

**Mid Devon District Council**

**Leasehold Management Policy**

Policy Number: HSG v4.0

**December 2015**

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## Version Control Sheet

*Title:* Leasehold Management Policy

*Purpose:* To review the Leasehold Management Policy in accordance with good practice and relevant legislative requirements.

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*Consultation* **This document was sent out for consultation to the following:**

Cabinet Member

Staff

Tenants Together

Management Team

PDG Decent & Affordable Homes

## Document History

This document obtained the following approvals.

<b>Title</b>	<b>Date</b>	<b>Version Approved</b>
Cabinet Member	28.9.15	
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Management Team	17.11.15	
PDG Decent & Affordable Homes		
Cabinet		

## 1. Introduction

This policy statement outlines Mid Devon District Council's (MDDC) approach to meeting its obligations to leaseholders in accordance with the terms of their leases and the relevant legislative requirements.

## 2. Scope

This policy explains how the Council will meet its responsibilities to leaseholders under the terms of their lease and to provide them with a good standard of services in the management and maintenance of their homes. In addition it explains the service charges that leaseholders are responsible for as well as ensuring that all leaseholders understand their rights and responsibilities.

This policy covers the following points and should be read in conjunction with the related documents highlighted below:-

- Leasehold management
- Changes to leases
- Selling a property and the right to manage
- Service charges
- Complaints and disputes

## 3. Related Documents

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

## 4. Definitions

- **Leasehold Management** covers the range of services provided by the Council to those who own their property on a leasehold basis.
- **A Leaseholder** is a tenant who has purchased a long 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 management (b) and the whole or part of which varies or may vary according to the relevant costs".
- **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.
- **Enfranchisement** is a group right for leaseholders to buy the freehold of the building they live in subject to meeting certain conditions.
- **Lease** is a binding contract between MDDC and the leaseholder which outlines the rights and duties of both parties.

## 5. Leasehold management

### 5.1 We will comply with legislation relating to leasehold management and service

charges.

- 5.2** We expect that leaseholders will be provided with a copy of their lease by the solicitor acting on their behalf when they purchased their home. If, however, the leaseholder requires a copy, this can be obtained in various ways, for example from the Land Registry or from us. A charge will be made for this service.
- 5.3** We will collect from leaseholders all monies due from them under the terms of their lease.
- 5.4** Where a leaseholder is experiencing financial hardship, we will signpost them to appropriate agencies to provide financial advice and guidance.
- 5.5** We will provide new leaseholders with a copy of the Leaseholder's Handbook which contains key information and advice regarding the services they can expect to receive.
- 5.6** Relevant information will be sent to leaseholders to inform them about the work of the Council.

## **6. Leaseholder improvements**

- 6.1** Leaseholders are responsible for maintaining and repairing the internal parts of their home including maintenance of fixtures and fittings.
- 6.2** We are supportive of leaseholders wishing to improve their homes. Leaseholders are required under the terms of their leases to obtain written consent from us to make any alterations or improvements. Where permission is refused, we will set out the reasons in writing for our decision.
- 6.3** Leaseholders will not be given permission for any alterations or improvements that:-
- Makes the property or part of the property dangerous or unstable;
  - Creates a risk to the health and safety of others;
  - Encroaches upon land not defined in the lease;
  - Impacts on the structure or changes the appearance of the building or the shared or communal parts in any way;
  - Prevents light or air reaching other residents;
  - Affects the legal rights of other residents, for example a right of way;
  - Reduces access to other neighbouring properties;
  - Invalidates the Council's building insurance;
  - Makes maintaining neighbouring properties more difficult or expensive.
- 6.4** Any written consent given will be on condition that the leaseholder has provided us with details of the proposed works and subject to meeting conditions, such as obtaining planning permission and/or building regulations.
- 6.5** The future maintenance of any improvements or alterations to the property will be the responsibility of the leaseholder. Any damage caused to adjacent properties due to any works carried out, the leaseholder will be responsible for making good and any costs incurred for putting it right.

**6.6** The loft space within a block of flats remains the property of the Council and should not be used by a leaseholder for any purpose including the storage of goods. Leaseholders who have sole access to a loft can apply to purchase the loft space, however we are under no obligation to sell.

## **7. Repairs and maintenance**

**7.1** We will maintain the external fabric of the building and shared communal areas in accordance with lease obligations. This will include day to day repairs, cyclical maintenance and major works. Under the terms of the lease, we will charge leaseholders for their share of the costs.

**7.2** A leaseholder may be entitled to a loan to help to pay for major works, subject to qualifying conditions. Under the Housing (Service Charge Loans) Regulations 1992, Right to Buy leaseholder's who have bought under the provisions of the Housing Act 1985 have the right to a loan from the Council within the first ten years of their lease.

## **8. Consultation**

**8.1** We will ensure that leaseholders are fully consulted in compliance with section 20 Landlord and Tenant Act 1985 (as amended). This requires consultation with leaseholders on proposed major repairs or improvements for which they are required to pay and also proposed changes to contracts for long term maintenance services.

## **9. Subletting**

**9.1** Leaseholders may be able to sublet their property, subject to written consent from us. They are advised to refer to their lease for clarification.

**9.2** If a leaseholder chooses to sublet their property, they will become a landlord and will be subject to the rules and regulations imposed on landlords.

**9.3** The leaseholder will still be responsible for:-

- Paying service charges;
- Providing up to date contact details, details of their tenant and any management company (if applicable) in case of emergencies or problems caused by defects within the property;
- Ensuring that the property does not become overcrowded;
- Obtaining consent from their mortgage company to sublet, (where applicable);
- Servicing the gas supply and appliances in the property annually and providing their tenant with a copy of the safety check certificate;
- Installing carbon monoxide detectors;
- Providing their tenant with an Energy Performance Certificate;
- Ensuring that the leaseholder's tenant does not breach the conditions of the lease. We will take legal action against any breach of conditions which are not resolved.

## **10. Neighbourhood walkabouts**

**10.1** We hold a programme of regular neighbourhood and communal walkabouts. Leaseholders are encouraged to participate as this provides them the opportunity to meet staff, residents and councillors as well as being able to discuss specific issues including estate improvements.

## **11. Anti-social behaviour**

**11.1** Should a leaseholder have issues with neighbouring Council tenants, such as anti-social behaviour, harassment, noise or nuisance, they are advised to report these problems directly to the Council. This will be dealt with in accordance with our Anti-social behaviour policies and procedures.

## **12. Breaches of the lease**

**12.1** We will take appropriate action, which may include taking legal action, whenever we become aware that a leaseholder is in breach of the terms of their lease. Such breaches may include:-

- Unapproved alteration or improvement works;
- Improper use of property including illegal activities;
- Failure to pay service charges;
- Causing anti-social behaviour;
- Failure to maintain the property or damage caused thereto; or
- Failure to allow Council employees, contractors or agents access.

**12.2** If the leaseholder does not remedy the breach of their lease, we may consider, as a last resort, applying for forfeiture of the lease.

## **13. Further advances and postponement of charges**

**13.1** 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, the Council will not agree to postpone its charge in favour of any additional borrowing.

## **14. The right to extend a lease/varying the lease**

**14.1** When the term of the lease expires, the Council may give consideration to allowing the leaseholder to revert back to being a Council tenant of the property. However, the leaseholder has the right to buy an extension to the term of their lease. They can apply for a new lease at any time as long as they meet certain conditions. To qualify, they must be a long leaseholder and have held a lease for two years or more.

**14.2** Where a leaseholder applies for a new lease during enfranchisement, their application will not go ahead until the enfranchisement process has ended.

**14.3** The terms of a lease can be varied only by specific agreement between the parties to the lease and, where appropriate, their mortgagees or through an order by a Leasehold Valuation Tribunal (LVT).

## **15. Enfranchisement**

- 15.1** Subject to certain conditions, leaseholders of flats may have the right to collective enfranchisement, if they and the building in which they live in qualifies. They are advised to seek independent advice.
- 15.2** Should leaseholders seek to acquire the freehold of a block of flats, the Council will comply as required by the Commonhold and Leasehold Reform Act 2002.

## **16. Right to buy discount rules**

- 16.1** The Council will enforce repayment of discount for any Right to Buy purchaser who chooses to dispose of their home within the discount repayment period.

## **17. Selling the property**

- 17.1** When a leasehold property is being sold, the Council will provide on request to the Current and/or prospective leaseholder and their advisors, all the necessary information regarding service charges and any planned major works. A fee for this service will be charged.
- 17.2** 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.
- 17.3** Leaseholders are not required to seek permission from us if they wish to sell their home. However they are required to offer to sell their home back to the Council, if they purchased it under the Right to Buy scheme, within ten years of the original conveyance.
- 17.4** It is a requirement of the lease to notify the Council of the sale within one month following completion. This needs to be done by way of a formal Notice of Assignment served by the purchaser's solicitors to the Council. There is a fee for serving this Notice. If a Notice is not received, the original leaseholder will be liable for any charges made against the property.

## **18. Right to manage**

- 18.1** The Commonhold and Leasehold Reform Act 2002 provides a right to leaseholders (of flats, not houses) to force the transfer of the landlord's management function to a special company set up by them. The right empowers leaseholders to take responsibility for the management of their block as long as they meet certain conditions to qualify. The Council will provide a management service that is to a good standard and value for money to encourage leaseholders to continue to be provided with this service from the Council.

## **19. Service charges**

- 19.1** Leaseholders are responsible for paying their share of the Council's costs for repairing and maintaining the exterior and communal areas relating to their home. Service charges that leaseholders are responsible for include: ground rent,

insurance, grounds maintenance, caretaking service, communal gas/electric, repairs on communal areas, repairs before repainting, repainting, management and administration fees.

**19.2** The Council will provide service charge estimates in the section 125 Notice (the offer notice detailing the sale) to the prospective leaseholder. Leaseholders may be charged a reasonable proportion of the cost of any relevant works undertaken after the initial five year period of their purchase.

**19.3** Charges for each financial year are sent to leaseholders on an annual basis. Payment is required within twenty one days of the date of the invoice.

**19.4** Leaseholders will be offered a variety of different ways to pay their service charges. Methods of payment include: monthly or annual direct debit, automated telephone service, bank transfer, cheque, Post Office, standing order, over the internet, payment kiosk, salary deduction (for employees of MDDC) or by debit or credit card at our offices or over the phone.

## **20. Service charge arrears**

**20.1** Any leaseholder who falls behind with payments will be notified of this. In addition, they will be advised that appropriate action for debt recovery will be taken.

**20.2** The leaseholder will be contacted and encouraged to either make an immediate payment to clear the full amount or to make an arrangement to clear the outstanding amount.

**20.3** If a leaseholder refuses to pay for service charges or where other courses of recovery action have failed, legal proceedings may be considered including: obtaining a County Court Judgement, which will affect a leaseholder's credit rating, an Attachment of Earnings, a Charging Order on the property or an approach to their mortgage company to request payment of the outstanding charges, which would then be added to the mortgage. As a last resort, we may apply for forfeiture of the lease.

## **21. Summary of service charge accounts**

**21.1** Leaseholders have a statutory right to seek a summary of the service charge account under section 21 of the Landlord and Tenant Act 1985. The request must be in writing and can request a summary of the 'relevant costs in relation to the service charges payable' in respect of the last accounting year, or where accounts are not kept by accounting years, the past twelve months preceding the request.

**21.2** The Council will provide the summary within one month (or within six months of the end of the twelve month accounting period, whichever is the later).

## **22. Complaints and disputes**

**22.1** The Council will deal with any complaints about its service in accordance with its

Complaints Procedure, details of which are available on the website at [www.middevon.gov.uk](http://www.middevon.gov.uk) or by telephone on 01884 255255.

## **23. Leaseholder Valuation Tribunals (LVT)**

**23.1** If a leaseholder is dissatisfied with a service or the charge levied for that service, and they cannot resolve the matter, they can go to the LVT. Leaseholders can also seek a determination on works or services that are proposed in the future. There are certain restrictions where a leaseholder cannot make an application to the LVT. Leaseholders are advised to seek further guidance from the government website, [www.gov.uk](http://www.gov.uk).

## **24. References**

- Commonhold and Leasehold Reform Act 2002
- Housing Act 1985
- Housing (Service Charge Loans) Regulations 1992
- Landlord and Tenant Act 1985

## **25. Equality and Diversity**

**25.1** The Council tailors its services to meet the diverse needs of individuals. We foster good relations with people when providing services to eliminate discrimination and to promote opportunity of equality.

## **26. Review**

**26.1** This Policy has been written in line with current relevant legislation. The policy will be reviewed and revised to reflect any legislation requirements and/or other guidance or good practice. The next review of this Policy is due December 2019 and every four years thereafter.