



LEEDS CITY COUNCIL AND ARMS
LENGTH MANAGEMENT
ORGANISATIONS

**Right to Buy &
Leaseholder
Services
Policy 2009/11**



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1.0 Introduction

Tenants of Social Landlords have been able to purchase their homes under the Right to Buy since the introduction of Right to Buy legislation in 1980. Since its introduction in excess of 30,000 properties have been sold by Leeds City Council. The numbers of sales in each year has fluctuated since the Right to Buy was introduced. At its peak in 1989/90 over 3,000 properties were sold during the year. In 2008/09 this has reduced to 77 completed sales. The reduction in Right to Buy completions is largely considered to be due to the recession and the previous years increase in property prices. This has meant obtaining a mortgage is more difficult and the maximum discount available of £24,000 is not as significant as in previous years, making properties less affordable to all tenants.

Properties purchased by tenants include both houses and flats. As at July 2009 there are 1683 flats or maisonettes which have been sold on leasehold terms. The analysis of leaseholders across the 3 Arms Length Management Organisations and Belle Isle Tenant Management Organisation is:

West North West Homes (WNWh)	- 744
East North East Homes (ENEh)	- 638
Aire Valley Homes (AVH)	- 277
Belle Isle Management Organisation (BITMO)	- 24

The Council administers the Right to Buy application process, whilst the Arms Length Management Organisations (ALMOs) and the Belle Isle Tenant Management Organisation (BITMO) are responsible for the day to day management of the Housing stock, including the flats and maisonettes sold under the RTB on a leasehold basis.

2.0 Purpose

This policy outlines the Council's approach to managing the Right to Buy process and dealing with Leaseholders and their homes in partnership with the ALMOs and BITMO. The Policy aims to provide clarity in the way leasehold properties are managed, leaseholder enquires are to be dealt with and compliance with relevant legislation.

This policy is not and should not be construed as a legal agreement between the Council, Arms Length Management Organisations, BITMO and/or Leaseholders. Where any party requires an interpretation of the legislation they should seek their own independent legal advice.

3.0 Customer Care

The Council, ALMOs and BITMO are committed to ensuring that excellent customer care is offered to all customers including leaseholders in line with contractual and legal requirements and best practice nationally. At the same time ensuring value for money is achieved in providing the service. That this is demonstrated for both leaseholders paying for services through their Service Charges and for tenants by ensuring that equitable service charges are raised. That income is maximised through collection of eligible service charges.

Satisfaction surveys will be undertaken with leaseholders and tenants exercising their Right to Buy, to monitor satisfaction, to determine how we are achieving our objectives and to increase customer satisfaction through the provision of excellent customer services.

4.0 Equality & Diversity

The Council, ALMOs and BITMO have Equality and Diversity Strategies and will ensure that this policy is clearly linked to it in order to ensure that it contributes fully with the Equality and Diversity objectives of the organisations.

5.0 The Right to Buy

The Council manages the Right to Buy (RTB) service on behalf of all Leeds City Council tenants and aims to comply with all statutory requirements and timescales in relation to the RTB.

5.1 Service Standards

Detailed below are Service Standards which the Homeownership Team aim to achieve in processing Right to Buy applications:-

Right to Buy
- We will be courteous and helpful at all times, listening to our customers and partners
- We will communicate with our customers in plain and easy to understand terms
- All literature can be made available in different languages, large print and Braille. An interpreter can be provided by appointment in most instances if required
- We will aim to answer telephone calls promptly, within Corporate timescales
- We will acknowledge receipt of an application within 15 working days
- We will send a freehold offer letter within 12 weeks of receipt of an application
- We will send a leasehold offer letter within 16 weeks of receipt of an application
- We will aim to comply with all statutory timescales in processing an application
- We will aim to respond to all correspondence/enquiries within 10 working days
- We welcome and encourage feedback from our customers and will try and resolve any complaints as a matter of priority. We will acknowledge your complaints within 3 working days and provide a full response within 10 working days from the date your complaint was received. Where a longer period is required by necessity customers will be advised
- We will comply with Data protection regulations and all personal details will be treated in strict confidence and will not be disclosed to any other parties without the written agreement of the applicant
- We will acknowledge any requests (which should be in writing), for Freedom of Information access made to this office within the timescales set down in the Freedom of Information Act 2000

5.2 Summary of Right to Buy Process

- a) Tenants request application and Information Pack (Packs will be held at local offices, One Stop Centres and can be obtained from the Councils Home Ownership team)
- b) Tenants submit their application to purchase
- c) Home Ownership Team will:
 - acknowledge receipt of an application
 - verify the tenants eligibility to the Right to Buy
 - verify any family members eligibility to be enjoined in the Right to Buy
 - liaise with tenants for additional information
 - send a Right to Buy admittance/denial document to the tenant
 - liaise with ALMO regarding property repair and improvements for Cost Floor purposes and structural information.
 - liaise with ALMO on the checking details under the NCIS regulations
 - request a valuation of the property
 - request an Energy Performance Certificate (EPC) survey
 - request boundary plans and internal layout (flats only for latter)
 - verify previous tenancies claimed for discount purposes
 - calculate tenants discount
 - calculate Service Charge Estimates,
 - determine in conjunction with the ALMOs/BITMO major works (flats only)
 - refer case to Legal Services for conveyancing
 - respond to any delay Notices served by a tenant
- d) Legal Services will:-
 - issue Section 125 Notice (price, discount, Service Charge Estimate
 - where tenants seek the valuation be determined by the District Valuer, make the required referral
 - issue revised Section 125 following District Valuer Determination
 - where tenants fail to respond issue default Notice on tenants
 - where sale goes to completion correspond with tenants and/or their legal representatives
- e) The ALMOs/BITMO will:
 - provide all details requested by the Home Ownership Team in respect of properties which they manage on the Councils behalf. The information sought will be in relation to the property type, repairs and improvements carried out, structural matters, tenancy details and any details required under National Crime Intelligence Service (NCIS).
 - undertake any investigations in relation to the tenancy of a property, where the Home Ownership Team Leader considers there is doubt about the occupation of the property by an applicant.

5.3 Right to Buy Policies

The legislation relating to the Right to Buy and Leasehold properties provides landlords with some discretion in the processing of applications. Therefore in order that the Council/ALMOs and BITMO acts in a consistent and equitable manner in dealing with enquiries and requests from tenants the Council has established a number of policies. These policies are detailed below:-

5.3.1 Repairing / Improving a Property Subject to the Right to Buy:

The Council/ALMOs/BITMO will continue to repair and maintain properties in accordance with its duties as landlord until such time as a property which is subject to a Right to Buy has been sold. However, the carrying out of improvements will be at the ALMOs/BITMOs discretion. Consideration will be given to ensuring that the property is wind, water tight, safe and secure.

Where a valuation has been carried out on a property which is subject to a Right to Buy application, any subsequent improvement works which are carried out cannot be reflected in the valuation. In addition the cost of improvements does not generally add an equal value to the valuation of a property.

5.3.2 Enjoinder of a Family Member: The Right to Buy legislation provides that family members may be enjoined in the purchase of a property. The qualification for enjoinder is that the family member(s) must have been resident in the property during the 12 month period prior to the date of the application and that the property is their only, or principal home.

Whilst there is discretion with regard to the period the Council will generally apply the 12 month qualification criteria. Each case is considered on its own merits.

5.3.3 Enjoinder of a Family Member under the Age of 18 years: The Right to Buy legislation determines that where a family member is applying to be enjoined in the purchase of a property they should be at least 18 years of age before they are eligible.

Whilst there is discretion with regard to the age of a person being enjoined in the purchase of a property the Council will generally apply the 18 years of age qualification criteria. Each case being considered on its own merits

5.3.4 Applications to Buy Garages: Where a tenant rents a Council garage during their tenancy, the garage will not be sold as part of the Right to Buy. In addition the Council will not sell garages, or garage sites as a voluntary sale outside the Right to Buy.

5.3.5 Council Mortgage Provision: tenants do not have the right to obtain a mortgage from the Council. However, the Council has recognised that there are some properties, multi-storey flats or properties termed as defective (of non traditional build) where the Financial Lending Institutions may be unwilling to provide mortgages. In such instances where a tenant provides evidence (3 written refusals) of attempting to obtain a mortgage, the Council may consider the provision of a mortgage. The provision of mortgage would be subject to the tenant meeting a financial resources test and the mortgage would be secured against the property. The Council will only consider acting as Lender in Last Resort.

5.3.6 Right of First Refusal - Purchase of Former Council Properties: The Housing Act 2004 imposes a legal obligation on tenants who applied to purchase their home under the Right to Buy on or after 10 August 2005. The requirement is that should the owner wish to sell their home they must first offer the property to the Council at market value, before they can place it on the open market. The Council will, in conjunction with the ALMOs/BITMO and other partners consider each offer to purchase. A response will be provided to the owner occupier within the prescribed period of 8 weeks. Failing this the owner can sell on the open market without further referral to the Council.

5.3.7 Repurchase of Former Council Properties: Where an owner requests that the Council repurchase their former Council home. Consideration will be given to the request by the Council in conjunction with the ALMOs/BITMO.

There is no obligation upon the Council to repurchase properties purchased under the Right to Buy.

5.3.8 Waiver of Liability to Repay Discount: The Right to Buy legislation requires that where an owner/leaseholder is seeking to sell their home within the first 5 years of purchase and they submitted their application to buy on or after the 18th January 2005, there is a liability to repay discount received. The level of discount repayable is proportionate to the value of the house when purchased and the sale price, reduced by the numbers of years elapsed. An owner who sells within the 1st year in a buoyant housing market may be required to pay more than the original discount received.

Where an application was submitted prior to the 18th January 2005, the period for discount liability is 3 years and discount reduces by one-third for each complete year which has elapsed.

There may be exceptional circumstances facing an owner who may require selling within the 3 or 5 year discount liability period. Where a request is submitted to waive the discount liability, the Council will consider each request on its own merits, having consideration to the legislative guidelines and its fiduciary duty.

5.3.9 Extension to Timescales to Purchase: The Right to Buy legislation provides the landlord with the discretion to extend the period of time by which a tenant must advise the landlord of their intention to purchase the property or to complete the purchase. The Council will consider each request from tenants based its own merits providing:-

- a request is made in writing or via e-mail
- the request is submitted prior to the expiry of the Final Notice period.
- the request includes a reason why the extension is required and why they were unable to complete within the statutory timescales
- provide a date by which the tenant anticipates completion can be achieved

An extension period may be granted of 4 weeks, in exceptional cases this may be extended to 10 weeks. This is considered adequate to resolve any outstanding matters and to resolve any issues with regard to obtaining a mortgage. Each case is considered on its own merits.

5.3.10 Owners Additional Borrowing Against the Property - Postponement of the Councils Discount Charge:

The discount provided to tenants under the Right to Buy:-

- is a registered charge against their property, immediately following any mortgage obtained to acquire the property.
- remains as a liability to until the expiry of a period of 5 years from the original date of purchase from the Council. Reducing by a prescribed amount for each complete year which has elapsed

Tenants seeking to borrow additional monies (in excess of the costs of acquiring the property), or seeking additional borrowing at subsequent date within the first 5 years must consider the following:-

- lenders will generally require that the Council postpones its charge in favour of the additional borrowing
- the lender, the home owners, or their representatives must seek the Councils written agreement to postpone its charge. Failure to do so will mean the Councils charge will rank in priority to any subsequent borrowing
- legislation requires that the Council agrees to postpone its charge where the additional borrowing is in respect of home improvements or other approved borrowing and is with an approved lender
- the Council will require copies of invoices, receipts for works which are claimed to have been carried out, or estimates for proposed works along with an assurance from the lender that the purpose of the loan is for home improvements, or an approved purpose under the legislation.
- The Council has discretion to postpone its charge in favour of other borrowing, although will generally apply the legislative requirements in consideration of its Fiduciary duty. Each case will be considered on its merits.

Whilst the Council has some discretions as detailed above it will generally apply the legislative requirements, whilst also considering each case on its own merits.

The Council must have regard to its fiduciary duty in dealing with public money, the powers granted under the legislation and also its duty to the individuals.

6.0 Leasehold Services

6.1 Service Standards:

Leeds City, the ALMOs and BITMO will endeavour to provide a high standard of service to all their leaseholders. Detailed below are the standards by which the organisations will operate.

Leaseholders
<u>Property Maintenance/Improvement</u> The ALMOs <ul style="list-style-type: none">- will maintain, repair and improve the building structure and communal areas of blocks containing leasehold flats/maisonettes- will consult with leaseholders in advance of any proposed major repairs and improvements to the block- will provide contact points and emergency numbers whilst major repairs and improvements are being undertaken- will investigate complaints of poor quality repairs/improvements- will undertake emergency repairs to the block within 24 hours, priority repairs within 4 working days and general repairs within 4 weeks- will ensure that leaseholders have contact information of how to order repairs to the block/communal areas- will provide leaseholders with details of programmes of planned works and improvements to the estate and arrange for contact to discuss carrying out works <u>The Council</u> <ul style="list-style-type: none">- will ensure that buildings insurance is in place for all leasehold flats/maisonettes
<u>Enquiries/Complaints</u> The ALMOs, BITMO and Council <ul style="list-style-type: none">- will acknowledge enquiries and complaints within 3 working days and respond fully within 15 working days.
<u>Services</u> The ALMOs <ul style="list-style-type: none">- will provide caretaking, cleaning and any others services which they consider are required for the block of flats/maisonettes- will ensure that the services provided are to a high standard and address any issues of non-performance- will provide gas servicing to leaseholders at a competitive price where this service is offered by the individual ALMO, BITMO
<u>Service Charges</u> The Council <ul style="list-style-type: none">- will issue Service Charge Estimates in March each year advising leaseholders of charges for the coming financial year- will issue quarterly invoices in April, July, October and January of each year- will provide an annual statement in September of the actual costs incurred and rechargeable, which have been incurred for the previous financial year. Advising of any under or overpayment- will provide instalment facilities to allow payment of service charge invoices either monthly or quarterly in advance
Leaseholders

Service Charges (cont'd)

- will discuss with leaseholders financial options available to meet Service Charges issued for major works
- will provide a variety of payment methods by which leaseholders can pay their Service Charges

Information and Leaseholder Forums/Focus Groups

The ALMOs

- will hold regular Leaseholder Forum Meetings, or convene Focus Groups as determined by each ALMO. These to be held at least ½ yearly
- will provide information to leaseholders on the work of their organisation through a copy of their newsletter and other media used by the individual ALMO/BITMO
- will involve leaseholders in establishing leasehold service standards

The Council

- will issue to leaseholders all Notices and information required by statute
- will advise leaseholders of changes to leasehold legislation
- will attend leaseholder Forums and meetings arranged by the ALMOs/BITMO

6.2 Summary of Leasehold Process

Tenants who apply to purchase their flat/maisonette home under the Right to Buy will follow the Right to Buy process detailed at 5.2 above. Upon completion of the purchase of their home the following processes and procedures will apply:-

The Council will:-

- a)** Prior to a tenant completing the purchase of their home, they will be invited to attend an informal meeting with the Council's Leasehold Officer, to discuss leasehold property ownership and matters affecting leaseholders.
- b)** within 10 working days of the Council being advised of the sale of the property or the lease assignment of the property:-
 - send the leaseholder a Statement of the Service Charge costs estimated to be incurred in the current financial year
 - send the leaseholder a Service Charge Account
 - send the leaseholder a Direct Debit application inviting the payment by this method
 - send the leaseholder copies of Notices served under the Consultation Regulations requirements of those contracts affecting them
 - send a copy of the Leaseholder Guide
 - send a copy of the Notice relating to Rights and Responsibilities
 - send a copy of the Notice relating to Administrative fees and Charges
 - send a copy of the Ground Rent Notice
- c)** During March of each year leaseholders will be issued with the Service Charge Estimates Statement, which advises of the estimated Service Charge costs to be incurred during the financial year
- d)** Prior to the beginning of each quarter (April, July, October and January) issue a Service Charge account to each leaseholder advising them of the amount payable.

- e) Issue statutory Consultation Notices advising leaseholders of major works which are to be undertaken affecting their flat/block
- f) Issue in October of each year a statement of the previous years actual costs incurred. Adjustments for under or over payments will be made in the Final two quarters accounts.
- g) Pursue recovery of unpaid Service Charge Accounts, through use of External Agents and the Courts as appropriate
- h) Respond directly to, or direct enquiries /complaints to the relevant officers within the Council/ALMOs
- i) Where requested by the Leaseholder, discuss methods which may be available to pay their Service Charges, including charges for major works

The ALMOs/BITMO will:-

- j) upon request from the Council's Home Ownership Team provide information regarding any works which are likely to be carried out during the 5 year period immediately after the sale of a flat/maisonette
- k) upon request from the Home Ownership Team provide details of the type of services which the ALMO/BITMO continue to provide to the block
- l) upon request from the Council's Leasehold Officer, provide the annual costs of those services which the ALMO/BITMO continue to provide
- m) consult with and notify leaseholders of any proposed changes in the services which the ALMO/BITMO provides
- n) consult with the leaseholders on any planned major works which are proposed
- o) provide to the Councils Leasehold Officer details of any proposals to enter into new contracts for services or works. Notice of the changes to be in advance of any advertisement, or invitation to contractors to submit tenders
- p) respond direct to enquiries or complaints from leaseholders relating to services provided by the ALMOs. Refer financial matters to the Council's Leasehold Officer as appropriate.
- q) arrange and invite leaseholders to attend at least half yearly meetings
- r) provide leaseholders with information relating the operations/performance of the ALMO/BITMO through periodic newsletters
- s) advise leaseholders of the tenants and residents group in their areas.

6.3 Leasehold Policies

Once a property has been sold under leasehold the Council retains responsibility for the provision of some services to a block of flats/maisonettes. It also retains the responsibility for the repair and maintenance of the building structure, out buildings and communal areas. This management function for these properties and blocks of flats is being undertaken by the ALMOs/BITMO as agents of the Council.

The Council remains the freeholder of the properties and is responsible for the decision making process in consultation with the ALMOs/BITMOs. The following policies apply to leasehold properties:

6.3.1 Sale of Roof Space/Basements

The roof space and/or basement area accessible to leaseholders are not conveyed at the time of the Right to Buy. Where a leaseholder has sole access to these areas and wish to acquire the area for either storage, or possible development into additional living accommodation, a request must be made to the Council prior to any works commencing.

Where considered appropriate the Council may agree to the sale of the area on a leasehold basis, the lease being co-terminus with the existing lease for the flat. The Council will require a fee to be paid for the area along with its reasonable legal and other costs in processing the sale. The leaseholder will be required to obtain all building and planning approvals in respect of any works or conversion works.

Where conversion has been undertaken without the prior approval of the Council, the Council may require that the roof space/basement is returned to original condition and the leaseholder will be responsible for all associated costs.

6.3.2 Improvements and Alterations

Leaseholders cannot undertake any works of improvement or alteration which affect the building structure (eg replacement windows, replacement doors, removal/addition of internal walls) without the prior written consent of the Council.

Consent will not unreasonably be withheld, however, details of the works will be required and a surveyor may need to inspect prior to and after the works have been started / being completed. The leaseholder will be required:-

- to obtain any building or planning approvals necessary
- ensure that the works are carried out to a good standard
- ensure that no damage is caused to the property, or adjoining property during or as a result of the works.

The Council will pursue recovery of any costs from the leaseholder which it incurs in repairing the property, adjoining property, or correcting poor workmanship.

6.3.3 Non payment of Service Charge – Debt Recovery Actions

Where a leaseholder fails to pay the Service Charge demands of the Council, recovery of the debt will be made through the use of External Debt Recovery Agents and also through the Courts.

Forfeiture of the lease may also be considered by the Council where deemed appropriate. Whilst this would be a last resort such action would result in the leaseholder losing their home.

6.3.4 Varying the Lease

The leases cannot be varied without the consent of all parties to the lease. Where a request is made to the Council to vary the lease terms each case will be considered on its own merits. Consideration must be given to the implications for the Council, its tenants including other leaseholders.

6.3.5 Consultation on Services Provided

The ALMOs/BITMO are responsible for managing the services provided to blocks of flats (eg caretaking, cleaning, repairs and maintenance and improvement works).

- **Change of Contract:** Where the ALMO/BITMO intend to enter into a contract for the provision of a service (eg Cleaning of blocks), prior notice will be given and consultation undertaken with leaseholders by the ALMO/BITMO. Where the contract is a long term agreement (eg for a period of 12 months or more) the ALMO/BITMO will provide all the necessary details to the Council's Leasehold Officer who will arrange for the formal Notices to be issued under the Service Charge (Consultation Requirements) (England) Regulations 2003.
- **Service Review:** Where the ALMO/BITMO intend to review the service provided to a block of flats containing leaseholders, they will consult with the leaseholders prior to implementation, giving due regard to the comments made by leaseholders.

Where such a review requires the implementation of a new long term agreement or a charge in excess of £100 per annum to leaseholders the required information will be provided to the Council's Leasehold Officer to allow them to issue the formal Notices under the Service Charge (Consultation Requirements) (England) Regulations 2003.

6.3.6 Consultation on Contracts for Repairs/Maintenance and Major Works

Where the Council and/or the ALMOs/BITMO propose to enter into a long term agreement for the provision of Repairs and Maintenance, or Major Works consultation will be undertaken with leaseholders in advance of a contract being let.

- **Repairs and Maintenance:** The Council will issue the Notices prescribed under the Service Charge (Consultation Requirements) (England) Regulations 2003. These Notices will invite leaseholders to make any comments regarding the proposals.
- **Major Works:** The ALMOs will advise leaseholders in advance of any proposed major works to be carried out to the block containing their home. Where considered appropriate meetings can be held with leaseholders.

The Council will issue the Notices prescribed under the Service Charge (Consultation Requirements) (England) Regulations 2003. These Notices will invite leaseholders to make any comments regarding the proposals.

6.3.7 Loans for Major Works

The Council and the ALMOs/BITMO recognise that the costs payable by leaseholders for major works of repair and/or improvement can be high. Therefore the Council will consider the provision of a loan where a leaseholder has received a Service Charge Account for this type of work.

Leaseholders may be entitled to a Loan under The Housing (Service Charge Loans) Regulations 1992. Entitlement to a loan will be notified to the leaseholder by the Council, when they receive their Service Charge demand for the works.

Provision of a loan where there is no mandatory entitlement, or provision of a loan to cover any shortfall from the mandatory value will be considered by the Council, subject to a satisfactory property valuation and a satisfactory financial resources test of the leaseholder.

Leaseholders will be required to meet the Council's legal costs and administrative costs.

6.3.8 Sinking Funds/Reserve Funds

Leeds City Council does not currently operate a sinking fund. The lease agreement between the Council and leaseholders does not contain any provision whereby leaseholders would be required to contribute towards a Sinking or Reserve Fund.

The Council and ALMOs will periodically seek leaseholders views on operating and contributing towards such a Fund.

7 Summary

This policy is to be adopted by Leeds City Council, the Arms Length Management Organisations and Belle Isle Tenant Management Organisation who act as agents of the Council. This policy will:-

- be operational from the 1st October 2009 until the 31st March 2011
- will be subject to review annually April each year or at such other times agreed with all parties
- Wherever possible/necessary leaseholders will be consulted on any changes made to this policy.

This policy is not, and should not be regarded as a contractual agreement between the Council, ALMOs or leaseholders. Parties should seek their own independent legal advice any issues arising from this policy.

