



Barrow Borough Council Housing Department

NON DOMESTIC HOUSING ASSETS MAINTENANCE PROCEDURE

This procedure should be read in conjunction with the Council's corporate procedure entitled "Maintenance of Electrical, Gas and Water Services".

1. AIM

To ensure the mains services (electrical installations, gas supplies and gas equipment, water supplies/testing and fire risk controls) in non domestic Council assets are safe when a lease begins and is maintained in a safe condition throughout the term of the lease.

2. OBJECTIVES

- Ensure a periodic electrical check is carried out within is carried out at least every 5 years or on the change of tenancy by a suitably qualified electrical engineer in line with the "2017 Electrical Testing Procedure"
- Ensure that the lessee undertakes an annual gas safety check within 12 months of the lease commencement or the installation of a new gas appliance or flue and annually thereafter by a Gas Safe Registered engineer in line with the "2017 Gas Servicing Procedure".
- Ensure an assessment of the risk from exposure to Legionella is undertaken at the commencement of the lease to ensure the safety of lessee's and workers in line with the "2017 Water Testing Procedure"
- Ensure we manage the presence of asbestos in non domestic housing assets to prevent or control the potential for harm to staff and other persons working at or using its premises in line with Health & Safety at Work etc. Act 1974 and the Control of Asbestos Regulations 2012 (CAR).
- Ensure the lessee of non domestic housing assets undertake their own fire risk assessment.
- Ensure that a fire risk assessment is undertaken to all non domestic housing assets with residential units above who may be affected by a fire in the commercial unit.
- Ensure that all fire risk assessments for non domestic housing assets are reviewed annually or where there is;
 - A change of work practice;
 - A significant change in numbers at work or otherwise attending the premises;

- Any structural or material alteration to the premises or building;
- Any restructuring of the fire precautions in the premises; any fire incident.

3. STAFF RESPONSIBLE

- **Assistant Director-Housing (ADH)** – Is responsible for the drafting, issuing and renegotiation of leases with existing and potential leaseholders and is responsible for liaising with Business Support, the Accounts team, Maintenance team and the Council's solicitor regarding rent, rental assessment, repair obligations and legal matters.

The ADH will undertake the role of the “Responsible Person” as outlined in the corporate “Maintenance of Electrical, Gas and Water Services” procedure.

The ADH will be responsible for the rent account to ensure it remains “in balance” and that income from the leaseholder is recovered in accordance with the lease and liaison with the Business Support and Accountancy teams.

The ADH will engage with the Council's approved Solicitor for any matter for which legal advice is necessary, this will include drafting new leases, taking action to recover possession, etc.

The ADH will require the agreement of the Leader of the Council and the deputy for granting a new lease in certain circumstances, i.e. above a certain rent/length of lease. Details and pro-forma is in attached at Appendix?

- **Maintenance and Asset Manager (MAM)** – Is responsible for the maintenance of the shops with regard to asbestos, mains services (water, electricity and gas), fire risk assessments and associated repairing obligations to roofs, structure and foundations.
- **Senior Surveyor** – Is responsible for ensuring periodic inspections of the premises are carried out by the MCU supervisor and for undertaking dilapidation surveys when premises become vacant. This includes responsibility for ensuring premises have satisfactory certificates on file for mains services (gas, water and electricity), asbestos and fire risk assessments.
- **Accountancy Team** – Will be responsible for providing advice regarding proposed rent arrangements and advising the ADH if the proposed lease is to be classified as an operating or capital lease based on the relationship between the annual rent charge, capital value of the shop and the repairing obligations on the leaseholder.

GUIDANCE NOTES

Over-view

The Housing Service manages and generates income from 19 shops located on 4 estates around the Borough.

The purpose of this Operational Note is to provide guidance to ensure a consistent approach to their management.

The Housing Service recognises shop parades provide a focal point on estates and full occupation ensures a range of retail activity is available, creates local employment opportunity and will no doubt add to the popularity and general prosperity of the area. Our objective is to create this feeling of prosperity, keep the shops fully occupied and achieve an acceptable financial return.

Record keeping

All reference to a particular shop and leaseholder will be kept on a bespoke electronic file, currently R drive with a title "Shops".

This folder is made up as follows:

- Individual file for each shop with sub folders such as correspondence, emails, lease, EPC, plans.
- A spreadsheet of all shops- to use as a quick reference summary of the individual shops which is self-explanatory
- A spreadsheet containing asbestos records
- A spreadsheet containing electrical, gas and water maintenance records
- A copy of the Fire Risk Assessment
- A "general folder" which should only contain correspondence, notes or reference material which is relevant to the management of the shops as a whole rather than an individual property.

A separate paper file will be kept by Business Support which will include a copy of the current lease for a shop, or assignment documents (Footnote- the paper record of the lease is kept solely for the purpose of producing an original should it become necessary.)

Once a leaseholder vacates a shop, Business Support will ensure all papers relating to their lease will be archived within the relevant shop file and retained for a period of 5 years. Any reference to the structure or maintenance of the property will remain in the specific property file.

In addition to the location of these Shop files information will be recorded as appropriate on CX under each unique property file. "Conversations" with a leaseholder should be recorded on CX under each asset folder. CX will be the means by which the rent account will be managed.

Business Support will review the data report held on the X drive on a monthly basis to ensure outstanding payments are identified and managed effectively. This Report is view only and is updated on a monthly basis by the system automatically

When a shop is vacated

When a shop becomes vacant the following factors need to be considered:

- Was the required notice complied with and has the leaseholder fulfilled the requirements of the lease when vacating?
(Footnote: if the answer is no to either the MAM will consider and record what action is required)
- Business Support (BS) will be notified of the pending vacancy or vacant shop. BS will ensure all electronic records are updated appropriately as described through this Note.
- The property: the Senior Surveyor shall complete a “dilapidation survey” to assess the condition of the property and any repairs required prior to offering to another potential leaseholder. This should include a record of the externals of the property including adjoining property and common areas/access areas/rear yards etc-anything which impacts on the property as well as the internal condition of the property. If work is required there are two options which should be discussed between the Senior Surveyor and the maintenance and Asset Manager. If there is any residual damage to the shop or there is clear evidence that the outgoing leaseholder has not fulfilled the obligations of the lease, then the MAM shall write to the leaseholder asking them to comply with their obligations. If this is not possible a work programme will be agreed and actioned by the Senior Surveyor.
- Whilst the premise is vacant the Senior Surveyor will ensure an electrical safety test is completed. All Code 1 repairs will be completed immediately. All Code 2/3 repairs will be risk assessed by the Senior Surveyor and where necessary remedial works will be completed. The Senior Surveyor will ensure that a copy of the electrical test certificate is stored and recorded electronically.
- The Senior Surveyor shall ensure an “asbestos” survey is completed in conjunction with the Council’s Health & Safety Adviser. The Senior Surveyor will ensure that a copy of the asbestos survey is stored and recorded electronically.
- The Senior Surveyor shall ensure the gas is capped at the incoming main be identified and completed prior to occupation.
- The Senior Surveyor will take a photographic record of the shop at the time of the dilapidation survey and immediately before occupation by a new leaseholder. These photos should be retained electronically on the individual shop file.

Footnote:

- *The dilapidation survey should provide a visual and written assessment of the shop, its condition and any main features it has.*
- *Where appropriate, a pre vacating visit should be made to discuss with the leaseholder any repairing issues regarding the property.*
Identifying a new leaseholder

Our experience over some years is that demand for vacant shops is limited and to identify a new leaseholder may take some time.

More often than not a change of leaseholder is by way of “Assignment of the lease” which will be referred to elsewhere in this note.

As a matter of course, when a leaseholder gives notice to leave a number of actions should be taken:

- The ADH considers the options available for advertising. This will generally include;
 - Advertising on the Councils website,
 - Placing a “for Rent” board on the property (a number are held at MCU), or
 - Advertising in the press.

The need for press advertising will be dependent on the success of options 1 and 2 and whether or not the cost warrants it.

- Where there is clear demand for a property the Maintenance and Asset Manager will prepare and advertise a “competition” and invite interested parties to submit a proposal including the rent they are prepared to pay. The property will still be advertised as above.
- The matrix for assessing submissions of interests will include; the nature of the proposed business, the leaseholder’s previous experience, rent offered, community benefits (does it compliment other shops on the parade).
- The Maintenance and Asset Manager will request a financial reference from potential leaseholders to establish financial support for their submission.

Agreeing new rent

The ADH will prepare a proposed rent statement on the basis that it is to be an “Operating Lease”. The draft rent statement will be reviewed by the Council’s accounts department prior to issue.

The accounts department will advise if the proposed rent arrangements are to be classified as an operating or capital lease based on the relationship between the annual rent charge, capital value of the shop and the repairing obligations on the leaseholder.

The ADH will retain a copy of this advice electronically.

The guide on identifying a new rent should be based on the rent for the previous leaseholder.

The ADH will base new rent calculations on the rental income received from other shops on the same parade, with reference to all shops and to the square metre area. The previous rent will be calculated and increased by 1.5% per annum based on the number of years that has elapsed since the last rent was agreed.

In completing the above there will remain an element of judgement depending on the interest in a vacant shop and what can be negotiated.

Should there be a decision to invite “offers of interest” the ADH shall calculate a proposed rent which reflects the above guidance. The ADH shall also consider the relationship between rent/length of lease and whether approval is required from Chair and Vice Chair of the Council.

Type of lease

- The Council's approved solicitor will be instructed to draft a new lease based on the principle of "shared premises" to minimise the risk of it being classified as a "Capital lease"
- The Solicitor will ensure the lease clarifies repair responsibilities, with particular reference to the Council being responsible for the structure, walls, floors, etc.

Footnote: the split of repairs is also a factor in determining a "Revenue Lease", the more onerous on the leaseholder the more likely it will be viewed as a "capital lease".....this aspect of lease should be discussed with Finance.

- The Solicitor shall prepare a model lease to aid consistency of management across all shops (example attached at Appendix ?)
- The term of a lease should be no longer than 5 years and preferably 3 years.
- Where a lease of longer than 3 years it should include a rent review after the initial 3 years and each subsequent 3 year period.
- Rent should be paid monthly in advance by Direct Debit
- No premium shall be charged at the start of a lease.
- All new leases shall include responsibility for contribution towards insurance costs.

Held over leases.

At the end of a lease period, should the leaseholder remain in occupation the lease would be referred to as "held Over".

A leaseholder would generally have a right to a new lease on the terms and conditions of their original lease.

The ADH may decide to renew a lease at the end of the original term providing he/she undertakes a review of the rent using the methodology above.

The ADH will not renew a held over lease until any arrears issues are resolved.

Repair responsibilities

It was our previous approach to adopt a "full repairing" obligation on the leaseholder. This will be a potential problem in suggesting they are "operational leases," see above.

More recent leases have shared the responsibilities with the council taking responsibility for roof, structure; walls, etc. (see 19 Ruskin Ave dated May 2016 as an example).

Particular attention should be given to "services" such as gas, water and electrical installations.

Electrical installations:

- When a shop becomes vacant the Senior Surveyor will arrange an “electrical safety check”. Any Code 1 faults identified should be rectified prior to granting a new lease and a “Satisfactory” safety certificate obtained. All Code 2/3 repairs will be risk assessed by the Senior Surveyor and where necessary remedial works will be completed.
- The Senior Surveyor will ensure that a copy of the electrical test certificate is stored and recorded electronically.
- On renewal of lease or assignment the leaseholder should be told of their repairing obligations regarding the ongoing maintenance and safety checks of services.
- The lease shall make specific reference to the leaseholder’s obligation to undertake an electrical safety test every 5 years.

Gas installations:

- It is our policy not to install gas appliances in shops. If a leaseholder wishes to install a new gas appliance they will need to ensure they have written permission from us and have it installed and maintained in accordance with the current gas regulations.
- When a property becomes vacant the Senior Surveyor will assess the condition and suitability of the gas installation and equipment. If the installation is assessed as old/poor condition the appliances will be removed. If the installation is deemed to be serviceable, a safety check will be completed and any necessary repairs completed.
- The lease shall make specific reference to the leaseholder’s obligation to undertake an annual gas safety test of the premises and any associated flats or maisonettes that form part of the lease agreement.

Other repairs:

- The leaseholders repairing obligations are defined by the terms and conditions of the lease.
- As a general rule we will only consider repairs which are to do with structure. (Subject to the terms and conditions of the lease)
- All internal repairs, including external painting and plate glass are the lease holder’s responsibility. (Subject to the terms and conditions of the lease)
- On receipt of an enquiry the Senior Surveyor will check the terms and conditions of the lease for clarification prior to issuing any remedial works.

What should you provide to a new lease holder?

During completion of the new lease a new leaseholder should be provided with the following:

- Copy of lease
- Advisory note to explain the obligations of the Lease.
- Direct Debit forms for payment of rent- Business Support will write to the new lease holder with the necessary forms on sign-up
- Copy of the electrical safety certificate and standard letter
- Copy of gas safety certificate and standard letter
- Copy of the Asbestos survey
- Copy of the EPC
- Copy of any local restrictions or covenants

On-going management of occupied shops

The approach to management of shops should be based on the minimum necessary to generate the income and respond to enquiries from the lease holders.

- The MCU supervisor will carry out a 6 month inspection of the communal areas of each shop to ensure they are safe and pose no hazard to visitors to the shops and there are no obvious hazards on the external fabric of the property.
- The Senior Surveyor will review the 6 monthly inspection record and issue any identified repairs or ensure any identified hazards are risk assessed and where necessary removed.
- The Senior Surveyor shall retain a copy of the inspection record sheet electronically.
- Business Support will check each shop rent account on a monthly basis using the report from the CX system. Business Support will further investigate concerns using the information contained in CX. Business Support will record all concerns and actions taken on CX and retain any letter copies on the "Shop File" on R Drive.
- One month's rent arrears will prompt an initial rent arrears letter to the leaseholder. Two months' rent arrears will involve a face to face dialogue between the leaseholder and Business Support. Where arrears exist for three months or more Business Support will undertake a capability review of the account. A copy of the capability review will be retained electronically.
- Where the capability review outcome is unlikely to recover or poor Business Support will inform the ADH who will review the circumstances of the case to determine if forfeiture of the lease should be considered and details of such recorded electronically.
- Where missed payments result in a shop rent account balance going up and down, Business Support will engage in ongoing dialogue with leaseholders on a monthly basis
- On an annual basis, Business Support will add to the shop accounts their contribution to insurance for the property.
- All staff visiting a shop premises should ensure they identify that the occupant is the lease holder and the shop has not been sub-let.
- Ad hoc may arise when intervention is required, the response on such occasions will be determined by the issue.

Commonly asked questions

In addition to above guidance, there appear to be a number of common questions asked from time to time as follows:

Q: Can a leaseholder purchase the property?

A: No. We have sold some shops previously but they were stand-alone buildings. The remaining shops, except one, are part of a parade of shops, some with flats above.

Selling the freehold of a shop requires a Council decision to consider the following aspects of the sale:

- What impact does the loss of rental income have on the HRA income stream?
- Would the sale provide a financial benefit to the HRA?

- Is the sale likely to be complicated due to issues such as mixed use or shared ownership? This may include consideration of premises that contain residential and commercial elements and various owners or occupiers that could complicate future options for the Council and impact on day to day management issues.

Q: My lease has not yet ended but trade is not good and I would like to close will you accept lease forfeiture?

A: No. The Councils preferred option is to try and sell the lease to a third party. Should the leaseholder indicate they have severe financial hardship, the Maintenance and Asset Manager will review each case individually with the evidence provided by the leaseholder and seek advice from Business Support and the Accounts team as appropriate if forfeiture does appear to be the only option?

Q: Why do you control the range of retail opportunities on a parade?

A: Council used to try and follow a Baker, butcher, etc. approach but was not practical to achieve. The approach is now to allow the market to determine the usage of the shops.

Q: can we not just rent the shop week to week.

A: have not done this for some time. The concept of a lease was introduced because previously shop keepers said that despite building up a following, when they gave up their tenancy they walked away with nothing. They can sell the "lease" when they leave now.