

Report for: Cabinet 21 January 2020

Title: Annual Leasehold Service Charge – Review of Management Fee

Report

Authorised by Dan Hawthorn, Director of Housing, Regeneration and Planning

Lead Officer:

Ward(s) affected: All

Report for Key/

Non-Key Decision: Key Decision

1. Describe the issue under consideration

- 1.1. Haringey Council (the Council) is the landlord of 20,079 homes. 15,118 are occupied by tenants who rent their homes from the Council, while 4,961 are owned by leaseholders, with the Council remaining as the freeholder.
- 1.2. Homes for Haringey (HfH) is the Council's Arm's Length Management Organisation and manages these homes on the Council's behalf. HfH also provide services to homes owned by leaseholders.
- 1.3. The leasehold management fee is the charge made to leaseholders for the costs of providing the management service as well as administering and managing leasehold accounts. This report sets out a proposal to introduce a fourth band to the leasehold management fee (for converted street properties) to deliver a more equitable set of charges.

2. Cabinet Member Introduction

- 2.1. This administration is committed to providing high quality services and to ensuring that, where these are paid for by residents, all charges are fair and equitable and there are no unjustifiable unintended impacts of charging policy. As part of this we have been reviewing areas where we think existing charges may fail to meet that test.
- 2.2. There was a change to the banding of leaseholder charges in 2019/20, to reflect the costs of a new cleaning and inspection service. This had significant impacts on some leaseholders, in particular those in converted street properties, who are just under 10% of our leaseholders and faced an increase of over £100 per year. It is clear to me that the scale of increase in charges that these leaseholders faced was inequitable and placed an unfair proportion of the burden of these new charges on this group. So we are now proposing a new charging band, specifically for these properties, to eliminate that inequity.
- 2.3. This re-banding does not affect the level of overall service charges for leaseholders as a whole, but seeks to spread these costs more equitably. As a result, the three quarters of leaseholders who live on estates will now face a small increase of around £2 per year in their charges, while those who faced a manifestly unfair increase in their charges will have far more reasonable bills.

3. Recommendations

It is recommended that

- 3.1. Cabinet approves the introduction of an additional fourth band of leasehold management fee for converted street properties as set out in paragraphs 6.8 to 6.14.
- 3.2. Cabinet notes the proposed management fee charge for each of the four bands as set out at the final column of the table at 6.13

4. Reasons for decision

- 4.1. A new band of leasehold management fee will ensure that the charges paid by leaseholders for the management of their homes better reflect the service they receive. It will also ensure that service charges are reasonable and reflect the requirements of section 19 of the Landlord and Tenant Act 1985.

5. Alternative options considered

- 5.1. **A flat rate management fee:** This would mean that one fee is applied to all leaseholders irrespective of the type of service received. Although some landlords use this mechanism, it would not be appropriate to implement a flat rate management fee because this would not reflect the different costs of managing different types of property owned by the Council
- 5.2. **A percentage of total service charge:** This was the method for calculating fees used by the Council prior to 2004/05. In 2004/05, a review of the management fee was carried out, which recommended that this method should be changed to a two-band system (later revised to three). It would not be appropriate to revert to this method since it would lead to those properties which receive expensive services having an excessively high management fee.
- 5.3. **Not to make any change:** This option was rejected because it would fail to deal with the perceived unfairness of the charges currently being levied on leaseholders in converted street properties.

6. Background information

Setting leasehold charges

- 6.1. Haringey Council's leaseholders pay an annual service charge to the Council. The lease states that the leaseholder must pay a proportion of the cost of managing the building and estate, but Haringey calculates the leasehold management fee using methods that are different to those set out in the lease. This is because, while the lease itself does not provide for the separation of the costs relating to tenants and leaseholders, the method Haringey Council operates ensures that the management costs for leaseholders are separated from those that relate only to tenants.
- 6.2. This means leaseholders do not pay anything towards costs including the collection of rents, internal repairs to tenants' homes and the refurbishment of voids. Instead leaseholders pay a proportion of the costs for managing the exterior and communal areas of the building, together with estate and support services. However, leaseholders pay for the full cost of work carried out by the Leasehold Services Team, which includes the billing and collection of the annual service charge.
- 6.3. The costs included in the management fee charged to leaseholders as part of their annual service charge fall into two parts – costs related to general management and support services and costs related to the Leaseholder Services Team.

- 6.4. The costs related to general management and support services are apportioned among all of the Council's tenants and leaseholders. Leaseholders pay their proportion of the costs, based on the number of leasehold properties in relation to the total number of properties of which the Council is the landlord. These costs include charges for the following services:
- the management of the building and the estate by Tenancy Management
 - the costs of the Customer Service Centres
 - the Repairs Call Centre
 - Homes Zone
 - Central services such as Finance, Resident Involvement, Feedback and Support, Communications, Business Improvement (projects), support services and corporate recharges
- 6.5. In contrast the costs related to the Leasehold Services Team are apportioned solely among the Council's leasehold properties. These costs include charges for the following services:
- the maintenance of leaseholders' accounts and records
 - the calculation of the annual service charges
 - the preparation of the annual statements
 - the provision of cost breakdowns
 - the issue of invoices
 - the collection of payments
 - the provision of explanatory information
 - dealing with queries
- 6.6. The method of charging used by Haringey Council results in lower charges to leaseholders than if the method contained in the lease was followed. It is also easier to justify, in that strict compliance with the lease would not be practical and would incur higher costs for many leaseholders. It would also require the allocation of specific management costs to individual blocks and estates, which would necessitate additional IT systems and increased administrative costs.
- 6.7. An exercise has been carried out using the 2018/19 fees to demonstrate that calculating the management fee strictly in accordance with the terms of the lease would result in higher management fees for all leaseholders. This is shown in the table below. These higher fees would be at risk of a successful challenge under Section 19 of the Landlord and Tenant Act 1985.

Type of property	2018/19 leaseholder charge if calculated as per the terms of the lease	2018/19 leaseholder charge actual	Variance
Street properties	£487.26	£88	£399.26
Stand alone blocks	£244.56	£191	£53.56
Blocks on estates	£315.76	£269	£46.76

Introducing new bands

- 6.8. In 2012, the Council agreed to introduce three bands of management fee for leaseholders. The three bands are for flats in:
- a) Street properties: These are currently defined as buildings that only receive insurance, lighting, repairs and ground rent.

- b) Stand-alone buildings: These are purpose-built blocks that are not part of a wider estate, which receive additional services such as cleaning and gardening.
- c) Buildings on estates: These are purpose-built blocks within the environs of Council estates, which receive a higher level of service than buildings in the other two categories.
- 6.9. In 2019, HfH introduced a new cleaning and inspection service for street properties. An allowance for this was included in the Estimated Service Charge for 2019/20. As a result of this allowance, some buildings moved from the street property category to the stand-alone building category. This significantly increased the management fee for leaseholders in flats in these buildings from £98 to £199 in 2019/20.
- 6.10. Following the issue of the Estimated Service Charge for 2019/20, there were a large number of complaints from leaseholders about this increase. The increase of £8.40 a month represented a large percentage rise, which some leaseholders felt was unfair and did not offer value for money. The increase was comparable to the charge levied to leaseholders of standalone buildings, but the service was less than that provided to those residents. This is because street properties in general require a lower level of management than standalone buildings.
- 6.11. Under Section 19 of the Landlord and Tenant Act 1985, which governs the way HfH can construct service charges, service charges must be “reasonable”. Officers have reviewed the reasonableness of the charge and on this basis, have recommended that an additional fourth band management fee is introduced to better reflect the actual cost of this service
- 6.12. In comparison with calculating as per the terms of the lease, what is proposed is a relatively simple solution. The introduction of a fourth band management fee would more accurately reflect the different levels of housing services provided to buildings and estates in the borough than the current system. It is clear the properties that would be in this fourth band (converted street properties) do not receive, or need to receive, as high a level of service as blocks in the band in which they are currently assessed.
- 6.13. Current management fees for 2019/20 and the new proposed fees for 2019/20 are as set out in the table below:

2019/20 management fee band	Properties	Current estimated fee	Properties	Proposed fee
Street properties	429	£98	395	£90
Converted street properties	-	-	455	£111
Stand alone blocks	827	£199	406	£197
Blocks on estates	3690	£274	3690	£276

- 6.14. Based on changes from the current estimated Service Charge 2019/20 to the proposed service charge in 2019/20, the change in the management fee for those households affected would be:
- 395 would see a decrease from £98 to £90 (decrease of £8)
 - 34 would see an increase from £98 to £111 (increase of £13)
 - 421 would see a decrease from £199 to £111 (decrease of £88)
 - 406 would see a decrease from £199 to £197 (decrease of £2)

- 3,690 would see an increase from £274 to £276 (increase of £2)
- 6.15. Service charges are governed by Section 19 of the Landlord & Tenant Act 1985, which says that service charges must be reasonable. Leaseholders always have the right to apply to the First Tier Tribunal for a determination of the reasonableness of service charges. Given the fact that some leaseholders will see their management fee decrease, and that those whose charges will increase will be a relatively small amount, it is unlikely that there is any risk of challenge, and therefore, there is no requirement to consult leaseholders.

7. Contribution to strategic outcomes

- 7.1. The recommendation in this report supports the delivery of the cross-cutting aim of the Borough Plan to promote fairness. In particular it explicitly addresses the stated ambition that “... we want to make sure that the greatest weight is placed on the broadest shoulders by looking at options that make Council Tax, and our policies for charging for services, fairer.”
- 7.2. It also supports the Housing priority in the Borough Plan, helping to deliver the objective to “*Improve residents’ satisfaction with the service they receive from Homes for Haringey to be in the top quartile for London (78%) by 2022*”. It is clear that the current system for leaseholder service charges is a cause of dissatisfaction for those leaseholders whose management fee has increased.

8. Statutory Officer Comments

Finance

- 8.1. There is a provision in the lease for recharging the cost of managing the leasehold stock to leaseholders. The legislation stipulates that it must be fair and reasonable.
- 8.2. The use of banding in calculating the proportion of management fee charged to leaseholders ensures that leaseholders that receive similar services are charged the same level of management fees. This seems fair and reasonable.
- 8.3. In March 2019, leaseholders in converted street properties were issued estimated bills but their management fee were at band 2 level (stand-alone blocks). This means a higher estimated management fee.
- 8.4. This recommendation to introduce another band will ensure that their actual management fees reflect the services they receive and will see a net reduction of £75 in the actual management fee for 2019/20.
- 8.5. Although this will lead to an overall reduction of £0.03m in the 2019/20 actual service charge compared to estimated charge for the same year, it seems reasonable and reflect the actual services provided to each category of properties.

Legal

- 8.6. The Assistant Director for Corporate Governance has been consulted in the drafting of this report and comments as follows
- 8.7. Legal comments are set out in the body of the report.
- 8.8. No statutory consultation is required for the introduction of the new band.

- 8.9. Since the effect of the new band is to reduce the management charge that would otherwise be payable for all those falling within it, non-statutory consultation is not required.
- 8.10. See Appendix A for further exempt legal comments.

Equalities

- 8.11. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and people who do not
 - Foster good relations between people who share those characteristics and people who do not.
- 8.12. The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 8.13. This report sets out a proposal to introduce a fourth band to the leasehold management fee. Those affected will be leaseholders in homes where the Council holds the freehold, numbering approximately 5,000. We do not hold any demographic data on these leaseholders and so it is not possible to determine accurately the extent to which any group of people who share the protected characteristics will be affected. However, no adverse impact is anticipated on the leaseholders, many of whom will see a reduction in their management fee. For those who will see an increase, this increase is considered proportionate and appropriate in the interests of achieving an equitable fee structure, and for the vast majority of leaseholders this will be £2 per year.

Procurement

- 8.14. No procurement comments

9. Use of appendices

Appendix A Exempt Legal Comments

10. Local Government (Access to Information) Act 1985