00 per application to buy the freehold under compulsory statutory requirements. This fee would also be applicable under this process.

29. As discussed in paragraph 23, the participating leaseholders will pay the costs of the independent consultant (Open Communities Ltd) to administer the consultation process. Fees are subject to change depending on the consultant and start from £77.50 plus VAT per hour. An estimate of time and anticipated fee for the consultation process is set out below. Upon an application preceding to consultation the estimated fee will be payable in full with the balance released or payable (which ever is applicable) prior to release of the ballot results and report.

Outline Costs for Freehold Disposal Southwark			
Item	Hours	Rate	Cost
Review Background information and project Briefing. Draft covering letter inviting residents to consultation meeting	8	77.5	620
Prepare and Chair Consultation Meeting	5	77.5	387.5
Follow up on queries raised at Consultation Meeting	3	77.5	232.5
Draft and post Letter Invite to all non participators to meeting	2	77.5	155
Prepare Ballot Papers and Cover Letter	3	77.5	232.5
Deliver Ballot Papers and freepost return (per paper sent)	1	1.5	1.5
Receive ballot papers and return to Southwark Council for analysis and reporting	4	77.5	310
TOTAL	26	77.5	£1,939.00
		INC VAT	£2,326.80

30. In addition to the above application fee the participating leaseholders are also liable to pay the council's valuation fee (currently £625.00) and legal fees for the sale of the reversionary interest and leaseback of flats that are occupied by secure tenants. These fees are subject to change and the applicable fee will be provided at the time of application.
31. For clarity the costs for this process are set out in the below table:

Fee	Amount	When payable
Application fee	£280.00	On completion of stage one
Cost of consultation	£2326.90	On completion of stage one and held on account.
Valuation	£625.00	On successful consultation
Lease Plan (per leaseback property)	£231.04	On agreement of purchase price
Council's Legal fees		On completion of the transaction
-Sale of Freehold	£351.06	
-Per Lease Back Property	£208.26	
ESTIMATED TOTAL	£4022.26	

32. We note that the estimated fees set out in paragraph 32 do not include the purchase price of the freehold.

33. Fees for this process will be set out in our guidance notes which will be updated to reflect any variation of fees year on year.

Financial Implications

34. It is noted that the Council will obtain income from the sale of freehold.
35. In addition the Council will make savings as resources will no longer be needed for the day to day management of any buildings sold under the policy. However, the Council may be liable for third party management costs over which it has little control as the building will be managed by an entity in which it has no control. It will not be able to recover these costs from its secure tenants.
36. Implementation of this policy will allow the Council to raise income via the sale of the freehold and remove ongoing management costs for the freehold.
37. Implementation of the policy does not require any additional budget requirements as fees collected will pay for staff time in assessing any application.

Community impact statement

38. This policy will provide greater clarity to residents but will not have a negative impact on the community.
39. The Equality Act 2010 imposes a general equality duty on public authorities (the Public Sector Equality Duty – PSED) in the exercise of their functions, to have due regard to the need to :
- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
 - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it;
 - Foster good relations between people who share a relevant protected characteristic and people who do not share it.
40. For the purposes of the PSED the following are “protected characteristic” considerations :
- Age
 - Civil partnership
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex and sexual orientation
41. The Council will need to consider the PSED at all stages of its decision making relating to the adoption of this policy and throughout its implementation..

Legal implications

42. The position for leaseholders qualifying under LRHUDA 93 remains unchanged and the Council will need to consider applications received under the statutory framework in the

usual way. This policy is designed to set out the criteria which the Council will use to determine whether leaseholders who do not qualify for, or do not want to proceed pursuant to, the available statutory framework.

43. The intention of this report is to set out a clear policy framework against which applications to purchase Council freeholds are assessed, which is open and transparent.
44. The need for a new policy arises as a result of the more relaxed provisions of the 2013 General Consent which gives councils wider powers to dispose of freeholds without the Secretary of State's consent being required.

Consultation

45. This policy is being presented to the Tenants and Homeowners Council in order for us to get additional insight into the proposed policy and address any concerns raised. As we acknowledge we will need to provide assurance that the policy does not adversely impact on any non participating resident. Furthermore that the extensive consultation process set within the policy affords them the opportunity to vote anonymously whether they agree to the transaction or not.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

46. The main legal implications of the report are set out in the body of the report.
47. Particular attention will need to be paid to the conditions set out in the General Consent to ensure that these are met in each individual case.
48. Under D7 of the General Consent, disposal of the reversionary interest will be subject to a contractual obligation on the buyers to grant the council a lease of 999 years, on completion of the disposal, of any flat occupied by a council secure, introductory or demoted tenant. This means the council will remain the landlord of council tenants after disposal although the council's relationship with former council leaseholders would effectively be reversed.
49. It should be noted that D5 of the General Consent provides that the local authority must not have an interest in any management company set up to hold the freehold interest. This means that where a non statutory right disposal of a freehold interest is agreed, the council will no longer be able to participate in the management of the building notwithstanding (where buildings have council tenants) the grant of a 999 lease to the council of any unit let under a council secure, introductory or demoted tenancy.
50. Legal advice will continue to be provided as the policy is put in place and as individual applications received to acquire Council freeholds.
51. The Council will need to consider the PSED at all stages of its decision making and if it is apparent that certain groups sharing a protected characteristic are likely to be more adversely impacted by the policy than those who do not share it, then consideration must be given to how those impacts could be mitigated.
52. It is proposed to consult on individual applications with non participating long leaseholders and the council's secure, introductory and demoted tenants. Where consultation takes place it must take place in accordance with legal requirements

irrespective of whether the consultation is carried out pursuant to statutory or other legal requirements or in exercise of the council's powers.

53. The general legal requirements of consultation are that consultation must; be undertaken when proposals are still at a formative stage; include sufficient reasons for the proposals to allow interested parties the opportunity to consider the proposal and formulate a response; must allow adequate time for interested parties to consider proposals and formulate their response and the outcome of it must be conscientiously taken into account when the ultimate decision is taken. These are the central requirements for fair and proper consultation and should be applied at all stages of the consultation process.
54. Section 93(1) of The Local Government Act 2003 enables the Council to charge for providing discretionary services. The power in the Act is subject to the requirement that the authority is not expressly prevented from charging for the services by virtue of any other legislation. The Director of Law and Democracy is not aware of any specific legislative provision which would prevent the council from relying on this power in connection with the proposals in this report. The power to charge for a service under the Act is also subject to the duty to make sure that the income from charges made from a service does not exceed the cost of the provision of the service. The Council is, therefore allowed to set the level of the charge for the service that it thinks fit, subject to those charges not exceeding the costs of the provision.
55. The decision to approve new fees and charges is a matter reserved to full cabinet for collective decision making in accordance with Part 3C paragraph 8 of the council constitution. Although the Leader may delegate the decision for individual decision in the ways set out in the introduction to Part 3 of the council's constitution. The constitutional team will be able to advise further on the procedure for delegations.

Strategic Director of Finance and Governance

56. Insert text

57. Insert text

Other officers

58. NA

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Title of document(s)	Title of department / unit	Name / Phone number
Voluntary Disposal of Reversionary Interest	Customers Experience / MSHO	Fiona Buist / 0207 525
(Insert hyperlink here)		

Title of document(s) (Insert hyperlink here)	Title of department / unit Address	Name Phone number
(Insert hyperlink here)		

APPENDICES

No.	Title
Appendix 1	Property Information Form
Appendix 2	
Appendix 3	
Appendix 4	
Appendix 5	

AUDIT TRAIL

Lead Officer	Michael Scorer – Strategic Director of Housing and Modernisation	
Report Authors	Fiona Buist – Head of My Southwark Homeowners Ross Reddy – Sales and Acquisitions Manager	
Version		
Dated		
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
List other officers here		

Cabinet Member	Yes/No	Yes/No
Date final report sent to Constitutional Team / Community Council / Scrutiny Team		