



KINGS CRESCENT PHASES 3 AND 4 DISCRETIONARY SERVICE CHARGE REDUCTION Key Decision No. NH Q.32	
CABINET MEETING DATE (2019/20) 16 March 2020	CLASSIFICATION: OPEN If exempt, the reason will be listed in the main body of this report.
WARD(S) AFFECTED Brownswood	
CABINET MEMBER Mayor Glanville Housing and Regeneration	
KEY DECISION Yes REASON Spending	
GROUP DIRECTOR Ajman Ali, Acting Group Director, Neighbourhoods and Housing	

1. CABINET MEMBER'S INTRODUCTION

- 1.1 Hackney is building. I'm proud that the Council will deliver thousands of new homes itself over the next few years – with the majority for social rent and shared ownership.
- 1.2 We've already delivered hundreds of award-winning homes at the Kings Crescent Estate, and I'm proud that last year we secured planning permission to build hundreds more – ensuring that more local families in housing need can have a genuinely affordable place to call home.
- 1.3 But I've always made clear that we're not just building new homes, we're investing in our existing homes as well. At Kings Crescent, this means we're refurbishing remaining homes to a higher standard than we would normally, as well as providing more community facilities – ensuring that everyone benefits from the estate's regeneration, not just new residents. Whether it's better security, better green spaces or simply a home that doesn't look out of place amongst the new development, it's right that existing residents who have lived through the disruption of lengthy demolition and construction should receive benefits as well.
- 1.4 When we agreed the first phase of the estate's regeneration nearly ten years ago, we put in place a £10,000 cap on the amount we would charge leaseholders, due the long history of failed regeneration on the estate. Most of the estate's demolition was completed in 2002, but two failed attempts through other delivery methods led to children growing up for years living on a half-demolished estate. It's absolutely right that we remember the history of this project when we plan our approach for the future.
- 1.5 So I'm proud that we are putting in place a new fair deal for remaining resident leaseholders on the estate for the final phase of our fantastic regeneration plans, which will also keep our community together for the long-term. Our offer is clear – if you are a resident leaseholder and you remain living in your home for five years after the work, you won't pay a penny more than £10,000 towards the cost of it. If you're a non-resident leaseholder, we'll ask you to pay your fair share.
- 1.6 Given that the value of their homes will likely be significantly increased by this work, this is a fair approach which meets our objective that no residents should be worse off through the regeneration of the estate.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 In July 2011 Cabinet agreed to the introduction of a cap of £10,000 on the amount of costs which can be recharged to each leaseholder on the Kings Crescent Estate for the following works - external cladding, new windows, new roofs, and balconies (final phase of refurbishment works). This was proposed due to the exceptional circumstances relating to the estate.

- 2.2 The 2011 Cabinet decision does not stipulate when the cap of £10,000 should expire and whether or not it applies to leaseholders in Phases 3 and 4 of the regeneration. However, the £10,000 cap was applied to historic major repairs bills associated with the 2011/12 and 2012/13 capital works programme of window renewal and brickwork repairs. See 6.3.1 for further details.
- 2.3 The proposal to undertake both repair works and improvement works to Bramfield, Datchworth, Theobalds and Weston Court part of the Phase 3 and 4 regeneration plans has highlighted a need to review the recharges applicable to Kings Crescent leaseholders, and provide clarity on the scope and application of the approach specifically to Kings Crescent. This should not set a precedent for any other estate regeneration scheme.

3. RECOMMENDATION(S)

Cabinet is recommended to:

- 3.1 **For resident leaseholders within Bramfield, Datchworth, Theobalds and Weston Court (Kings Crescent Phases 3 and 4) who have leases without improvement clauses, apply a £10,000 cap to the amount of costs which can be recharged for the major repairs works as outlined in paragraph 6.3.3. This cap shall apply until the completion date of the above mentioned works, forecast to be 2024. For the avoidance of doubt, this cap shall not apply to non-resident leaseholders at the date when Section 20 Notices are issued.**
- 3.2 **For resident leaseholders within Bramfield, Datchworth, Theobalds and Weston Court (Kings Crescent Phases 3 and 4) who have leases with improvement clauses, apply a £10,000 cap to the major repairs works and the improvement works as outlined in paragraph 6.1.4. This cap shall apply until the completion date of the above mentioned works, forecast to be 2024. For the avoidance of doubt, this cap shall not apply to non-resident leaseholders at the date when the first Section 20 Notice for the works is issued.**
- 3.3 **Restrict the application of the £10,000 cap for resident leaseholders to the costs associated with the approved package of works as part of the estate regeneration project on Bramfield, Datchworth, Theobalds, and Weston Courts. All future works undertaken under the Council's asset management plans are to be excluded from the cap.**
- 3.4 **Secure that, in the event of a resident leaseholder ceasing to be a resident leaseholder within five years of the final accounts being issued, a proportion of the uncharged element of the works will be repayable through a clawback mechanism. The repayable amount shall be reduced in equal steps from 100% in the first year following the final accounts being issued to 20% in the fifth year.**

- 3.5 Delegate authority to the Group Director of Neighbourhoods and Housing in consultation with the Group Director of Finance and Corporate Resources and the Director of Legal and Governance Services to determine the detailed arrangements for the implementation of the discretionary major works and improvements service charge reduction for resident leaseholders including the clawback mechanism in 3.4.**
- 3.6 Delegate authority to the Group Director of Neighbourhoods and Housing in consultation with the Group Director of Finance and Corporate Resources to vary the schedule of works within the cap, as set out in 3.1 and 3.2, in order to facilitate the delivery of the Kings Crescent estate regeneration.**

4. REASONS FOR DECISION

- 4.1 Kings Crescent Estate had a long history of stalled attempts at regeneration before the Council successfully delivered Phases 1 and 2 of the regeneration in 2017. The substantive demolition was completed in 2002 in anticipation of a housing association and developer partnership delivering the regeneration. There followed two failed attempts through such delivery methods and, as a consequence, residents of the Kings Crescent Estate encountered a living environment on a half demolished estate for a significant duration. Subsequent changes in legislation that permitted council-led delivery to redevelop and regenerate estates enabled the Council to bring forward regeneration proposals, and the first masterplan was commissioned in 2010. Delivering an in-house investment programme at Kings Crescent that ensured the delivery of new Council rented homes and the complete renewal of existing homes could then become a reality.
- 4.2 A project brief for Phases 1 and 2 was drawn up in 2012 and co-produced with residents. One of its key design principles was that the works to the existing blocks should seek to achieve a design which complements the external appearance of the new build homes, matching its quality and specification, altogether generating a genuinely tenure blind estate. The design objectives for the refurbishment of Phases 3 and 4 have aimed to continue this commitment to enhance the quality of life for the existing residents by transforming the character of the retained buildings and the perception of the estate; and ensuring equity across all phases as well as across the existing and new homes. The installation of precast balconies, new lobby entrances and other elements of the improvement works are critical design interventions that achieve the stated objectives.
- 4.3 It would be fair and reasonable to introduce a cap on the amount of costs that can be recharged to resident leaseholders given the protracted history of the regeneration, the Council's vision to deliver an equitable regeneration proposal for all residents on the estate, to keep the existing community together; and to recognise the considerable disruption to residents in the retained blocks whilst the works to their homes are delivered, in addition to the new build construction works which will occur simultaneously.

- 4.4 In recognition of these factors, in July 2011, Cabinet granted approval of a recharge cap for leaseholders of £10,000, and this was communicated to leaseholders in Phases 1 and 2 as part of the formal Section 20 Notice process. A similar approach is recommended for resident leaseholders in Phases 3 and 4.
- 4.5 In 2018 the Council's Leaseholder and Freeholder Options Document was adopted for regeneration estates. This policy is intended to help maintain existing communities and enable residents to stay in Hackney. While the policy applies to buying back homes, the same principle applies to the proposed amount that resident leaseholders in Phases 3 and 4 can be recharged for the cost of major repairs and improvement works, as set out in this report.
- 4.6 The estimated recoverable income from a full recharge to all leaseholders for the major repairs works and improvement elements of the scheme would be circa £2.73m. The estimated income, following the introduction of a £10,000 cap for each resident leaseholder would be £1.06m. The estimated uncharged element for leaseholders is therefore in the order of £1.67m. The costs for the improvement works and major repairs work that exceed the £10,000 cap, will be cross-subsidised from outright sales income from Phases 3 and 4. The financial impact of the uncharged element is considered justifiable given the reasoning set out above.
- 4.7 The above estimates are based on existing records which indicate that 43 out of 56 leaseholders are resident leaseholders and 13 are non-resident. Anecdotal information suggests that the number of non-resident leaseholders may be greater than 13, in which case the uncharged element of the works would be reduced. Further due diligence will be carried out to establish the resident and non-resident leaseholders at the date of issuing the first Section 20 Notice.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 The option to recharge all leaseholders in Phases 3 and 4 for all recoverable elements of the works was considered, generating estimated income of £2.73m. The option to apply the £10,000 cap to all leaseholders in Phases 3 and 4 was also considered, generating estimated income of £560,000.
- 5.2 Both of the above options were rejected. The proposed approach is to apply the £10,000 cap to resident leaseholders only, subject to a clawback mechanism in the event that leaseholders become non-resident within five years. This is to help maintain the sense of fairness and equity as well as the existing community at Kings Crescent.

6. BACKGROUND

- 6.1 **Phases 3 and 4 scheme proposals**

6.1.1 Kings Crescent estate regeneration comprises four phases. Phases 1 and 2, comprising 273 mixed tenure new build homes and the refurbishment of 101 homes within three blocks, were completed in December 2017. Phases 3 and 4 were consented in November 2019. The scheme proposals comprise the following:

- 28 social rent homes;
- 75 shared ownership homes;
- 116 outright sale homes;
- 174 existing homes receiving major repairs and improvements;
- A new community facility;
- 480m² of retail commercial space;
- 500m² of office/workspace; and
- Associated public realm and landscape works including improved facilities for play and recreation.

6.1.2 Of all the regeneration proposals within the Estate Regeneration Programme, Kings Crescent is the only one where there are retained blocks that are being refurbished. These are Kelshall, Therfield, and Lemsford Courts in Phases 1 and 2, and Bramfield, Datchworth, Theobalds and Weston Court in Phases 3 and 4. The aim of the refurbishment of the estate blocks in Phases 1 and 2 was to achieve a tenure blind scheme by complementing the external appearance of the new build homes within the refurbishment element of the works. The additional refurbishment undertaken in Phases 1 and 2 comprised:

- Improvements to roof to enhance thermal performance;
- Provision of full-height winter gardens to south-facing homes;
- Provision of private balconies to east and west corner homes;
- Garage to home conversions;
- Rationalisation of all exposed utilities such as electricity wires, etc. to improve external appearance;
- Removal of bridge walkways between Lemsford and Therfield Courts; and
- Improvement to undercroft gateways and communal facilities such as refuse stores.

6.1.3 In relation to the blocks to be refurbished as part of Phases 3 and 4, all internal refurbishment works including installation of new kitchens and bathrooms were completed under a Decent Homes programme. The lifts to all cores have also been replaced. Secure door entry systems with fob controls are currently being installed. The strategy established in Phases 1 and 2 is that the refurbishment of blocks in Phases 3 and 4 should both be transformational and achieve a parity between it and the new build development.

6.1.4 The Kings Crescent Phases 3 and 4 works have been widely consulted upon with residents of the Kings Crescent Estate, with leaseholders helping to shape the proposals which have been submitted to planning. The major repairs and improvement works to the retained blocks include:

- New precast balconies;
- New sedum green roofs;

- New roof access hatches;
- Replacement communal windows (all blocks);
- Replacement windows to Bramfield Court;
- New rainwater pipework;
- New screed flooring to walkways;
- Provision of front entrance gardens;
- New back garden walls/gates;
- New precast concrete seats to ground floor gardens;
- New aluminium cladding to soffits of underpasses;
- New lighting to underpasses;
- Improvements to Weston Court podium;
- New stairs to Weston Court;
- Improvements to the facade of Weston Court;
- New lobby entrances along Queens Drive;
- Painting of entrances and stair cores;
- New railing to walkways;
- New refuse stores;
- Upgrades to the residents' stores;
- Provision of cycle storage;
- Provision of new cleaners' stores; and
- New postboxes.

6.2 Phases 1 and 2 discretionary major works and improvements service charge reduction

6.2.1 The discretionary service charge reduction applied to the leaseholders within Phases 1 and 2 who had refurbishment works completed was to cap (at £10,000) the amount of costs which would be recharged to each leaseholder for the following works – external cladding, new windows, new roofs and balconies. In addition leaseholders were not charged for the winter garden and balcony works.

6.2.2 Section 20 Notices (Notices of Landlord's intention to carry out Qualifying Works under a qualifying long term agreement (QLTA)) were issued for Phases 1 and 2 in 2015. Leaseholders were advised that the external building elements of the blocks had been assessed and that it was considered that the works were required to maintain the structure and exterior of the block, to provide improved water-tight, thermal and energy efficient living conditions, provide safer and more secure living environment and to improve access to external amenity spaces.

6.2.3 Leaseholders were also advised that there were two elements of work:

Works subject to recharge (up to the £10,000 cap)

- Roofs: replacement of roof;
- Windows: replacement of existing windows in the communal areas;
- Walkways: new floor coverings for communal walkways;
- External Walls: cleaning and repair of external brickwork, replacement of weatherboarding and removal of all redundant services and signage.

Works not rechargeable.

- Decoration works: decoration of walls within the communal stair-cores and walkways, cleaning and repair of tiling in the bin stores;
- Replacement of existing doors of bin store and pram sheds;
- Balconies and winter-gardens: addition of balconies or winter-gardens;
- Canopies: addition of canopies to the block entrances;
- Walkway extensions: glazed extension of walkways;
- Cycle store: conversion of redundant space on the ground floor into cycle storage units;
- Conversion works to existing ground floor garages;
- Construction of new socially rented, shared-ownership and outright sale homes; and
- Construction of public realm and infrastructure works.

6.2.4 Leaseholders were informed that the rechargeable works were capped at £10,000.

6.3 Proposed leasehold discretionary major works and improvements service charge reduction - Phases 3 and 4

6.3.1 On Phases 3 and 4 the original (2011) £10,000 cap has been reached or almost reached for most leasehold properties in relation to a 2011/ and 2011/2012 and 2012/2013 capital planned maintenance programme comprising window replacement, roof renewal, communal walkway works, external decorations and brickwork repairs. 37 leaseholders in Weston, Datchworth and Theobalds Court were either charged less than £10,000 or at a capped level of £10,000. It should be noted that Bramfield Court was not included in the 2011-2012 planned maintenance programme.

6.3.2 Were the balance of the original (2011) £10,000 cap to be applied to the proposed major repairs works due under the forthcoming estate regeneration, there would be minimal income that could be received. It is therefore proposed to introduce a new cap for the Phases 3 and 4 refurbishment works.

6.3.3 10 of the 56 leases within Phases 3 and 4 contain a non-improvement clause that would result in the following rechargeable and non-rechargeable works:

Rechargeable works

- New sedum green roofs;
- New roof access hatches;
- Replacement communal windows (all blocks);
- Replacement windows to Bramfield Court;
- New rainwater pipework;
- New screed flooring to walkways; and
- Upgrades to the residents' stores.

Non-rechargeable works

- New precast balconies;
- Provision of front entrance gardens;
- New back garden walls/gates;

- New precast concrete seats to ground floor gardens;
- New aluminium cladding to soffits of underpasses;
- New lighting to underpasses;
- Improvements to Weston Court podium;
- New stairs to Weston Court;
- Improvements to the facade of Weston Court;
- New lobby entrances along Queens Drive;
- Painting of entrances and stair cores;
- New railing to walkways;
- New refuse stores;
- Provision of cycle storage;
- Provision of new cleaners' stores; and
- New postboxes.

6.3.4 For resident leaseholders in Phases 3 and 4 who have leases without improvement clauses, it is proposed to apply a £10,000 cap to the amount of costs which can be recharged for the major repairs works as outlined in paragraph 6.3.3. For resident leaseholders who have leases with improvement clauses, it is proposed to apply a £10,000 cap to the major repairs works and the improvement works as outlined in paragraph 6.1.4.

6.3.5 The above cap would not apply to non-resident leaseholders, who will be subject to a full recharge, payable from the date when the final accounts are issued. This will apply to leases containing both improvement and non-improvement clauses.

6.3.6 Furthermore, resident leaseholders who cease to be resident leaseholders within five years of the date when the final accounts are issued (for example if they sell their homes or become non-resident leaseholders) would be required to repay a proportion of the uncharged element of the works through a clawback mechanism. This is intended to help maintain the existing community at Kings Crescent. The repayable amount will be reduced in equal steps from 100% in the first year to 20% in the fifth year, similar to repayment of the Right to Buy discount.

6.4 Policy Context

6.4.1 The Housing Act 1985 provides various means by which a local authority can assist leaseholders who are finding it difficult to pay the costs of repairs, maintenance and improvements by way of service charge. In the event that these means are considered insufficient, due to either individual circumstances or the cost of the recharge, the Housing Act 1996 confers powers for social landlords to reduce or waive the recharge in its entirety, having considered the criteria set out in The Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014, paragraphs 3 and 4.

6.4.2 The general overall criteria to be taken into account when considering whether to waive or reduce service charges are:

- a) Any estimated costs for works, maintenance or improvements given to the lessee prior to the purchase of the lease;
- b) whether the purchase price paid took account of these costs;

- c) did the leaseholder benefit from an increase in monetary value, energy efficiency and or improvement in security of the property as a result of the works;
- d) would the leaseholder suffer exceptional hardship as a result of the charges; and
- e) any other circumstances of the leaseholder that the landlord considers relevant.

6.4.3 In view of the circumstances applicable to the Kings Crescent regeneration, as set out in this report, it is proposed to apply the discretion afforded by limb (e) above ***“any other circumstance of the lessee which the social landlord considers relevant”*** to the leasehold charges for Phases 3 and 4.

6.5 Equality Impact Assessment

6.5.1 Kings Crescent is unique within the Estate Regeneration Programme in that there is a refurbishment element alongside new build development. Leaseholders and tenants have been living next to a partially demolished estate for almost 20 years, as demolitions took place to anticipate developer/housing association-led developments that failed to materialise. Subsequently a further three years of construction disruption have taken place. A cap to leasehold recharges was applied on Phases 1 and 2 in recognition of Kings Crescent’s unique history.

6.5.2 The introduction of a cap on the amount of costs for the refurbishment works that can be recharged to resident leaseholders in Phases 3 and 4, subject to a clawback mechanism in the event of leaseholders becoming non-resident within five years, is considered to be fair and equitable. This is consistent with the objective of the Council’s Leaseholder and Freeholder Options Document, to help maintain existing communities and enable residents to stay in Hackney.

6.6 Sustainability

6.6.1 The Sustainable Procurement Policy, Strategy and Guidance supports the priorities to achieve balanced, sustainable communities and neighbourhoods which celebrate their diversity. The next phase of the regeneration of Kings Crescent will deliver sustainable design and construction policy requirements by minimising carbon dioxide emissions, making efficient use of natural resources in and around buildings, minimising noise/pollution and protecting biodiversity.

6.6.2 The development enhances biodiversity through new planting and improved amenity, as well as open space for existing residents, and new brown and green roofs on existing blocks. The overall scheme incorporates a renewable energy strategy that utilises photovoltaic panels, air source heat pumps and use of a CHP system. This enables the development to achieve a 36% improvement in CO2 emissions above the baseline requirements to combat climate change. In addition to this, a surface water management strategy combining permeable paving, soakaways and rain gardens will contribute to achieving a scheme that is future flood proofed. Lastly, the provision for new cycle spaces in existing blocks will further promote sustainable transport and minimise car usage.

6.6.3 The refurbishment strategy for the existing blocks at Kings Crescent aims to achieve a tenure blind scheme by complementing the external appearance of the new build development. The provision of precast external balconies in both the new build and refurbishment elements of the proposals achieves a parity of design treatment, as well as affording all residents in the upper floors of the retained blocks with substantial amenity space. Residents of ground floor properties in Bramfield, Datchworth and Theobalds Court will be provided with new front gardens, as well as brick walls to the back gardens and patios, creating defensible space and enhancing the appearance of the back gardens. These proposals recognise the additional disruption created by the installation of precast balconies, for ground floor residents.

6.6.4 All residents are afforded the opportunity to benefit from the range of events and activities being planned by the newly formed Tenants and Residents' Association (TRA). Furthermore, a commercial unit has been secured for a provider to deliver community activities and events to all residents on the estate and within the wider community. A permanent community facility will be delivered in the Phases 3 and 4 proposals.

6.7 Consultations

6.7.1 All leaseholders along with other residents have been afforded the opportunity to shape the design proposals for the masterplan, for Phases 1 and 2 and more recently Phases 3 and 4, as part of an extensive resident consultation process. For the duration of the Phases 3 and 4 design process, leaseholders were invited to four estate wide resident consultation exhibitions and themed workshop events including one specifically dedicated to the refurbishment proposals, with a follow up drop-in event providing the opportunity to understand the details.

6.7.2 The consultation process has been supported by the involvement of an Independent Tenants and Leaseholders' Adviser (ITLA) service. The ITLA has performed a door knocking and drop-in service for all residents in the retained blocks, throughout the consultation period. Leaseholders have been given the opportunity to inform themselves of the proposals and provide feedback in an informal setting.

6.7.3 In addition all residents have been consulted as part of the statutory planning consultation process for the submitted planning application.

6.7.4 Subject to cabinet approval of this proposal, a three stage consultation process will be run in parallel to serving the Section 20 notices to individual leaseholders. This will occur at pre-tender stage, tender stage and finally at award of contract stage. The consultation process will be supported by the Independent Tenant and Leaseholder Adviser and the Council's Leaseholder Services team, who will provide an opportunity for leaseholders to attend individual surgeries.

6.8 Risk Assessment

Risk	Likelihood	Impact	Overall	
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	L – Low; M – Medium; H - High			Action to avoid or mitigate risk
The discretionary service charge reduction is not compliant with legislation; it is ultra vires or open to legal challenge.	L	H	M	Legal opinion on the discretionary service charge reduction has been obtained.
Leaseholders from other estates challenge the fairness of the offer to Kings Crescent leaseholders.	M	M	M	Clear communication of the specific reasons why the discretionary service charge reduction is being applied to Kings Crescent. Liaison and consultation with Leasehold management team on the reasons for application of the discretionary service charge reduction.
Non-resident leaseholders challenge the fairness of the discretionary service charge reduction for resident leaseholders only.	M	M	M	Clear communication of the specific reasons why the discretionary service charge reduction is being applied to resident leaseholders. Liaison and consultation with Leasehold management team on the reasons for application of the discretionary service charge reduction.
Resident leaseholders challenge the fairness of the clawback mechanism.	L	M	M	Clear communication of the specific reasons why the clawback mechanism will apply to resident leaseholders. Liaison and consultation with Leasehold management team on

				the reasons for application of the clawback mechanism.
Discretionary service charge reduction to apply a second £10,000 cap is misunderstood or disputed by leaseholders.	M	L	M	An outline of the discretionary service charge reduction, along with an FAQ document will be issued with Section 20 Notice of intention letters. If necessary a leaseholder surgery will be arranged.
The value of the work is disputed as well as the value of the cap.	M	L	L	A robust condition survey will evidence the necessity of the rechargeable works. The Section 20 process will enable tenders to be obtained and the final works costs to be evidenced. The precedence of the £10,000 cap is established from Phases 1 and 2.
Discretionary service charge reduction is too complex or too difficult to be understood.	L	L	L	The £10,000 cap for resident leaseholders is easily communicated and understood. The discretionary service charge reduction was applied on the previous phases and was understood by leaseholders.
Payment difficulties are experienced.	M	L	M	Information regarding payment options will be communicated, such as the two year interest-free repayment agreement; the 10 year repayment agreement with interest; and the deferred payment option for

				leaseholders over 60 years of age.
The HRA is adversely impacted by the application of the £10,000 cap.	L	L	L	The works to the existing blocks will be cross-subsidised by outright sale and shared ownership sales income.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 The cost of the works to the existing blocks totals £2.7m and is included in the scheme's financial appraisal. Income received up to the proposed £10,000 cap per resident leaseholder and the full recharge to non-resident leaseholders will therefore contribute towards the cost of the works. Any shortfall in the recovery of costs will be met by surpluses on the outright sale properties being delivered as part of the scheme. With the risk of increasing cost of development and construction works, any additional income will be used to mitigate these increases and support the delivery of the scheme.

8. VAT Implications on Land & Property Transactions

8.1 The recharge of service charges by a local authority, including major works, are outside the scope of VAT and so there are no VAT implications of these works or the recommendations in this report.

9. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE

9.1 Under the Mayoral Scheme of Delegation of January 2017, the framework for applying discretionary reductions for Leaseholder re-charges is reserved to the Mayor and Cabinet which is why this report is before the Cabinet.

9.2 The 56 leases in respect of Kings Crescent Phases 3 and 4 have been reviewed and include provisions to recharge.

9.3 Detailed regulations under section 20 of the Landlord and Tenant Act 1985 (as amended by S151 of the Commonhold and Leasehold Reform Act 2002) set out the precise procedures landlords must follow; these are the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations') which can only be dispensed at the discretion of the Courts.

9.4 This report recommends a resident leaseholder recharge cap of £10,000 per resident leaseholder for specific works over a specific time period in accord with the Recommendations at section 3 of this report. The Council is entitled to do this on the following basis:

- 9.4.1 The Housing Act 1996 confers powers for social landlords to reduce or waive the recharge by an amount the landlord considers to be reasonable in accord with the Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014 (“the Directions”).
- 9.4.2 The Directions give a social landlord a wide discretion to reduce service charges giving consideration to the criteria at Paragraph 3 of these Directions. The landlord must consider the four specified criteria in each case and then the fifth criterion at paragraph 3(e) which states: “*any other circumstance of the lessee which the social landlord considers relevant.*” A social landlord only has to have regard to these criteria. It is not necessary for all the criteria to be present. It is enough if only one is present. This report sets out those circumstances the Council considers relevant to reduce the service charges for resident leaseholders and external legal advice has been received that confirms this course of action is justified.

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