

Subject: LEASEHOLD SERVICE CHARGES

Report to: Housing & Neighbourhoods Committee 22nd June 2017

Report by: Trevor Chaplin, Group Manager Housing Services

SUBJECT MATTER/RECOMMENDATIONS

This report provides details on the legal background and procedures for raising annual service charges and further charges for major works to leasehold properties within the GYCH stock.

Committee are asked to note this report

1. INTRODUCTION/BACKGROUND

- 1.1 When a flat or maisonette is purchased under the Right to Buy (RTB) scheme or on the open market, the council is still responsible for the upkeep of the structure, exterior and communal areas of the block and for providing services.
- 1.2 The lease is a legal contract between the leaseholder and us (the landlord). It sets out the boundaries of their property and their estate (if relevant) and any garden or amenities included in the sale. It also explains rights and responsibilities of both parties.
- 1.3 In accordance with most leases Great Yarmouth Borough Council is legally required to recover costs for responsive repairs and services provided through the annual service charge mechanism in the lease.
- 1.4 All leaseholders are required to pay a share of the cost of these services, called a service charge. These are billed annually in arrears by 30th September each year.

2. SERVICE CHARGES

2.1 Service charges are paid to the council to cover a share of the cost of managing, maintaining, improving, repairing, insuring and providing services to the block or estate they live in.

2.2 Service charges are divided into four areas:

- Services
- Block repairs
- Block insurance
- Management costs

2.3 Leaseholders might also have extra charges to pay if they purchase a property in certain blocks of flats that have extra facilities such as:

- caretaking services
- cleaning shared areas
- window cleaning to communal areas
- lift services
- fire equipment
- street cleaning within the boundaries
- electricity and communal lighting
- door-entry system
- communal TV aerial system

2.4 Costs for each block and estate are requested by the end of April each year for the preceding year and take several months to collate and check. Great Yarmouth Borough Council can **ONLY** recover actual costs incurred.

2.5 Leaseholders are sent an annual invoice and a statement of service charges with a breakdown of each area of repair or service to the block, the number in the block, and the total costs.

For example: There may have been 6 separate chargeable repairs over the year with a total spent of £624. The leaseholder's statement of service charges will apportion this as per the lease (number of properties in block) and in this case 6 flats in the block to give a total on the statement of £104.

- 2.6 The leaseholders are also supplied with an information sheet on what type of repairs may have been carried out. We do not and are not required to list every single repair that has taken place in the block. We group them together for example (these are just a few of them) and provide descriptions of each

- Boundary areas/walls/car parks/paths / shed/outbuildings etc
- Communal Electricity
- Door Entry Systems
- Entrances/passageways/Light repairs
- Structural repairs

(See appendix 1)

- 2.7 We also send an invoice, ways on how to pay, a summary of tenants' rights and obligations.

- 2.8 If the leaseholder requires further information regarding specific repairs or how we came to a figure, we are obliged to offer a place that is accessible to the leaseholder to view invoices and repair information, the onus is on the leaseholder to come in and view the information.

- 2.9 As the invoice is served in arrears the time to pay is 28 days. Leaseholders are aware the invoice is coming each year and should prepare for the bill.

3.0 Management Fees

- 3.1 Management fees are charged as per the terms of the lease as the Council are entitled to recover the costs of managing the leasehold service.
- 3.2 We charge a management fee to cover all administration costs of calculating charges, managing accounts, dealing with enquiries, supervising services and so on.
- 3.3 The fees are broken down into two bands and reflect the true cost of managing the leaseholder properties. The first band is a Leasehold Management Fee. All leaseholders were charged a fixed fee of £120.09 for leasehold management, staff & associated costs, and corporate & legal costs for 2015/2016. This covered the leasehold-related costs of the Leasehold Management Team such as calculating service charges, producing annual Estimates and Schedules of Service Charges, issuing invoices, dealing with queries, issuing Ground Rent Notices, payment reminders, producing newsletters, office overheads and so on.
- 3.4 The second band is a Service Management Fee. This is a percentage fee of 15% and is only added to the cost of services such as caretaking and communal cleaning, repairs and grounds maintenance, to cover the cost of managing those services. It is not charged on Building Insurance.
- 3.5 This does not completely cover our costs, however the amount charged is both fair and reasonable.
- 3.6 The costs were apportioned equally between 333 leaseholders in 2015/2016

4.0 Leasehold Consultation on Major Works

- 4.1 Section 151 of the Commonhold and Reform Act 2002 amended the statutory requirements for consulting Leaseholders on Qualifying Works and Qualifying Long Term Agreements. The consultation process is commonly called the "Section 20 Consultation".
- 4.2 If we need to carry out major works (works costing more than £250 per leaseholder) or enter into long term agreements we must consult with our leaseholders
- 4.3 Major Works are any works provided to the building in which the leasehold property is situated that will incur a cost of more than £250 to any one individual leaseholder in one financial year. If this is the case, Great Yarmouth Borough Council must undertake 'Section 20' (S20) consultation. If we do not consult under S20 we will only be able to recover a maximum of £250.00 regardless of how much the work actually cost.
- 4.4 Major works are works to the building for repair or maintenance issues and improvements.
- 4.5 The consultation for Qualifying Work can be carried out under a Schedule 3 One Stage notice (Appendix 2) or under a Schedule 4 Part 2, 3 Stage Notice (Appendix 3)
- 4.6 The S20 consultation process starts with a Notice of Intention: This is sent to all affected leaseholders and any Tenants & Residents Association notifying them of our intention to carry out work. The notice must:
- describe, in general terms, the works proposed
 - invite observations in writing;
 - give the address to which such observations must be sent;

- state that they must be delivered by the due date;
- give the date on which the consultation period ends (30 days);
- inform leaseholders that they have the right to nominate a contractor

4.7 We also send an information leaflet on the S20 process (appendix 4)

4.8 Consultation involves only the pre tender stage but leaseholders are not invited to nominate their own contractor.

4.9 If the Council consult under S20 Schedule 4 part 2 (3 stage process) then the leaseholders are invited to nominate their own contractor. The Council also send

- Tender Stage (consultation): This is where we send the leaseholder details of the estimates we have received for the work and any observations received
- Award of Contract: This is where we will tell leaseholders who has been awarded the contract. We only have to send this letter if we do not choose the lowest quote.

5.0 Major Works Management Fees

5.1 A management fee is charged at invoice to all S20 Major Works. The recommended amount by the First Tier Property Tribunal is up to 20%. Great Yarmouth Borough Council charge 10% for all Major Works above the value of £5000 per Leaseholder. Below this threshold an amount of 15% is added. These fees are inclusive of the GYN management charge. This means that leaseholders are not paying two separate management fees for S20 Major Works.

5.2 Major works are not subject to VAT.

6 FINANCIAL IMPLICATIONS

- 6.1 In 2015/2016, £146,500 was billed for service charges and ground rent.
- 6.2 We estimate that 2016/2017 the service charges and ground rent charges, to be billed by September, will be in the region of £165,000 for service charges. We further estimate that in 2016/2017, Major Works to be billed will be around £200,000

7. RISK IMPLICATIONS

- 7.1 Failure to apportion costs to leaseholders under the terms of the lease will lead to financial loss to the Housing Revenue Account (HRA) and the full burden of costs being born by rent payers.

8. CONCLUSIONS

- 8.1 It is reasonable and appropriate to ensure that leaseholders meet their obligations under their lease and pay any correctly assessed and billed service charges and any contribution to major works to their properties.

9.0 RECOMMENDATIONS

- 9.1 It is recommended that Committee note the report.

10.0 BACKGROUND PAPERS

Areas of consideration: e.g. does this report raise any of the following issues and if so how have these been considered/mitigated against?

Area for consideration	Comment
Monitoring Officer Consultation:	N/A
Section 151 Officer Consultation:	N/A
Existing Council Policies:	N/A
Financial Implications:	As per report
Legal Implications (including human rights):	As per report
Risk Implications:	As per report
Equality Issues/EQIA assessment:	N/A
Crime & Disorder:	N/A
Every Child Matters:	N/A

Service Charges & Repairs Information Sheet

Ground Rent – This is a specific requirement of the lease and must be paid on the due date.

By law we must give you notice that your ground rent is due and we will send you a written demand before it is due to be paid.

Communal Cleaning and Caretaker - This is the cost of providing a caretaker or cleaning service to the communal areas of your block or if we carry out a mobile cleaning service. Also includes cleaning communal windows, litter picking and fault reporting.

Communal Lighting – This is the cost of electricity to power lighting to the internal and external communal areas of your block.

Communal Aerial – This is the cost of repairing, servicing and maintaining the communal television aerial.

Door Entry System – The cost of maintaining a controlled entry system, including annual servicing costs and any repairs and call-outs

Grounds Maintenance – the cost of maintaining communal areas of grassed land, car parking areas, weeding pathways and grounds cleansing. Landscaping and tree management. Clearance of rubbish and graffiti.

CCTV – The cost of servicing and repairing CCTV equipment if you have this service

Responsive Repairs – This covers the cost of the day to day general repairs, servicing and maintenance to the structure and communal areas of your block. This includes any boundary walls and fences for which the Council are responsible for maintaining.

These have been broken down further on your annual service charge statement so you can see which area of the block had repairs

- **Entrances, Lights And Passageways** – Repairs To Communal Entrance Doors including frames, Communal Windows, Sills and Lintels, Canopies, Communal Lighting, Passageways, Communal Electrical Repair, Stairwells, Replacing bulbs or tubes, Resetting timers or other repairs.
- **Pipes, Drains and Cables** – Repairs To Gutters, Soffits, Fascia Boards, Dry Verge Caps, Downpipes, Drainage, External Cables, Manhole covers and Gullies
- **Boundaries, Walls And External Communal Areas** – Any Repairs Carried Out To Fencing, Boundary Walls, Car Park Areas, Paved Communal Areas, Bin Stores, Drives, Paths, Entrance Gates, Garage Blocks and Hard Standings
- **Structural** –Structural Repairs to the skin of the building. Covers Brickwork, Roofing Slate and Felt Repairs, Rafters, Purlins, Binders, Roof Trusses External Stairwells, Balconies and Sheds, External Woodwork, Foundations, Joists and Beams, Chimney Stacks and Flues.

Internal Decorations – The costs of redecoration and associated repairs to the internal communal areas of your block

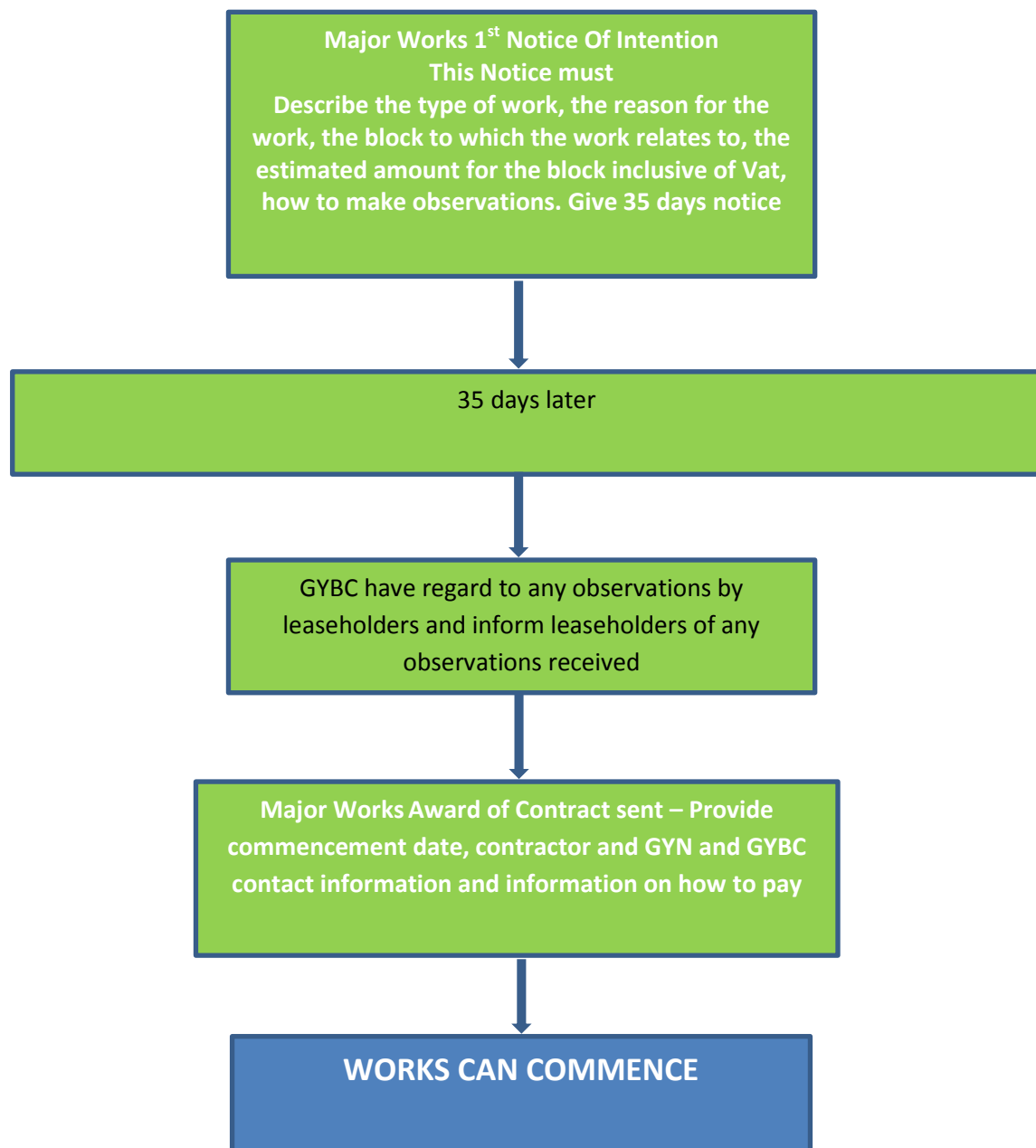
External Decorations – the cost of redecoration and associated repairs of the structure and communal areas of your block.

Fire – The costs of Fire Risk Assessments and Inspections, Emergency Lighting.

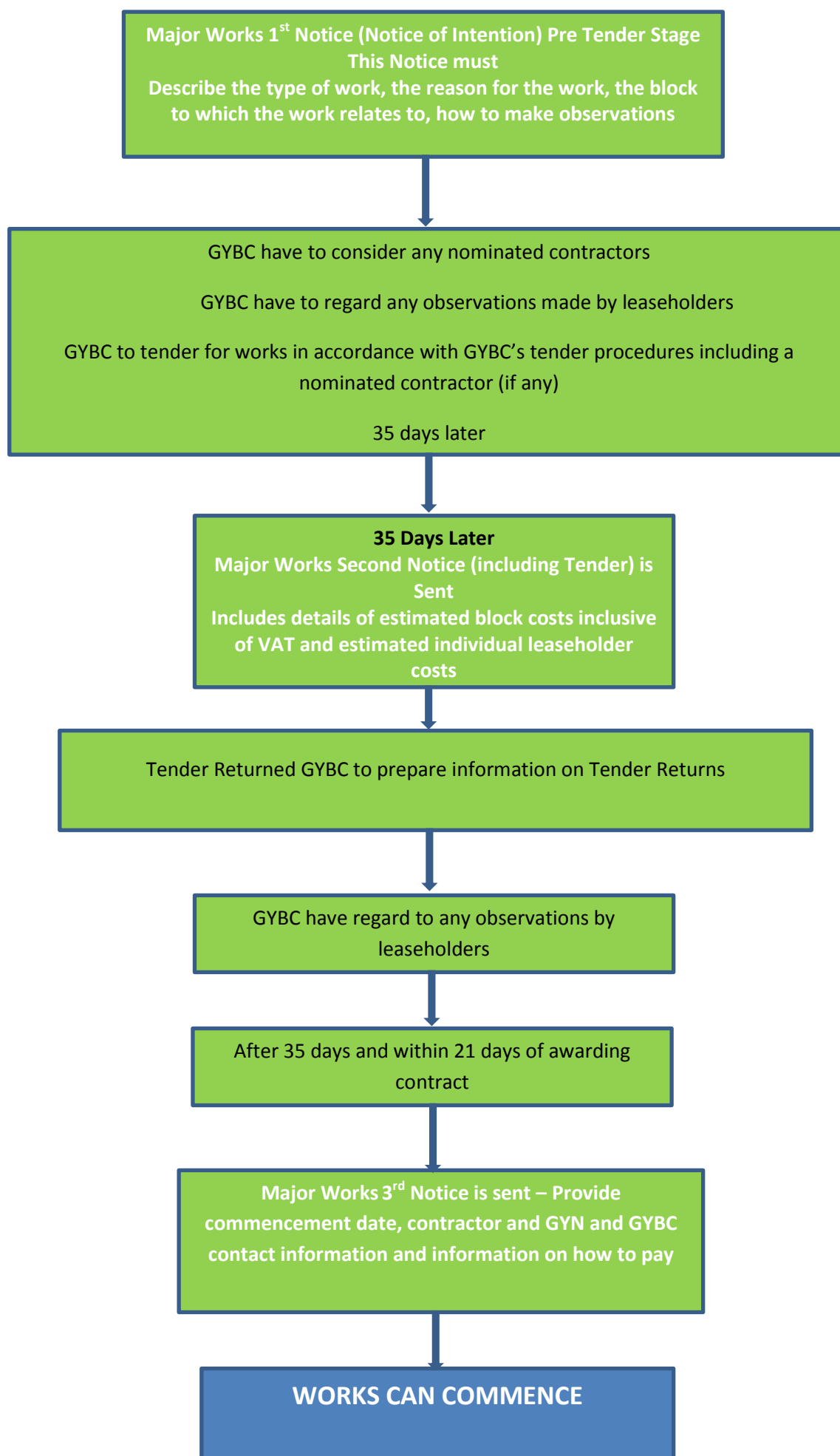
VAT – VAT is not charged on any repairs or services with the exception of Communal electricity where this is charged at the standard 5% rate

Leasehold Management Fees – This is a charge for managing the leasehold service and the services provided to your block. It includes query handling, contract management, staffing and overheads.

Qualifying Works for which public notice is not required (Schedule 3) - Flow Chart



Qualifying Works for which public notice is not required (Schedule 4, Part 2) - Flow Chart



Additional Information – Section 20 Consultation

What is section 20 (s.20) Consultation?

As a Leaseholder or Tenant paying a variable service charge, you are obliged under the terms of your lease / tenancy agreement to pay towards the cost of services, repairs, maintenance or improvements to the building your flat is in or the estate it is on. Section 20 of the Landlord and Tenant Acts (1985 & 1987) requires us to provide you with details and ask for your opinions about the intended or proposed works/services being consulted on. Section 20 sets out the way we must consult, if we do not do this we may not be able to charge you the full cost of the works under this contract.

This leaflet is provided to assist you with understanding the statutory consultation and provide answers to some frequently asked questions.

This leaflet accompanies a statutory Section 20 Notice of Intention to enter into an agreement to carry out Major works. This leaflet is not a substitute for the formal notice which should be read in full.

Why was the notice sent to me?

The notices are intended to be served on:

- Leaseholder/s named on the Lease agreements

Why have you sent a section20 Notice?

As Landlord, we are obliged to serve you with a notice when we intend to enter into an agreement to carry out major works. We have served you the notice to ensure compliance with our legal requirements and the Commonhold and Leasehold Reform Act

(2002) which will enable us to recover the full costs for works or services.

If the contractor doesn't perform well, will they keep getting work?

The contracts will clearly stipulate that if the contractor's service is not as expected or does not provide value for money, we can ultimately end the contract. The contractor will be aware of this so it will be in their interest to ensure they carry out works and services within acceptable parameters for standard and value, the performance indicators for which will be set out in the contracts.

How can I make my observation comments?

Observations must be received within the 30 day consultation period. Please note we allow an additional 5 or more days on our notices to cover mail delays.

You can send written observations about the consultation to:

Project Manager Great Yarmouth Norse Asset Management Services, Novus House, The Conge, Great Yarmouth NR30 1NA. Observations will only be accepted in hard copy in writing by post or hand delivery to the stated office or by email to Ian.Smith@ncsgrp.co.uk and Titled S20 Consultation Observation in the subject heading.

What do you do with my comments?

We will record your comments and discuss them at a specific meeting and our responses will be recorded in a summary chart which will be sent to all Leaseholders/ Recognised Tenant Association Secretaries and Tenants with a variable Service Charge with the Notice of Proposal that will be sent to you.

What happens next?

The s.20 Notice of Intention is the first stage of the process. Once all comments have been responded to, we will close off the consultation and proceed to the tendering stage.

Once the tender stage is completed, we will proceed to the second stage of consultation – Notice of Proposal. At this point, we will advise you of our contract proposals and provide you with the details and costs of the associated works, services or goods. If the information is too large to send, we will make this available to you to view at our local office. You will be made aware of how and where to view any documents within the Notice of Proposal. Where we cannot provide you with costs, we will let you know why and when these will be made available to you.

You will have a further chance to comment during the Notice of Proposal Stage and we will again consider and respond to your observations. You will receive a copy of the full summary of observations from the first consultation stage.

Once we have completed the second consultation stage, we will look to enter in to the contract/s.

When your building is identified as requiring major works you will receive a third stage consultation which will provide you with specific details of the works to be carried out plus an estimate of the cost for these works. Again you will have an opportunity to comment and we will again consider and respond to your observations.

Whilst any reporting, surveying and repairs may commence along with the contract start, the major works may not affect you for a number of months.

Contacting us:

If you wish to have an informal discussion about the consultation please contact Emma Hamilton on 01493 846259 or email at em@great-yarmouth.gov.uk marking your email 'Leasehold Consultation'

Thank you

Grounds Maintenance

This is information about the standard and frequency that you can expect of the communal grounds maintenance service. It also tells you how the service will be monitored. These standards are based on our aim to provide all customers with the best possible service at the most reasonable cost.

What areas are included in the service?

- Communal gardens
- Communal drying/paved areas
- Communal car parks/garage forecourts

What level of service can I expect to receive?

Grass

- Grassed areas will be mown every 3 weeks between March and November (subject to weather conditions)
- Grass cuttings are not collected but they are mulched by the lawn mowers to reduce cuttings left. Any grass cuttings on paths will be blown back onto the lawn

Shrub borders

- Shrub borders are regularly tidied between March and November and receive a major prune between November and March
- Shrubs may also be pruned if they obstruct windows or paths.

Hedges

- Hedges are regularly pruned between March and November subject to bird nesting issues

Trees

- Trees are inspected twice a year and any dead or diseased trees are removed in accordance to risk
- During each inspection, any branches that block paths or are a hazard to pedestrians will be reported and removed by a tree specialist
- Young staked trees will be regularly inspected to ensure good health. Trees will be pruned, staked or tied where considered necessary.

Paths, drying areas, car parks and garage forecourts

- These are regularly inspected and will be swept and cleared of litter as required
- Weeds in excess of 25cm (height/width) will be sprayed during the Summer
- Moss/lichen will be treated when identified as a problem

Leaves

- Leaves are swept, raked and removed once a year between November and March (or more frequently where they become a hazard to pedestrians)

How will the contract be monitored?

Neighbourhood Officers and Caretakers will inspect the grounds on a regular basis.

Service Charges - Summary of Tenants' Rights and Obligations

1. This summary, which briefly sets out your rights and obligations in relation to variable service charges, must by law accompany a demand for service charges. Unless a summary is sent to you with a demand, you may withhold the service charge. The summary does not give a full interpretation of the law and if you are in any doubt about your rights and obligations you should seek independent advice.
2. Your lease sets out your obligations to pay service charges to your landlord in addition to your rent. Service charges are amounts payable for services, repairs, maintenance, improvements, insurance or the landlord's costs of management, to the extent that the costs have been reasonably incurred.
3. You have the right to ask the First-tier tribunal to determine whether you are liable to pay service charges for services, repairs, maintenance, improvements, insurance or management. You may make a request before or after you have paid the service charge. If the tribunal determines that the service charge is payable, the tribunal may also determine-
 - who should pay the service charge and who it should be paid to;
 - the amount;
 - the date it should be paid by; and
 - how it should be paid.

However, you do not have these rights where-

- a matter has been agreed or admitted by you;
 - a matter has already been, or is to be, referred to arbitration or has been determined by arbitration and you agreed to go to arbitration after the disagreement about the service charge or costs arose; or
 - a matter has been decided by a court.
4. If your lease allows your landlord to recover costs incurred or that may be incurred in legal proceedings as service charges, you may ask the court or tribunal, before which those proceedings were brought, to rule that your landlord may not do so.
 5. Where you seek a determination from a First-tier tribunal, you will have to pay an application fee and, where the matter proceeds to a hearing, a hearing fee, unless you qualify for a waiver or reduction. The total fees payable will not exceed £500, but making an application may incur additional costs, such as professional fees, which you may also have to pay.
 6. The First-tier Tribunal has the power to award costs, not exceeding £500, against a party to any proceedings where-
 - it dismisses a matter because it is frivolous, vexatious or an abuse of process; or
 - it considers a party has acted frivolously, vexatiously, abusively, disruptively or unreasonably.The Upper Tribunal (Lands Chamber) has similar powers when hearing an appeal against a decision of a First-tier Tribunal.
 7. If your landlord-
 - proposes works on a building or any other premises that will cost you or any other tenant more than £250, or
 - proposes to enter into an agreement for works or services which will last for more than 12 months and will cost you or any other tenant more than £100 in any 12 month accounting period,

Then your contribution will be limited to these amounts unless your landlord has properly consulted on the proposed works or agreement or the First-tier tribunal has agreed that consultation is not required. (Also see [Section 20 Procedures](#))

Appendix 6 – Summary of Tenants Rights and Obligations

8. You have the right to apply to a First-tier tribunal to ask it to determine whether your lease should be varied on the grounds that it does not make satisfactory provision in respect of the calculation of a service charge payable under the lease.
9. You have the right to write to your landlord to request a written summary of the costs which make up the service charges. The summary must-
 - cover the last 12 month period used for making up the accounts relating to the service charge ending no later than the date of your request, where the accounts are made up for 12 month periods; or
 - cover the 12 month period ending with the date of your request, where the accounts are not made up for 12 month periods.

The summary must be given to you within 1 month of your request or 6 months of the end of the period to which the summary relates whichever is the later.

10. You have the right, within 6 months of receiving a written summary of costs, to require the landlord to provide you with reasonable facilities to inspect the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them.
11. You have the right to ask an accountant or surveyor to carry out an audit of the financial management of the premises containing your dwelling, to establish the obligations of your landlord and the extent to which the service charges you pay are being used efficiently. It will depend on your circumstances whether you can exercise this right alone or only with the support of others living in the premises. You are strongly advised to seek independent advice before exercising this right.
12. Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise this right, the landlord must meet all the legal requirements and obtain a court order. A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by a court, tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case.

Administration charges – summary of tenants' rights and obligations

(1) This summary, which briefly sets out your rights and obligations in relation to administration charges, must by law accompany a demand for administration charges.

Unless a summary is sent to you with a demand, you may withhold the administration charges. The summary does not give a full interpretation of the law and if you are in any doubt about your rights and obligations you should seek independent advice.

(2) An administration charge is an amount which may be payable by you as part of or in addition to the rent directly or indirectly:

- for or in connection with the grant of an approval under your lease, or an application for such approval;
- for or in connection with the provision of information or documents;
- in respect of your failure to make any payment under your lease; or
- in connection with a breach of a covenant or condition of your lease.

If you are liable to pay an administration charge, it is payable only to the extent that the amount is reasonable.

(3) Any provision contained in a grant of a lease under the right to buy under Housing Act 1985, which claims to allow the landlord to charge a sum for consent or approval, is void.

(4) You have the right to ask a leasehold valuation tribunal whether an administration charge is payable. You may make a request before or after you have paid the administration charge. If the tribunal determines the charge is payable, the tribunal may also determine:

- who should pay the administration charge and who it should be paid to;
- the amount;
- the date it should be paid by; and
- how it should be paid.

However you do not have this right where:

- a matter has been agreed to or admitted by you;
- a matter has been, or is to be, referred to arbitration or has been determined by arbitration and you agreed to go to arbitration after the disagreement about the administration charge arose; or
- a matter has been decided by court.

(5) You have the right to apply to a leasehold valuation tribunal for an order varying the lease on the grounds that any administration charge specified in the lease, or any formula specified in the lease for calculating an administration charge is unreasonable.

(6) Where you seek a determination or order from the leasehold valuation tribunal, you will have to pay an application fee and, where the matter proceeds to a hearing, hearing fee, unless you qualify

Appendix 6 – Summary of Tenants Rights and Obligations

for a waiver or reduction. The total fees payable to the tribunal will not exceed £500, but making an application may incur additional costs, such as professional costs, which you may have to pay.

(7) A leasehold valuation tribunal has the power to award costs, not exceeding £500, against a party to any proceedings where it dismisses a matter because it is frivolous, vexatious or an abuse of process: or it considers that a party has acted frivolously, vexatiously, abusively disruptively or unreasonably.

The Upper Tribunal have similar powers when hearing an appeal against a decision of a leasehold valuation tribunal.

(8) Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise the right, the landlord must meet all the legal requirements and obtain a court order.

A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by a court, a tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case.