Retrofit London

Retrofitting Leasehold Properties: Guidance for local authorities

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LONDON COUNCILS

Contents

Summary

Making leaseholder homes warmer, healthier, and more energy efficient is challenging. As a result, many residents in mixed-tenure buildings are being excluded from opportunities to have greener and warmer homes with 36 per cent[1] of all homes being owned by leaseholders and 62 per cent of flats being owned by a leaseholder. Meanwhile, carbon emissions continue to accumulate.

Retrofit London, local authority representatives, legal experts, and housing practitioners have convened in a collaborative effort to define the issues, offer practical guidance on navigating them, and identify areas where policy must change to ensure a fair transition. This report sets out the findings and recommendations from this working group.

Our findings highlight a range of approaches that any residential freeholder can adopt to increase their ability to retrofit leasehold properties. Nevertheless, without changes to current laws, significant portions of housing in London and beyond will remain excluded from energy efficiency improvements. Our working group supports the introduction of new implied terms in leases, which would facilitate retrofitting and ensure that cost recovery laws are applied consistently and fairly.

Summary of key challenges:

The legal and regulatory frameworks around leasehold properties are a major barrier to retrofitting. Key issues identified include:

1. **Lease restrictions**: Residential long leases can be decades old and can make inadequate provision for modern, low-carbon improvements. Many leases do not allow for improvements on common parts of the building at all, providing only for repair and maintenance. However, updating or revising leases is legally difficult.
2. **Statutory hurdles**: Even where leases do allow retrofit works, compliance with statutory processes to allow the building landlord to recover costs of works from leaseholders takes time and can be complex. Legal disputes are not uncommon.
3. **Uncertain financial caps**: "Florrie's Law" limits cost recovery from London leaseholders to £15,000 over five years when government support is provided. Further clarity is needed about how this cap should be applied. Currently, different councils take different approaches, with some interpreting the rules in a way that severely limits retrofit action.

[1] Department of Levelling Up Housing and Communities (2024): https://www.gov.uk/government/statistics/leasehold-dwellings-2022-to-2023/leasehold-dwellings-2022-to-2023

4. **Affordability**: Retrofitting homes and blocks to a modern standard can be expensive. The legal complexity means there is uncertainty for both the landlord and leaseholders. This makes it harder for landlords to access grant funding and work together with leaseholders on financial plans that could cover some of the costs.

Policy recommendations

To enable energy retrofits to take place at scale we recommend:

- **A focus on improving leasehold law to allow retrofit:** Although the government has stated its intention for homes in England to move away from leasehold ownership, this is likely to be a very long-term process. Reform to leasehold law is essential to allow retrofit to proceed over the next decade.
- **Removing retrofit barriers from leases**: Primary legislation could ensure all existing leases provide for cost-effective energy-efficient retrofit improvements. This is a necessary part of maintaining the value and habitability of homes in the face of the climate crisis.
- **Updating legal frameworks:** Secondary regulations for leaseholder consultation and cost recovery could be reviewed and updated to streamline processes, while also providing greater clarity for leaseholders and landlords.
- **Reform and clarity over cost recovery rules:** Boroughs require the ability to recover energy retrofit costs in a fair and consistent manner, without placing excessive financial pressure on leaseholders.

Actions landlords can take now:

While legal reforms are crucial for addressing the systemic challenges of retrofitting leasehold properties, there are several steps that local authorities can take immediately to make progress, even within the constraints of current laws including:

1. Understand and Work within the existing statutory frameworks:

Although legal frameworks are restrictive, there are pathways within existing laws that can be leveraged to expedite retrofitting. The key is to understand the legal framework and to consider the leases for the properties concerned, from the earliest stage of retrofit planning. In addition, legal disputes can often be avoided through early leaseholder engagement, focusing on clearly and effectively communicating an understanding of the costs and benefits of retrofit.

2. Identify and prioritise projects that are suitable now and engage early:

Local authorities should identify and prioritise blocks or estates with leases that enable fair recovery now in order to build the business case for larger-scale efforts. Allowing for the additional time for even earlier engagement with leaseholders essential.

3. Develop flexible financing models:

Local authorities can explore flexible financing options to improve affordability. These may include repayment plans, interest free loans, and agreements to help spread the costs for leaseholders over an extended period.

4. Seek collaborative solutions:

Local authorities can work together with other boroughs, housing associations, and legal experts to share best practices and coordinate retrofitting efforts across London. Collaborative approaches can lead to cost savings, shared legal resources, and more unified engagement with government bodies.

5. Lobby for grant flexibility:

While awaiting long-term legal reform, local authorities can lobby central government departments for greater flexibility in the administration of grants like the Warm Homes: Social Housing Fund, advocating for longer project timelines and higher thresholds for cost recovery.

6. Utilise available legal expertise:

Authorities can work with legal experts specialising in property and energy law to interpret and navigate the complexities of existing lease agreements. By doing so, they may identify overlooked opportunities within current frameworks to facilitate retrofitting.

7. Work with leaseholders' associations:

Engaging with leaseholders' associations can be an effective way to build consensus and reduce potential conflicts. By collaborating with these groups, local authorities can better understand leaseholder concerns, identify allies within the leasehold community, and build collective support for retrofitting initiatives.

Step-by-step process for leaseholder retrofit

We have outlined six steps that landlords should follow to undertake the planning, consultation and implementation of energy retrofit in leaseholder buildings:

Step 1: Stock improvement planning

- Identify necessary measures to align housing stock with carbon reduction targets and climate action plans considering Local Area Energy Plans and heat networks.
- Review leases to assess impacts on planned measures and schedules for building safety and maintenance.
- Explore cost recovery from leaseholders, funding eligibility, and financing options.
- Identify potential barriers and seek legal guidance if needed.
- Notify leaseholders and tenants about potential future improvements.

Step 2: Retrofit assessment

- Recognising potential inaccuracies in pre-existing EPC conduct PAS 2035 assessments at the building and dwelling levels to identify suitable energy performance measures.
- Obtain access permission to properties from leaseholders for these assessments.

Step 3: Develop a retrofit plan for the building

- Work with leaseholders and tenants to co-produce the retrofit plan.
- Offer both in-person and online consultations to inform leaseholders about how retrofits will affect them.
- Discuss repayment arrangements, costs, benefits, and grants to offset expenses.

Step 4: Statutory consultation and grant funding applications

- Follow statutory consultation processes under Section 20 of the Landlord and Tenant Act 1985.
- Submit grant applications (e.g., SHF) ensuring timelines align with project deadlines.
- Monitor funding compliance and adjust plans to meet grant conditions while maintaining transparency with leaseholders.

Step 5: Delivery of works

- Establish a clear schedule for delivering works, ensuring all parties are informed and in agreement.
- Maintain open communication with leaseholders and tenants, providing regular updates on progress and promptly addressing delays or changes.

Step 6: Post-installation support

- Provide comprehensive guidance on using new equipment (heating systems, windows, ventilation) to resident and non-resident leaseholders.
- Implement post-installation monitoring to ensure performance.
- Offer clear instructions for reporting issues, ensuring ongoing support for leaseholders and tenants.

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Introduction

This guidance is intended to help councils planning to undertake retrofit on buildings in their social housing stock that contain leasehold homes. It provides guidance for housing and climate teams to navigate the legal, financial, and practical challenges associated with agreeing to and recovering costs for retrofit from leaseholders. The guidance also addresses national government policy changes required to unlock retrofit in London's mixed-tenure housing.

Privately owned, leasehold dwellings within local authorities' social housing stock present legal complexities that are preventing councils from installing energy efficiency measures. London has the highest proportion of leasehold properties in the country. 36 per cent[2] of all London homes are owned by leaseholders, of which 62 per cent are flats.

Achieving retrofit ambitions in London's local authority housing is becoming increasingly challenging given the high proportion of leasehold properties within blocks of social housing. As deeper retrofits involve measures such as insulation, communal heating and window replacement that affect whole blocks, councils must navigate complex leasehold law and leaseholder engagement exercises to ensure works proceed. This is an issue of critical importance to address in the context of the deeper retrofits now needed to move towards net zero.

Many local authorities are experienced with and have robust procedures in place for working with leaseholders. This document draws together practitioners' insights and current practice of working with leaseholders and highlights the current state of the leaseholder law: legislation, regulation and case law.

Points to Consider, limits and disclaimers

- Our focus is on retrofit, which we understand to mean any work on a building or its installed systems that will deliver an energy or carbon saving or is a necessary ancillary of such energy or carbon saving works. We use this term to include fabric insulation, glazing, heating, renewable energy measures, and ventilation measures.
- In legal texts, leaseholders are usually referred to as long-term tenants or lessees. For ease, we refer to "leaseholders" throughout except where quotation or clarity requires using the alternative terms. We use the term landlord to

[2] Department of Levelling Up Housing and Communities (2024): https://www.gov.uk/government/statistics/leasehold-dwellings-2022-to-2023/leasehold-dwellings-2022-to-2023

describe the local authority social housing provider that has issued the lease and in most, but not all, cases they will be the freeholder of the building.

- This document is intended to help readers understand some of the issues around retrofit works in buildings that are (a) occupied wholly or in part by residential long-term leaseholders and, (b) owned or leased by local authorities delivering their social housing function. Nothing in this document is legal advice, and no actions should be taken, or refrained from being taken, based on the information contained or omitted. This is a legally complex area and working with good lawyers throughout the retrofit process is vital.

Navigating and using this guidance - key questions covered

The retrofit in leasehold focussed guidance is set out so policy specialists and practitioners within local authorities can gain a more comprehensive understanding of the topic or as a reference manual to bolster existing knowledge and expertise. The sequence is purposeful reflecting a recommendation to understand the legal framework early on but prioritise engagement with residents above all else.

Section 1 Leaseholder engagement

How to reduce potential legal disputes and practical difficulties around retrofit through a well-planned leaseholder engagement programme.

Section 2: The legal framework

An introduction to leases and leasehold law relevant to retrofit - what is a lease?; the legal requirements for reasonable costs and statutory consultation; the role of the First Tier Tribunal.

Understanding what lease terms mean for retrofit:

- When can the building owner upgrade a building element when leases only allow for repairs and maintenance?
- The lease allows for improvements, what measures can be fitted?
- What about agreeing with leaseholders for measures and costs that go beyond what is allowed under lease terms?

Lease variation: can leases be revised or updated?

Section 3: Undertaking Section 20 consultation

Understanding the statutory requirements and timelines for leaseholder consultation on works to buildings that leaseholders will have to contribute to, through the service charge.

Section 4: Costs and Benefits

How should councils assess and demonstrate that the costs and benefits of retrofit works on buildings containing leaseholders are reasonable - as required by the regulations?

Section 5: Fairness and limits to cost recovery

To date, difficulties of cost recovery have often meant local authorities pay some or all of the leaseholders' share of retrofit costs:

- What are the principles that councils have considered in deciding whether to recharge leaseholders for retrofit costs?
- What are the regulations - including Florrie's Law - around recharging leaseholders for works on their building?

Section 6: Repayment Arrangements

What types of repayment arrangements have councils put in place to help leaseholders pay for works on their building?

What about the role of the Financial Conduct Authority (FCA) in regulating councils in this area?

Section 7: Grant Schemes

How have funding arrangements in some recent UK government grant and funding programmes worked for buildings with leaseholders?

Section 8: Worked Examples

What are some of the issues that need considering when working with leaseholders on projects to install different retrofit measures: windows, external wall insulation, roof replacement with insulation, communal heating upgrades, solar PV installation?

Section 9: Policy Recommendations

What are the policy issues that need to be addressed to unlock further retrofit in these buildings?

1. Leaseholder Engagement

Statutory processes as part of leaseholder engagement

Section 20 of the Landlord and Tenant Act 1985 sets out the statutory requirements for consulting with leaseholders over any major works on the building (see Section 3)

Successful retrofit projects should build from a programme of early engagement with leaseholders. This should lead into the statutory consultation and link to leaseholder engagement activities through the delivery of works and the post-installation phase.

Engagement before the formal Section 20 consultation phase allows leaseholders to contribute to retrofit plans alongside social housing tenants. Residents and leaseholders have first-hand knowledge of their buildings and its issues, risks and opportunities for upgrades.

In legal terms, early-stage engagement can help avoid dispute in the statutory process because leaseholders understand why the retrofit is planned and why measures and costs are reasonable, as well as the benefits.

More broadly, many London retrofit programmes, at the time of writing, are experiencing higher rates of access refusals from leaseholders unconvinced about the value of retrofit works, this increases programming and engagement costs. Landlords will reduce project delivery costs with good engagement.

Furthermore, a post-installation engagement ensures residents understand any changes they need to make in how they use their home after installation, which can resolve any post-installation issues. This will reduce future maintenance costs and ensure less opposition to future retrofit upgrades.

Principles of good practice in delivery of engagement with leaseholders

The Tenant Participation Advisory Service (TPAS) provides helpful guidance on leaseholder engagement: *Leaseholder Engagement Guide, TPAS.*

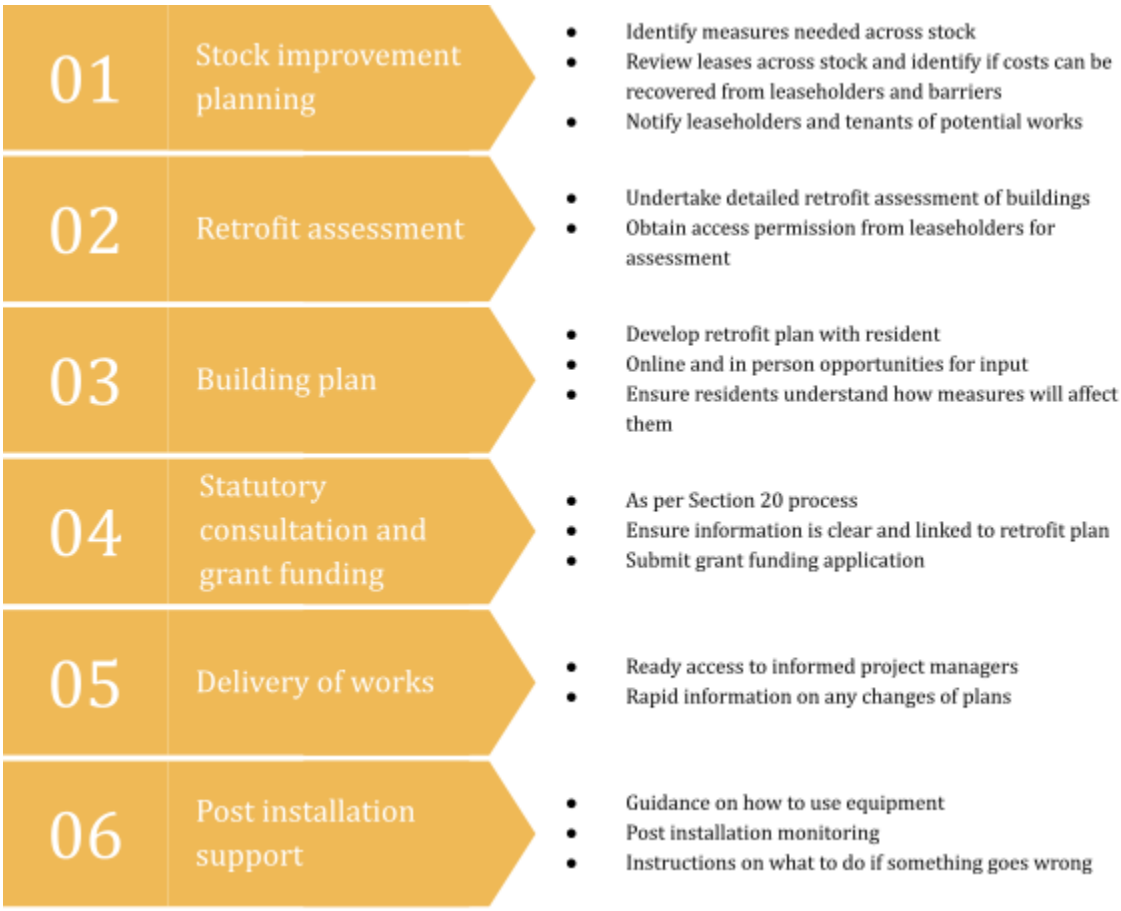
Some key considerations for retrofit context include:

- Recognise leaseholders as a priority in consultation for planned works along with social tenants. This is key as reluctant leaseholders can obstruct a potential retrofit programme.
- Ensure staff and contractors understand leaseholders' interest in the building. Leasehold law is complicated, and this guidance can be used to help explain some of the issues.
- Consider how you communicate with both resident and non-resident leaseholders e.g. provide engagement opportunities both online and in-person.
- Support leaseholders who sub-let their properties to engage their tenants in retrofit planning (e.g. provision of leaflets/digital information that leaseholders can pass on to their tenants).
- Make it easy for leaseholders to understand the context and history of formal consultation processes and how these link to retrofit plans. For example, by giving leaseholders access to a digital archive of notices and consultations issued, with updates on what's happened since.
- Provide clear estimates of the potential costs and benefits at all stages of the retrofit journey. This is discussed further in Section 4.

Good practice process for leaseholder engagement for retrofit

One model of engagement through the retrofit process is shown below. This shows how the statutory consultation should build from leaseholder engagement on:

- The council's medium and long-term plan for its stock. This should enable leaseholders to understand the larger context and the trajectory of the council's housing stock – including the net-zero trajectory.
- The scoping of the retrofit opportunity, for the building – through a relevant whole-building retrofit assessment. As we describe in Section 2 an assessment of the terms of leases should be undertaken at the start of this process.
- The development of a prioritised set of retrofit measures for the building. This could be a PAS 2035 Medium-Term Improvement Plan or building passport, which enable residents to see "what it means for me" in costs and benefits.



Step 1: Stock Improvement Planning
Start by identifying the necessary measures to bring the housing stock in line with carbon reduction targets and climate action plans. This should determine when retrofits need to take place across the stock with consideration of Local Area Energy Plans, including heat networks. Additionally, review the leases across the portfolio of stock to understand how these will impact the ability to carry out the planned measures, and schedules for ongoing building safety and maintenance works.

Step 2: Retrofit Assessment
Energy Performance Certificate (EPC) data might be inaccurate or lack sufficient detail for detailed retrofit planning, conduct PAS 2035 assessments at both the building and dwelling levels to clarify what energy performance measures are suitable or required. Leaseholders will need to grant access to properties for these assessments.

Step 3: Developing a Retrofit Plan for the Building
Collaborate with leaseholders and tenants to co-produce the retrofit plan, ensuring that their input is incorporated into discussions about the measures that could potentially be installed. Offer opportunities for both in-person and online consultations, allowing leaseholders to understand how the retrofit will affect them personally.

Step 4: Statutory Consultation
Statutory consultation processes are provided for under Section 20 of the Landlord and Tenant Act 1985: see Section 3. Transparency is key—ensure that all information is clear and accessible to avoid misunderstandings and to build trust with the leaseholders.

Step 5: Delivery of Works
Once the plan is agreed upon, establish a clear schedule for the delivery of works, making sure that all parties are informed and in agreement. Maintain open lines of communication with leaseholders and tenants throughout the retrofit process, providing regular updates on progress. It's important to communicate any delays or changes to the schedule promptly to manage expectations and address any concerns that may arise.

Step 6: Post-Installation Support
After the installation is complete, there should be comprehensive guidance on how to use any new equipment, such as heating systems, windows, and ventilation. This guidance should be provided in formats for resident leaseholders and for non-resident leaseholders to share with their tenants. Post-installation monitoring to ensure that the measures are performing as expected. Finally, provide clear instructions on how

leaseholders and their tenants can report any issues or problems that may arise, ensuring that they feel supported throughout the entire process.

2. The legal framework

For local authorities intending to undertake retrofit works and recover costs from leaseholders, there are three core considerations: the lease terms, the reasonableness of costs, and ensuring statutory consultation has been correctly undertaken.[3]

The lease is the legal document which grants a right to occupy a property for a fixed number of years.[4] Its terms set out the landlord's and leaseholder's obligations, rights, and powers. It explains what can be charged for through the service charge. This will typically include the upkeep, necessary repair and maintenance of the common parts of the building. In some cases, leases will allow the landlord to charge for building improvements.

Section 19 of the Landlord and Tenant Act 1985 (LTA) provides for service charges to be payable only to the extent that they are reasonably incurred and, where incurred, the services or works carried out are of a reasonable standard.

Section 20 covers consultation. In a case involving a private sector block, in 2013 the Supreme Court explained that consultation processes were to ensure that:

1) Landlords consult leaseholders in advance about proposed works, which addresses the issue of the appropriateness of the works;
2) Landlords obtain more than one estimate and consult leaseholders about them, which addresses the issue of the quality and the cost of the proposed works.[5]

Key considerations when reviewing leases for retrofit projects

a. Review lease terms early in retrofit planning

For retrofit projects on buildings containing leaseholders, the leases are as important as the features of the building in determining what measures can be installed where. Most

[3] Diagram based on wording at Page 17 in Bright S. Tower block refurbishment, flats, and understandings of ownership. *J Law Soc*. 2021; 48: 524–548. Manuscript copy available at: https://ora.ox.ac.uk/objects/uuid:a5a49159-7951-4105-b7c9-249f0779d890/files/rv979v357c

[4] UK Government *How to Lease* guidance MHCLG, 2022 available at: https://www.gov.uk/government/publications/how-to-lease/how-to-lease

[5] Adapted from text of Supreme Court judgement in Daejan v Benson, [2013] UKSC 14 On appeal from: [2011] EWCA Civ 38

local authorities will have numerous types of standardised leases. When planning retrofit it will be important to bring together officers' and legal advisors' understanding of what is permitted under the leases for the homes and buildings concerned. This can be considered alongside the insight from the retrofit assessment process.[6]

b. *Consider implied terms*

As well as stated lease terms, the law provides for an *implied term* in leases giving the leaseholders the right to quiet enjoyment of their property. This should be considered in planning how works are delivered, considering the impacts (noise, disruption etc) the works will have on leaseholders and residents. Where a building is defined as a "higher risk building" under the Building Safety Act 2022 there are statutory and further implied obligations on the landlord to keep the building safe.

[6] "Construing lease wording is complex and generally requires legal expertise, especially as there is a considerable body of case-law. A decision on the wording in one lease is not decisive in relation to other leases as the language and context will differ." S. Bright. (2024) *Time to revisit whether leaseholders have to pay?.* Available at: https://blogs.law.ox.ac.uk/housing-after-grenfell-blog/blog-post/2024/07/time-revisit-whether-leaseholders-have-pay. Accessed on: 04/08/2024

c. *Check if building element or equipment concerned falls under the responsibility of the landlord or the leaseholder*

Consider carefully what the lease says are the responsibilities of landlord and leaseholders regarding currently installed building elements and services provided, and to any new measures that will be installed.

Clearly, the landlord can only deliver retrofit interventions, and reclaim costs for retrofit, on building elements and installed services that are within their control and responsibility. For example, responsibility for windows can depend on the lease wording: the window frames may belong to the landlord and the glass to the leaseholder or either the landlord or the leaseholder may have responsibility for both.[7]

The recent Triplark V Whale [2024] case was brought regarding the replacement of a communal heating system. The covenant of the lease required the landlord to supply heating and hot water to the property as well as to "maintain and renew when required the central heating and hot water apparatus and all ancillary equipment thereto other than that contained in the flat". The replacement communal system included the installation of heat interface units (HIU) within the flats. The high court determined that maintaining the new HIUs increased the burden on the leaseholders - thus the right of the landlord to reclaim costs was dismissed.

Depending on lease terms, complications can arise where responsibility for systems is split – or will potentially be split – between leaseholder and landlord. For example, in the Triplark v Whale case (see box right) the wording of leases caused problems when the installation of a new communal heating system required the installation of new heat interface units inside leaseholders' flats.

Other challenges can arise with ancillary elements of retrofit measures. For example, good retrofit practice may require the installation of a ventilation unit inside the flats, accompanying upgrades to building fabric insulation and improved airtightness delivered on the common parts of the building. Leaseholders may be under no

[7] Weatherall, D., McCarthy, F. & Bright, S. Property law as a barrier to energy upgrades in multi-owned properties: insights from a study of England and Scotland. *Energy Efficiency* 11, 1641–1655 (2018). https://doi.org/10.1007/s12053-017-9540-5

obligation in their lease to accept the new ventilation unit in their flat and/or to accept the costs and responsibility of maintaining it.

In these cases, careful review of lease terms will be required as well as potential negotiation with leaseholders. This may focus on the fitting of the ancillary measure within the flat and access required to install it, as well as who will pay for it and maintain it. This needs to be an early consideration when planning measures. Lease variation (see below) may be considered, to update the terms of leases to take account of the new systems, services or elements in the building.

d. Check if planned retrofit measure constitutes or forms part of the repair or maintenance of an existing building element

Leases will normally oblige the landlord to repair and maintain the common parts of the building.

Under the landlord's "repairing obligations", once an item is beyond economic repair then replacement to a modern standard is usually permitted so far as the lease is concerned. For example, when replacing single-glazing windows that have reached the end of their life, the replacement must in most cases be a double-glazed unit under building regulations. Arguments could also be made that compliance with other standards such as PAS 2030/2035 or MCS standards is required to meet modern standards.

For measures that go beyond the nearest modern equivalent allowable under regulations, whether costs can be recovered is a reasonableness test. Arguments can be based on long-term cost-effectiveness (see Section 4); short-term capital costs will also be a consideration – considering the means of the leaseholders to pay. A principle to bear in mind when considering these questions is to "Make a decision as if you were paying your own money", which many local authorities will be if it is a mixed tenure block containing secure tenancies.

Landlords may wish to take advantage of the end of life of a building element to install a measure that goes beyond what could be considered a modern standard, and/or it goes beyond what is reasonable for leaseholders in a lifetime costs calculation. This may occur where landlords wish to install a measure that delivers significant carbon savings (which will not directly pay back to leaseholders) or long-term energy savings that are not offset by the additional upfront cost.

In these cases, the landlord may be allowed to install the measure but will probably need to bear the additional cost. The consideration to bear in mind here is, under the terms of the lease what the landlord can do and what they can recharge may be

different. So, the landlord may not be able to recover the cost but may be able to do the work anyway - this is an issue of lease wording.

e. Check if improvements are allowed under the lease

Modern social housing leases will typically allow for the landlord to improve the building and recharge costs of this through the service charges. This provides much greater flexibility when considering retrofit interventions that only provide for the repair and maintenance of the building. Nonetheless, an “improvement clause” does not allow the landlord to upgrade the building and recharge leaseholders however they see fit:

> “I appreciate that the council has responsibility for its secure tenants. However, it also has a responsibility as a landlord to the leaseholders. I do not underestimate the challenges that are faced by a public authority managing a mixed tenure estate where funding is offered to raise the quality of the housing provided to a decent standard. But in deciding what works to carry out it is not sufficient simply to rely on the right to recover the cost of improvements as a justification in itself for embarking on a scheme of very expensive works."
> **Upper Tribunal judgement cited by Court of Appeal in Hounslow v Waaler, 2017**

The Court of Appeal held that the more works can be considered discretionary, the greater the need is for *leaseholders' views, their financial means, and their financial interest in their property* to be taken into consideration for costs to be considered reasonable (Hounslow V Waaler, see box right). By illustration, the court discussed a spectrum of improvement actions. For example, security improvements that directly benefit leaseholders would be considered less discretionary (and therefore may be more likely to be seen as reasonable) than an improvement to beautify the estate.

The LB Hounslow v Waaler [2017]

The Court of Appeal case focussed on objections from leaseholders regarding whether charges for work carried out on their building were reasonable. Improvements were allowed under the lease and replacement windows and accompanying cladding on the building were improvements. However, the court accepted that the cost recovery for the windows and cladding was not reasonable because Hounslow ought to have taken particular account of the extent of the interests of the leaseholders, their views and the financial impact on them of the works.

This is a key reason why it is important to follow best practice in working with leaseholders on low-carbon retrofit:

- In ensuring that leaseholders are given full opportunity to provide informed views on retrofit assessments, that are taken into account by the landlord before plans are finalised. This should happen as part of statutory consultation but can be reinforced through earlier stages of engagement (see Section 1).
- In ensuring that landlords have a clear picture of the costs and benefits, and consideration is given to residents' financial means - both long-term and to pay upfront costs - in planning a package of measures for the building (see Section 4.)
- To reduce the financial impact of the works on leaseholders, which could be by providing flexible payment arrangements for leaseholders where possible (see Section 5.)

f. Check if access can be obtained to deliver the retrofit

Even where works are on parts of the building or equipment that are the responsibility of the landlord, access to flats may be required to work on the elements and install measures. The lease may - or may not - include stated provisions about rights of access

for the landlord. In general, for retrofit works, best practice should be to address and agree access arrangements with leaseholders well before works begin and as part of the retrofit engagement programme.

Where landlords are not relying on specific provisions in the lease, landlords are likely to want to seek specific legal advice around access, should they not be able to reach an agreement with leaseholders. A discussion of some of the principles that may be considered in this situation can be found in: *How limited is the Landlord's Right to Enter Flats?* Prof. Susan Bright, Oxford University, 2020[8]

g. Consider if the lease can be changed

Leases may be very old, poorly drafted, and make inadequate provision for modern requirements.[9] Unfortunately, changing or varying leases can be legally complex and can only be done with the agreement of at least a majority of leaseholders, unless the lease is considered defective on a limited set of tests.

Variation to leases with agreement between parties

Leases can, in some situations, be varied with agreement between parties. For example, where leases state that windows are the responsibility of the landlord, councils may allow leaseholders to take over the responsibility for the windows in their flat, formalised through a deed of variation to the lease. This sort of variation of individual leases may not always be possible: some leases oblige the landlord to grant all leases in the building on materially similar terms.[10]

Where lease variations affect all parties in the building (e.g. a variation to allow improvements or to reflect new systems) this can be undertaken by lawyers with 100% agreement of the landlord and all parties. "Parties" does not just mean landlord and leaseholders: where flats are mortgaged, lenders may well need to provide consent.

[8] Bright, S. (2020). *How limited is the Landlord's Right to Enter Flats?* Available at: https://www.law.ox.ac.uk/housing-after-grenfell/blog/2020/05/how-limited-landlords-right-enter-flats (Accessed 26th August 2024)
[9] Bright, S., and P. Morrison. "Varying Long Residential Leases: When, Why and Reform." *Conveyancer and Property Lawyer*, vol. 2019, no. 4, Sweet and Maxwell, 2019, pp. 332–54 Available at: https://www.law.ox.ac.uk/sites/default/files/inline-files/2019_83_Conv_Issue_4_Print_FINAL%20%281%29_BrightandMorrison.pdf (Accessed 26th August 2024)
[10] ibid.

Variation to leases where there is not full agreement between parties

Parties to a lease can also apply to the First Tier Tribunal for variation of a lease under Sections 35 and 37 of the Landlord and Tenant Act 1987.[11]

Under Section 35 of the Act, parties to a lease can apply for a variation to take account of deficiencies in the lease that prevent the property from being properly maintained. This includes matters relating to the management and upkeep of the flat or building, repair and maintenance, insurance, provision of services and arrangements for the recovery of the service charge.

Section 37 allows for leases to be varied where there is agreement between a significant number of parties. Where the variation applies to 8 or fewer leases, all or all but one of the parties must consent. For 9 or more leases it must not be opposed by more than 10% of the parties concerned, with 75% consenting.[12] Where there is loss or disadvantage arising from the variation to the leases, whether to the landlord, leaseholders or third parties, Section 38 of the Act allows the Tribunal to refuse the variation or require the payment of compensation. Section 37 has been used to add improvement clauses to leases, and to update leases to take account of modern heating systems.[13]

Agreeing retrofit measures that go beyond what is allowed under the lease

In many cases, landlords will agree with leaseholders to undertake works that go beyond what is permitted under leases. In these cases, an additional agreement between the leaseholder and the landlord is essential. This may be a side agreement or a licence: the key concern is that the terms of the agreement are clearly documented.

The First-tier Tribunal

The First-tier Tribunal (Property Chamber) serves to resolve disputes between landlords and leaseholders. It can adjudicate on issues related to service charges for repairs, maintenance and improvements, and whether the associated costs are reasonable.

Landlords have the option to pro-actively apply to obtain a determination as to the reasonableness of costs before charging leaseholders for major works. This can be

[11] https://www.legislation.gov.uk/ukpga/1987/31/contents
[12] Landlord and Tenant Act S.37 https://www.legislation.gov.uk/ukpga/1987/31/section/37
[13] Bright and Morrison *op. cit.*.

useful when it is anticipated that there could be a challenge or when the costs of proposed works are substantial.

Landlords can also apply to the FTT for a dispensation from the requirement to undertake a Section 20 consultation. This is typically sought when urgent works are required and the consultation process would cause delays that could lead to further damage or risk to the building. A retrospective application may need to be made if mistakes are made in the process.[14]

Leaseholders may bring proceedings concerning whether Section 20 consultation has been conducted and the reasonableness of proposed costs. They may challenge the apportionment of costs if they feel that they are not distributed in accordance with the lease. The cost of responding to such proceedings can be significant.

The process of bringing a case before the First-tier Tribunal can take several months, if not longer. The cost of an application, providing all documents and further evidence will also be payable by the Landlord and should be considered from the outset. Decisions can also be appealed, meaning that it can be important to include contingency for legal proceedings when scheduling retrofit projects.

[14] https://www.bradysolicitors.com/brady-blog/major-works-dispensation-from-section-20-consultation/#:~:text=Applications%20for%20dispensation%20from%20Section,have%20time%20to%20consult%3B%20or

3. Undertaking Section 20 consultation

The requirement for consultations on service charges for works are laid out in Section 20 of the Landlord and Tenant Act 1985,[15] with the detailed requirements set out in secondary regulations laid in 2003.[16] Statutory consultation on service charges within the terms of these regulations is a core part of local authority housing teams' ongoing work and there will usually be substantial expertise within councils on delivering Section 20 consultations.

This section sets out an initial overview of the Section 20 (S20) processes for retrofit teams: it should not be relied on to ensure compliance with the regulatory requirements. More detailed guidance is available from LEASE, the Leasehold Advisory Service at: *Section 20 Consultation for Council and other public sector landlords,*

Best practice considerations for Section 20 consultation

The Section 20 process exists to help landlords demonstrate to leaseholders that costs are reasonably incurred, see Section 3. As such, landlords may want to make sure that through the notices they issue in the Section 20 consultation process, leaseholders are given a clear picture of:

- Why the works are going to be carried out;
- What the benefits of the works will be;
- How the landlord came to the decision to proceed with works, including considerations of alternatives;
- How the costs for work have been estimated and;
- What criteria have been specified in the procurement of contractors.

The Landlord and Tenant Act does not specify that value for money has to be expressly demonstrated, but showing this will aid any consideration of whether or not costs are reasonable, particularly in cases where the lowest-price contractor is not chosen.

Section 20 consultation documentation can be legalistic and complex. Leaseholders can end up receiving multiple Section 20 notices for different works at different stages of the process. Landlords should give consideration to this. For example, by providing a clear and accessible online repository of different notices that have been issued.

Leaseholders often have the right to nominate contractors to undertake works which landlords must 'try to obtain estimates' from. Landlords should set out any essential

[15] As amended by the 2002 Commonhold and Leasehold Reform Act 2002.
[16] 2003 Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987.

criteria that are expected of contractors. For instance, PAS 2035 compliance, public liability insurance, and compliance with the Modern Slavery Act. This will make clear to leaseholders the requirements for any nominated contractors in order to be seriously considered for the contract.

It is good practice to obtain quotes from at least three contractors. Specifying the format of estimates by breaking down the components making up the final quote allows for clear comparisons between contractors and justifies the final selection.

An overview of the statutory requirements

Section 20 Requirements relate to:

- "Qualifying works" - Landlords must undertake S20 consultation with leaseholders when entering into agreements with suppliers for building works which will cost any one leaseholder over £250 under the service charge. There is case law on what may constitute a single set of qualifying works - see LEASE guidance for a discussion on this point.
- "Qualifying long-term agreements" - where an agreement is entered into by the landlord with suppliers for a term of more than twelve months, which will cost any one leaseholder over £100 a year. A qualifying long-term agreement may cover the provision of services - such as managing the building - or works on the building. Landlords must carry out a Section 20 consultation before entering into a long-term agreement. And they must carry out further consultations where works on the building are planned under a long-term agreement.

Public Procurement Thresholds

A principle across the Section 20 requirements is that leaseholders, or their representative associations, have the right to nominate suppliers to bid for the works. However, this does not apply in cases where the estimated costs of the works exceed certain threshold values and publication of the opportunity to bid is required under public procurement rules.

At the time of writing, those threshold values are:

Works - £5,372,609 (inc. VAT)

Services/supplies - £214,904 (inc. VAT)

These threshold values (which pre-Brexit were set at the European level) are now set by reference to the WTO thresholds and will be updated by the Cabinet Office every two years - they are next due to be reviewed in December 2025.

Section 20 sets five slightly different consultation processes which apply when landlords enter into:

A. An agreement for qualifying works under the procurement threshold
B. An agreement for qualifying works over the procurement threshold
C. A long-term agreement under the procurement threshold
D. A long-term agreement over the procurement threshold
E. Agreement to undertake qualifying works within a long-term agreement.

An overview of each of these processes is given below. Note these overviews do not contain all the details: landlords should review detailed guidance and regulations.

What happens when landlords don't comply with the consultation requirements

In cases where landlords dispense with some or all of the consultation requirements, in some circumstances cost recovery may still proceed: the legal test applied is whether failure to comply with the requirements damages leaseholders' interests in terms of the necessity, quality and cost of the works.[17] Clearly, to avoid legal dispute the best option is to fulfil the consultation requirements.

[17] Daejan v Benson, [2013] UKSC 14 On appeal from: [2011] EWCA Civ 38

A. Qualifying works which do not exceed the procurement threshold

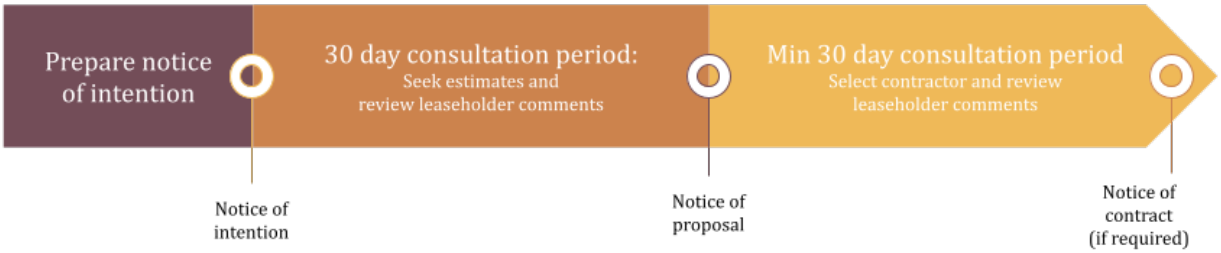
See Part 2, Schedule 4 of the regulations. The consultation requirements for qualifying works for which public notice is not required are:

1) **Notice of intention:** where landlords must issue a notice in writing to leaseholders describing in general terms the planned works, and the reasons for them and/or state where and when a description of the planned works can be inspected. Leaseholders are given 30 days to make observations on the planned works: the landlord must "have regard" to these observations. Leaseholders also have the right to nominate contractors who could deliver the works.

2) **Notice of proposals:** The landlord must seek estimates, including from the contractors nominated by the leaseholders,[18] and then notify leaseholders of the estimates[19] and the landlord's response to the leaseholders' observations on the plans. Leaseholders are then given 30 days to comment on the estimates. The landlord must "have regard" to leaseholders' observations on the estimates.

3) **Award of contract.** Where the lowest price or a leaseholder-nominated contractor is not appointed, the landlord must notify leaseholders within 21 days of issuing the contract, setting out the landlord's response to any leaseholder observations made on the estimates and the reason for selecting the contractor.

The timeline for consultations is thus shown below:



[18] There are limits on how many leaseholder nominated contractors have to be invited to quote - see the detailed regulations Schedule D part 2.
[19] Landlords have to notify leaseholders of at least two of the estimates, one of which must be nominated by the leaseholders, and make the others available for inspection. At least one of the estimates must come from a party unconnected to the landlord.

B. Qualifying works where works exceed the procurement threshold

See Part 1, Schedule 4 of the regulations.

Notice of intention: Where landlords must issue a notice in writing to leaseholders describing, in general terms, the planned works and/or state where and when a description of the planned works can be inspected. Leaseholders are given 30 days to make observations on the planned works: the landlord must "have regard" to these observations. As the qualifying works exceed the threshold, the landlord should state why leaseholders are not being invited to nominate suppliers.

Preparation of landlord's contract statement: The landlord should prepare a statement stating who is to be contracted, and any connection this person or company has with the landlord. This should include a *Paragraph 4 Statement* where the landlord should also estimate and tell leaseholders; (a) the relevant contribution to be incurred by them attributable to the works to which the proposed contract relates, or, if this is not possible, then; (b) the total value of the contract for the building, or; (c) the hourly/daily rate of the contractor. If none of these are possible the landlord should explain the reason why (but the landlord is then at a later date obliged to inform leaseholders when this information becomes available).

This notification should be sent to, or made available for inspection by, leaseholders who will be given 30 days to make observations on the Paragraph 4 statement.

Landlord's response to observations: The landlord has 21 days to respond in writing to any person who made observations, stating the landlord's response.

C. Qualifying Long Term Agreement below the procurement threshold

See Schedule 1 of the Regulations

The consultation requirements for qualifying works for which public notice is not required are as follows:

Notice of intention phase: The landlords must issue a notice in writing to leaseholders explaining why the landlord believes it is necessary to enter into the agreement. Where this includes qualifying works, it should state the landlord's reasons for considering it necessary to carry out the works, and/or state where and when a description of the planned works can be inspected. Leaseholders are given 30 days to make observations: the landlord must "have regard" to these observations. Leaseholders also have the right to nominate contractors who could supply the service or works.

Notification of landlords' proposals: The landlord must seek estimates including from the contractors nominated by the leaseholders[20] .The landlord prepares at least two proposals[21] for the provision of the service or works by different suppliers, laying out estimates of the costs and explaining how they have considered any observations from the leaseholders. Leaseholders are then given 30 days to comment on the proposals.

Duty on entering into agreement: After entering into an agreement where the agreement is not with the lowest priced contractor, or with a contractor nominated by the leaseholders, the landlord must notify the leaseholders within 21 days. The notification must state reasons for entering into the agreement and summarise how observations have been responded to. Alternatively, the response can specify where a statement providing this information can be inspected.

[20] There are limits on how many leaseholder nominated contractors have to be invited to quote - see the detailed regulations Schedule D part 2.
[21] One of which must be based on an estimate from a supplier unconnected with the landlord.

D. Qualifying Long Term Agreement above the procurement threshold

See Schedule 2 of the Regulations

Notice of intention: The landlords must issue a notice in writing to leaseholders explaining why the landlord believes it is necessary to enter into the agreement. Where this includes qualifying works, it should state the landlord's reasons for considering it necessary to carry out the works. The notice should explain why the landlord is not asking leaseholders to nominate suppliers (because the works are above the public procurement threshold). Leaseholders are given 30 days to make observations: the landlord must "have regard" to these observations.

Notification of Landlord's Proposal: The landlord should notify leaseholders of the parties to the proposed agreement and any connection between the landlord and the other parties. The notification should state the length of the agreement. It should explain how any observations from leaseholders have been responded to. The notification should include a Paragraph 4 Statement where the landlord should tell leaseholders (a) the relevant contribution to be incurred by them attributable to the works to which the proposed contract relates, or, if this is not possible, then (b) the total value of the contract for the building, or (c) the unit cost or hourly/daily rate of the contractor. If none of these are possible the landlord should explain the reason why (and say when this information will be available and make it available when it becomes so).

Landlord's response to observations: Leaseholders then have thirty days to make observations in response to the landlord's proposal, with the landlord obliged to respond to these within 21 days to the person who made the observation.

E. Where works are undertaken under a long-term agreement

See Schedule 3 of the Regulations

Notice of intention
The landlord must issue leaseholders with a notice stating; (a) in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected; (b) the landlord's reasons for considering it necessary to carry out the proposed works;(c) the estimated cost; (d) an invitation for leaseholders to make observations in relation to the proposed works or the landlord's estimated expenditure.

Response to observations
Where the landlord receives observations from leaseholders the landlord must within 21 days provide a response to the person who made them.

4. Costs and benefits

When making the case for retrofit to leaseholders, it's important to provide clarity over the costs of work, how they are to be apportioned to leaseholders, and how they have been considered against any benefits and disbenefits to the leaseholder. This is vital both where:

- Landlords are seeking to demonstrate that the costs of works are reasonable under lease terms;
- Landlords are seeking agreement from leaseholders for retrofit works that could be argued to go beyond what would be considered reasonable under lease terms.

The range of benefits for retrofit may include:

- Reduced fuel costs
- Greenhouse gas emissions reductions
- Improved thermal comfort
- Reduction of damp and mould with improved indoor air quality
- Improved aesthetics
- Higher asset value of the property
- Reduced upkeep and maintenance costs

These need to be communicated effectively to leaseholders in a balanced way that includes consideration of the disbenefits, such as disruption, the costs of measures, potential increases in heating costs, and ongoing maintenance costs.

A discussion about costs and benefits will often need to consider, and provide information to leaseholders, about costs and benefits for the service charge payers in the building as a whole. For example, under lease terms, roof replacement with additional insulation may be a reasonable improvement rechargeable to all flats regardless of location within the building. However, the insulation aspect would only bring significant energy bill savings to the top-floor flat owners.

Calculating and presenting costs and benefits

Lifetime "cost in use" calculations were successfully used by Wandsworth Borough Council to justify the reasonableness of replacement windows with uPVC double

glazing[22]. Such cost-in-use calculations typically compare the overall long-term cost of alternative measures. For example, there may be a reduction in long-term maintenance costs of a replacement as compared to keeping the old building element in use through repairs.

Estimating changes in fuel costs and greenhouse gas emissions

When determining if the costs to leaseholders are reasonable, assess the lifetime costs of the measure including energy savings and avoided costs of maintenance and repair.

At a borough level, decisions to proceed with retrofit are likely to be based on greenhouse gas emissions and fuel cost savings across the building stock. However, these will not provide leaseholders and tenants with sufficiently accurate estimates of how their energy use will change in their particular property.

To provide more accurate estimates for specific properties, energy consumption and associated costs can be modelled as part of a PAS 2035 retrofit assessment. This modelling can be done by the Retrofit Assessor using tools like SAP (Standard Assessment Procedure) or PHPP (Passive House Planning Package), which estimate the current and post-retrofit energy performance of a building.

Using these models the Assessor should provide detailed estimates of fuel bill and carbon savings. Retrofit projects often involve multiple measures—such as double glazing combined with wall insulation, or replacing a heating system alongside adding roof insulation. It's important to obtain estimates of how energy usage will change for all combinations of measures being considered to weigh against the costs.

Presenting fuel bill savings to leaseholders

The benefits of retrofit measures will vary between different flats within a building, depending on their size and location. For instance, larger properties with more exposed areas (windows, walls, roofs) will see greater savings from insulation or replacement glazing than smaller properties.

For leaseholders with fuel supplied through communal heating, residents may not be charged based on their individual usage, but through service charge based on the size of their property. This is most likely for older communal heating systems without heat metering. In these cases, landlords can estimate the reduction in fuel costs to the whole

[22] Wandsworth London Borough Council v Griffin [2000] 2 EGLR 105

building and present to the leaseholders the resulting reduction in their service charge from the measures.

To provide leaseholders and tenants, whose fuel costs are based on their direct consumption, with realistic expectations of savings, these should be modelled for their specific property type and ideally for different heating patterns.

Energy usage varies among households based on factors like how long the heating is on and at what temperature. Households with occupants who stay at home longer, such as people with certain disabilities, are likely to require heating for longer periods and may see more significant fuel bill savings from energy efficiency measures.

SAP and PHPP energy models, used in PAS 2035 retrofit assessments, allow for modifications based on occupancy levels and heating patterns to calculate fuel bill savings for different energy usage scenarios. For example, SAP typically assumes homes are heated for 9 hours on weekdays and 16 hours on weekends during the heating season, with temperatures between 18 and 21 degrees Celsius. However, this may not accurately reflect the actual usage patterns of many households.

Here is an example of how fuel cost savings could be presented for different heating patterns:

External wall insulation and triple-glazing	Low usage households	Typical usage households	High usage households
Current fuel cost estimate	£800 per year	£1,100 per year	£1,400 per year
Fuel costs following measures	£640 per year	£880 per year	£1,120 per year
Fuel bill saving	**£160 per year**	**£220 per year**	**£280 per year**

It is also important to consider that energy tariffs vary between households and over time. Projected future average domestic energy prices available from DESNZ

[23](Department for Energy Security and Net Zero) that can be used for modelling changes in savings.

But, given the variability in dwelling types, heating patterns, and fuel costs, presenting all possible combinations of savings to leaseholders and tenants can become complex. To simplify this, consider providing access to an online tool where households can input their specific heating scenarios and fuel prices. This will give them a more accurate and personalised understanding of their potential savings.

Maintenance, replacement and running costs

When evaluating the reasonableness of retrofit costs, ongoing maintenance and running costs must also be considered, especially for heating systems. When comparing the costs of two replacement technologies over their lifetime, consider the following factors:

- **Installed Capital Costs:** The upfront cost of installation
- **Future Replacement Costs:** The anticipated cost of replacing the system at the end of its lifespan
- **Annual Fuel Costs:** The ongoing cost of fuel to operate the system
- **Maintenance Costs:** Regular maintenance required to keep the system running efficiently
- **Metering and Billing Costs:** Any additional costs related to metering and billing, particularly for communal heating systems.

Additionally, auxiliary measures, such as mechanical ventilation systems required for compliance with PAS 2035, will incur additional maintenance costs. These systems need to be kept clean and operational to prevent issues like damp and mould, further contributing to the overall lifetime costs of the retrofit measures.

Apportioning costs

When presenting costs to leaseholders, it is important to provide a detailed and itemised breakdown of all costs involved in the major works or retrofit. This includes not only the direct costs of materials and labour but also ancillary costs such as professional fees, scaffolding, and any other related expenses. By itemising the costs, leaseholders can see exactly where their money is going and they are more likely to perceive the charges

[23] Uncertainties in future energy prices will affect actual fuel bill savings. Supplementary guidance provided by DESNZ to the Treasury's Green Book provides frequently updated low, central and high domestic retail cost projections of Gas and Electricity prices [see data tables 4 and 5 https://www.gov.uk/government/publications/valuation-of-energy-use-and-greenhouse-gas-emissions-for-appraisal]

as fair and reasonable. Additionally, highlight any cost savings achieved, such as grants, bulk purchasing of materials or the concurrent scheduling of multiple projects, and explain how these savings have been passed on to the leaseholders.

Leases generally all contain clauses that define how costs are to be divided among leaseholders, often based on factors such as the size of the property, the number of units in the building, or the proportion of the property that each leaseholder occupies (if they do not, an application can be made to the FTT for a lease variation). Local authorities must adhere to these provisions, and it is preferable to ensure that the method of apportionment is communicated clearly to the leaseholders in advance of any work being carried out.

Here is an example of how project cost savings could be presented to leasehold owners:

Measure	Project costs for the whole building	Proportion attributable to your property	Contribution from grants	Your contribution
External wall insulation	£96,000	6.25%	-£3,300	£2,700
Double glazing	£192,000	6.25%	-£1,000	£11,000
Scaffolding	£12,800	6.25%		£800
Total	£252,800			£14,500

5. Fairness and limits to cost recovery

Several local authorities in London have carried out retrofits in mixed tenure settings. Some supplemented leaseholder costs to reduce impacts on lower income private households within mixed tenure blocks. Although local authorities in London are intent on retrofitting the homes they manage as the freeholder for their residents, the HRA and other budgets for such work are constrained.

The approach of paying leaseholders costs is unlikely to be sustainable at scale given limited local authority budgets. This issue poses a challenge around fairness. On the one hand, there can be leaseholders with limited means who will struggle to afford the costs of retrofit by themselves. On the other, there is the restriction this puts on other building residents from accessing the benefits of warmer, greener homes. Furthermore, if leaseholders' costs are to be subsidised, should this come from council budgets, particularly from the rent payments of social tenants?

Subsidising leaseholder retrofit cost: considerations and issues of principle

In London, social housing blocks often include a mix of social tenants and privately owned leasehold properties. This complicates access to energy efficiency measures for tenants as the costs must be recovered from both the leaseholders and local authority budgets. Given that many leaseholders vary in financial capacity, from struggling pensioners to wealthy landlords, the fairness of service charges for retrofit works becomes a significant concern. Some leaseholders are struggling with the cost-of-living crisis and are unable to keep up with existing service charges for repairs and maintenance and compliance with building safety standards, let alone additional charges for retrofit measures. Similarly, many leasehold flats are rented out in the private sector, meaning private rented tenants also miss out on the benefits of retrofitting unless their landlord accepts these costs.

Legal context to council subsidies of leaseholder costs

Regulations introduced in 2014 addressed legal uncertainty surrounding councils subsidising the costs of works for leaseholders through reductions to service charges. It had been argued the councils owed a duty to their council taxpayers not to provide such subsidies. At the same time, there was concern that right-to-buy leaseholders were being burdened by high bills for works.

The Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014[24] allows social landlords to consider waivers or reasonable reduction in service charges related to repair, maintenance or improvements. The Directions note that the landlord should consider:

- The costs of the works and whether the leaseholders were informed of this prior to purchasing the lease and whether the price paid took this into account;
- Any benefit the leaseholders receive as a result of the work, including increases in value, energy efficiency or security;
- Whether the leaseholders will suffer exceptional hardship in paying the service charge;
- Whether the dwelling is the leaseholder's principal home;
- And the ability of the leaseholders to pay the service charge if the terms of the payment are extended.

The *Mandatory Reduction of Service Charges (England) Directions 2014,* commonly referred to as *Florrie's Law,* was introduced to protect leaseholders from unaffordable repair and maintenance costs. The law limits the amount that a landlord can charge for repair, maintenance or improvements to £15,000 in any five-year period for properties in London. However, the cap is only applicable when costs are incurred for repair, maintenance or improvement "undertaken wholly or partly with relevant assistance"[25] from a central government programme (e.g. a grant scheme).

Interpreting Florrie's Law

It is unclear whether the £15,000 cap in Florrie's Law applies to the cumulative costs of all major works within a five-year period or if it is limited to just one set of major works receiving relevant assistance. Discussion with lawyers and local authorities has found both interpretations used. A policy recommendation accompanying this guidance is that the government should provide clarity on this point.

Unintended consequences of Florrie's Law

This cap affects the extent to which local authorities can recover costs for retrofit when government funding is sought and can lead to unintended outcomes. One London borough had applied for SHDF funding on a tower block of 64 homes where 16 were

[24] The Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/342738/140811_Discretionary_Signed.pdf
[25] The Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014 https://assets.publishing.service.gov.uk/media/5a7d967240f0b65084e76196/140811_Mandatory_signed.pdf

leaseholders. The works were estimated to cost roughly £60,000 per property. For the works to go ahead with an SHDF contribution, the leaseholders would be limited to paying 25% of the costs (£15,000) and the remaining costs being paid for by the local authority. This would leave the local authority to cover the remaining costs, amounting to a total subsidy of £480,000. Without the government funding, the cost impact on the local authority would have been significantly reduced as they recovered the cost to improve leaseholder dwelling from those private owners the full amount.

Where does the money come from? HRA or General Fund

For local authorities to subsidise the retrofit of leaseholder properties, either in full or in part, raises considerations about whether money for this can come from Housing Revenue Accounts (HRAs) or the General Fund. There is a lack of legal clarity around this issue and councils must seek their own legal opinion this issue. Based on discussions held as part of this project our understanding is as follows.

HRA money should be used primarily for the management and maintenance of buildings only. Local authorities have a fiduciary responsibility for appropriate management of the HRA which should be used in the interests of tenants.

Therefore, local authorities could be challenged for using HRA money to subsidise leaseholders. This includes lending (at low or zero interest) from the HRA. However, arguably, subsidising measures on leasehold properties could be required in order to make repairs and improvements to a building for the benefit of the social tenants.

An alternative view is that if leaseholders' costs are to be subsidised, this should not come from the rent payments of social tenants who typically have lower incomes than the wider community. From this perspective, it may be better for the funding to come from the wider community - ie General Fund.

6. Repayment arrangements

Offering repayment arrangements is good practice when leaseholders are faced with costs for major works totalling thousands of pounds that they may not be able to afford. There is typically a range of offers made to leaseholders to help with repaying major works.

In some cases, councils are legally obliged to do this. Under legislation, councils may be obliged to offer loan financing for service charges to leaseholders, where leases were issued in the last ten years. In other cases, leases may specify repayment terms which landlords are then obliged to honour.

Financing offers

Based on a review of offers carried out at the time of putting this guidance together, financing offers from different London councils include some of the following elements:

- "A decision period" within which leaseholders can decide whether to take advantage of repayment options.
- Early repayment incentives (e.g. 5% off if paid in full within 6 weeks of the invoice).
- Staged repayment arrangements over different time periods, depending on the total cost of the work. Offers may consist of:
    - Interest-free repayment arrangement offered up to a certain period (e.g. 1 year, 3 years, 5 years).
    - A repayment offer consisting of a period of interest-free repayments followed by a period of interest-paying repayments
    - Interest-paying repayment arrangements.

  Larger loans or longer-term arrangements often require the leaseholder to allow the landlord to take a charge on the property and payment of an arrangement fee by the leaseholder. Interest rates are typically variable rather than fixed, may track different official rates, and vary between councils.[26]

- A loan secured on the property, repaid only at the point of property sale. The homeowner may be charged, annually, interest on the loan or the

[26] Public Works Loan Board rate (Haringey), the Bank of England Base rate (Islington, proposed), or percentage points above the BoE base rate (eg Hounslow in 2018-2023 set the rate at 1% above base rate), or a "national variable rate" (City of London).

interest may be rolled up and paid at the point of property sale.

- The council takes ownership of a share of the property equivalent to the costs of the works plus administration charges.

In cases of exceptional hardship, councils may offer to buy back all or a share of the property.

Lastly, councils might simply subsidise costs.

Many councils differentiate between resident and non-resident leaseholders in their finance offers, with non-resident leaseholders receiving less generous offers (in interest rates or length of repayment term). Offers may not be made to landlords who are companies. Vulnerable, elderly or resident owner-occupiers may receive more generous offers. In some cases, financial offers are only made available to leaseholders unable to access private finance.

Impacts on Housing Revenue Accounts (HRA)

Local authorities and leaseholders alike are facing high costs from building safety, maintenance and retrofit works. A key consideration of repayment options for major works is the impact this will have on HRAs (as discussed in Section 5). Islington Council in 2024 noted that "Improving terms for leaseholders by extending payment terms for longer periods, results in reduced HRA revenue in the earlier years of scheme[27]."

Financial Conduct Authority

Local authorities generally do not need FCA approval for most of their standard activities. The Financial Services and Markets Act 2000 (FSMA) provides exemptions for local authorities from FCA authorization for certain regulated activities[28]. While local authorities are exempt from FCA authorisation for many standard activities, FCA approval is required for specific regulated financial activities. Typical repayment options for leaseholders do not require FCA approval but specialist advice should be sought as to whether FCA approval is required for any bespoke repayment options.

[27] https://islington.moderngov.co.uk/documents/s37429/Leaseholders%20major%20works%20payment%20options%20002.pdf

[28] https://www.legislation.gov.uk/ukdsi/2014/9780111108376

7. Grant Schemes

Challenges of working with leasehold properties on grant-funded programmes

Florrie's Law

Florrie's law comes into force whenever a grant or other relevant assistance is used for the costs of works of repair, maintenance or improvement. This limits the total amount that London local authorities can recharge over a five-year period to £15,000 (though there is uncertainty over how this should be interpreted - see Section 5). While this is meant to protect leaseholders, it can create challenges for local authorities. For example, deep retrofit projects can cost over £50,000 per home. If grant funding only partially covers the costs, the law can lead to a situation where the local authority ends up paying more than if they had charged the entire cost to the leaseholders without grant.

Timing

Grant funding opportunities often arise with short notice and tight deadlines. For instance, the Social Housing Decarbonisation Fund 2.2 programme was announced in October 2023, with a three-month window for applications. Similarly, the Sustainable Warmth scheme was launched in Summer 2021, with implementation starting in early 2022. These rapid timelines can pose significant challenges in the leasehold sector, where processes are often delayed by required consultations and potential legal disputes. If local authorities can secure pre-agreement from leaseholders for upcoming works, it may expedite the process.

The Role of Stock Improvement Plans
Developing stock improvement plans that outline the necessary measures for buildings, expected timelines, and cost estimates can better prepare leaseholders for potential expenses related to major works. These plans can also streamline the grant application process and reduce delays during leaseholder consultations. By having a clear and well-communicated strategy in place, local authorities can mitigate some of the timing issues that arise when aligning grant funding with leaseholder consent.

Examples of specific grant schemes

Social Housing Decarbonisation Fund (SHDF)

Under the SHDF waves 1, 2.1, and 2.2, social housing providers could apply for a significant portion of capital costs for retrofit measures, with specific caps based on the initial EPC rating of the units. The scheme allowed social landlords to include a limited number of leaseholder properties in their applications. For these waves, leaseholders were expected to contribute towards the costs, with contributions capped at £3,300 for waves 1 and 2. Draft guidance for Warm Homes: Social Housing Fundwave 3.0 offers greater flexibility on leaseholder contributions.

Sustainable Warmth: The Green Homes Grants Local Authority Delivery scheme phase 3 and the Home Upgrades Grant phase 1

The Sustainable Warmth Competition, including the Green Homes Grant Local Authority Delivery scheme phase 3 and the Home Upgrade Grant phase 1, provided funding to enhance the thermal performance of owner-occupied or privately rented homes with an EPC rating of D or lower. Eligible households had to have a gross income of £30,000 or less. The scheme offered grants of up to £10,000 per home, focusing on measures that could improve the property's EPC rating and reduce energy bills. While leasehold properties were eligible for this funding, privately rented leasehold properties required the leaseholder landlord to contribute at least one-third of the final costs which is understood to have limited the uptake for these types of tenure arrangements.

The Energy Company Obligation (ECO) phase 4

ECO 4 primarily targets low-income, fuel-poor, and vulnerable households living in properties with EPC ratings of D-G. Unlike other schemes, ECO 4 funding cannot be combined with grants from other government initiatives like SHDF or HUG. However, it can be used effectively to "infill" leaseholder properties within projects that receive SHDF or HUG funding. This allows for more comprehensive energy efficiency upgrades across mixed-tenure buildings.

General Challenges with Grant Schemes

Grant schemes often fall short in supporting retrofit projects in mixed-tenure buildings due to four main issues:

1. Florrie's Law and grant scheme contribution caps significantly limit the amount local authorities can recharge to leaseholders, making deep retrofit projects difficult to fund.

2. The unpredictability of grant availability and eligibility criteria hinders strategic planning for retrofit projects.
3. The short application and delivery windows for grant funding do not align with the extended time frames needed for leaseholder consultations and approvals.
4. Social housing grant schemes allocate funding on a per dwelling basis and can exclude leaseholders from subsidies thus making it difficult to obtain agreement to proceed with work.

As far as possible, councils should seek to mitigate these challenges through careful planning and good communication, ensuring that projects are both feasible and compliant with legal obligations. However, there is scope for grant schemes to be better designed to take account of the mixed tenure context - this is discussed in Policy Recommendations.

8. Worked examples

This section examines the principal considerations for five retrofit measures: glazing, external wall insulation, roof insulation, communal heating, and solar PV. These give examples of understanding lease constraints, and how to apportion costs fairly, while ensuring compliance with the Landlord and Tenant Act 1985. By carefully considering the legal, financial, and practical aspects of these measures, it provides guidance on how to navigate the complexities of recharging leaseholders while improving building performance.

Glazing Replacement

Lease Considerations

Before embarking on glazing replacement, review lease agreements to understand the responsibilities and cost recovery options:

- **Landlord's vs leaseholders' responsibility**: Windows may be either the leaseholders' or landlord's responsibility depending on lease terms.
- **Improvement vs. repair:** Even where leases do not allow for improvements, changing single-glazed windows for double-glazing may often be delivered under the landlord's repairing covenant when windows need replacing, as double-glazing is required in most replacement situations under building regulations. Higher efficiency (e.g. triple glazing) or higher quality glazing may also be shown to have lower lifetime costs and therefore may be considered reasonable (see Section 1 and Section 3).
- **Access:** Replacing windows generally requires access to both the interior and exterior of a flat. Landlords must adhere to the lease's terms regarding notice and consent, ensuring they minimise disruption and respect the leaseholder's right to quiet enjoyment of their property.

Ancillary Measures

When replacing windows, it's important to consider how the work might interact with other potential upgrades or repairs:

- **Insulation Coordination**: Ideally, window replacement should be coordinated with external wall insulation (EWI) projects. Installing windows first allows for insulation to be wrapped around the frames, reducing thermal bridging. If the order of operations is reversed, the thermal performance of the insulation could be compromised.

- **Ventilation Impact**: Upgrading from single to double-glazing could reduce natural ventilation, potentially leading to moisture issues. In many cases, older windows with poor seals contribute to passive ventilation, and replacing them with more airtight units can exacerbate humidity problems. It may be necessary to include trickle vents in the new glazing. A more comprehensive solution, such as mechanical ventilation, may be required particularly if the building already has a history of condensation problems. Depending on the terms of leases this can require additional negotiation with leaseholders over costs and access requirements.

Appraising Costs and Recharge

The cost of replacing glazing can be substantial, and landlords must approach cost recovery with careful consideration to ensure compliance with the Landlord and Tenant Act 1985.

- **High Costs vs. Low Savings**: Double-glazing is one of the most expensive retrofit measures, with costs potentially reaching £18,000. However, the energy savings are relatively modest. For instance, the Energy Saving Trust estimates annual savings of around £120 for a gas-heated, semi-detached house after replacing single glazing. For flats, particularly those that already have some form of double or secondary glazing, savings could be even lower, making it difficult to justify these costs solely based on energy savings.

Given these dynamics, landlords can:

- Provide a clear and transparent breakdown of costs, including material costs, labour, scaffolding, and any ancillary services.
- Demonstrate how these costs have been apportioned to ensure fairness, particularly if some flats have significantly fewer windows.
- Justify the investment, not just in terms of energy savings, but also in terms of preventing further deterioration, reducing future maintenance costs, and complying with updated building standards.

Building Safety Works

If glazing replacement coincides with scheduled building safety works (e.g. addressing cladding issues), the efficiency of the project can be maximised by utilising scaffolding for both safety works and glazing replacement. Leaseholders should be charged proportionately for the shared use of scaffolding and other access-related costs. However, it will be important to ensure that qualifying leaseholders, those protected

from paying for historic safety defect remediation under legislation, are not unfairly charged for these additional works.

Ensure that any materials used in glazing replacement meet current fire safety regulations. This is particularly important in high-rise buildings or those undergoing other safety upgrades, where non-compliant materials could negate other safety measures and approval from the Building Safety Regulator would be required for the works.

External Wall Insulation (EWI)

Lease Considerations

When considering the installation of External Wall Insulation (EWI), carefully review lease agreements to consider:

- **Maintenance vs. Improvement:** EWI is often seen as an improvement rather than routine maintenance. While maintenance costs are typically recoverable through service charges, improvements may not be unless explicitly stated in the lease.

  Part L of the Building Regulations requires that when more than 25% of a building's thermal element (e.g. external walls) is being repaired, replaced, or renewed, the element must meet a specific U-value (0.3 W/m²K for walls). This effectively mandates insulation when undertaking significant repair work. In such scenarios, EWI could be considered necessary and therefore recoverable as a maintenance cost.

Ensure the lease allows the works to go ahead and whether recovery of these costs is possible from leaseholders. If the lease excludes improvements, landlords may need to consider negotiating with leaseholders and exploring alternative funding rather than solely through the service charge.

Appraising Costs and Recharge

The installation of EWI is a major undertaking with significant upfront costs. These costs need to be assessed and apportioned in a manner that is fair, transparent and in accordance with the lease:

- **Cost Range:** The cost of EWI can vary typically ranging from £4,000 to £7,000 per flat. This cost includes materials, labour, and associated expenses such as scaffolding and professional fees. It is essential to provide leaseholders with a detailed breakdown of these costs, including how their individual charges have been calculated.
- **Fuel Bill Savings:** One of the key benefits of EWI is the potential reduction in heating costs. If the expected savings are substantial, they can help justify the initial expenditure. For example, in some cases, EWI can reduce heating bills by up to 25-30%, which can significantly improve the payback period of the investment. Landlords should communicate these potential savings to leaseholders, highlighting the long-term financial benefits alongside the immediate costs (See Section 4).

Ancillary Measures

EWI installation can have several implications for the building's overall performance, requiring landlords to consider additional measures:

- **Ventilation Needs**: Adding insulation to a building can lead to moisture issues in the home if not properly managed. Landlords should assess whether additional ventilation measures, such as installing trickle vents or mechanical ventilation systems, are necessary to maintain indoor air quality.
- **Grant Schemes:** If ventilation equipment is required for a project to be PAS 2035 compliant, then grant funding could be dependent on the installation of this equipment. Depending on lease terms, negotiation and agreement with leaseholders may be required to install ventilation inside individual flats.
- **Coordination with Other Works**: If the building also requires new glazing, it is advisable to carry out window replacements before or simultaneously with the EWI installation. This allows the insulation to be wrapped around the window frames, minimising thermal bridging and maximising the overall energy efficiency of the building envelope.

Properly coordinating these measures can reduce long-term costs and improve the overall performance of the building, making the initial investment more justifiable.

Building Safety Works

Where EWI installation overlaps with scheduled building safety works, landlords should carefully plan the execution to optimise costs and avoid overburdening leaseholders:

- **Shared Scaffolding Costs:** If scaffolding is required for both EWI installation and safety-related repairs (such as cladding replacement), these costs should be shared proportionately among all affected leaseholders. However, those leaseholders who are exempt from paying for historic safety defects under the Building Safety Act should not be charged for EWI installation if it is directly associated with rectifying such defects.
- **Compliance and Material Selection:** EWI materials must meet stringent fire safety standards, particularly in high-rise buildings. The chosen insulation materials should be non-combustible or have a low fire spread rating to comply with the latest building safety regulations.

By considering these factors, landlords can ensure that EWI installation is conducted in a manner that is fair, compliant with regulations, and beneficial to both the building's energy efficiency and the safety of its occupants.

Roof Replacement with Insulation

Lease Considerations

When considering roof replacement with insulation, the lease agreement plays a crucial role in determining whether the costs can be recharged to leaseholders. Typically, the roof is a common part of the building, making it the landlord's responsibility to maintain and replace it as necessary. Considerations for the works will be:

- **Lifetime of Existing Roof:** If the roof is nearing the end of its natural lifespan or is in disrepair, replacement with added insulation may be seen as part of necessary repairs rather than an improvement.
- **Impact on Mid- and Ground-Floor Flats:** Insulation primarily benefits top-floor flats by reducing heat loss. The costs will be shared across all the flats in the block.

Ancillary Measures and Maintenance

Adding insulation during a roof replacement can impact the building's ventilation. A whole-house assessment may indicate a need for additional ventilation measures, especially in top-floor flats. Proper maintenance of the roof and insulation will be necessary to ensure long-term performance and compliance with modern standards.

Appraising Costs and Recharge

Costs should be appraised carefully, considering that:

- **Fuel Cost Savings:** Insulation benefits top-floor flats the most, as they experience the most heat loss through the roof.
- **Grants:** If SHDF grants are available, they may only apply to top-floor flats. In such cases, landlords will need to consider how to distribute costs fairly across the building, considering lease terms around service charges allocation and likely obligations under leases for all flat owners to contribute to the roof works.

Building Safety Works

Building safety works may provide an opportunity to coordinate roof replacement with other necessary building safety works, such as the removal of unsafe cladding. Landlords should consider utilising scaffolding for multiple purposes to minimise costs.

However, qualifying leaseholders[29] are protected from costs associated with replacing unsafe cladding or other historical safety defects. Additionally, any materials used in roof replacement must meet current combustibility standards to ensure compliance with safety regulations.

[29]For guidance on qualifying leases see: https://www.gov.uk/guidance/qualifying-date-qualifying-lease-and-extent

Renewable Communal Heating Systems

Lease Considerations

When replacing communal heating systems with renewable options (e.g. a central plant with a ground source or air source heat pump), it is crucial to examine the lease:

- **Heating and hot water supply:** For buildings with communal heating the lease often covers the landlord's obligation to supply heating and hot water services. This may mean that supply costs are through the service charge.
- **Repair/renewal obligations:** Determine if the lease allows to charge for repair of the heating system.[30]
- **Access rights:** Ensure the lease grants the landlord access to individual flats for installing or maintaining communal heating systems.

Ancillary Measures and Maintenance

Installing a renewable communal heating system may require:

- **Heat metering:** Individual heat meters in each flat to accurately measure and charge for heating.
- **Heat Interface Units (HIUs):** Most installations will require HIUs in each flat to facilitate connection to the communal system. If these are required, consider whether the lease allows for their installation and who is responsible for maintenance.
- **Maintenance and replacement:** Regular maintenance of the plant and distribution system is essential to ensure efficiency and longevity. The cost of maintaining and eventually replacing components should be factored into lifetime costs.

Appraising Costs and Recharge

- **Lifetime costs:** Renewable heating systems generally have higher upfront costs but potentially lower maintenance costs and a longer operational life. Landlords should evaluate these lifetime costs against the lifetime of traditional gas systems, which may have shorter lifetimes and require additional replacement costs.

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[30] See one case in this area: Southwark vs Michele Baharier [2019] UTT

- **Energy bill impact:** Renewable systems may or may not lead to lower energy bills for leaseholders. See Section 4 for a discussion of appraising costs and benefits for different leaseholders.
- **Equivalence with a gas system**: If it is established that the lifetime costs, for the leaseholder, are higher than continuing with a gas system, it could be appropriate to consider options to charge leaseholders the equivalent of a replacement gas system with an agreement that additional costs are subsidised by the landlord.

Solar PV on Existing Roof

Lease Considerations

Installing Solar PV on existing roofs presents the following lease considerations:

- **Lease terms**: Verify if the lease allows the landlord to undertake improvements and whether such costs can be recharged. Unless there is already a PV system in place, an installation would almost certainly be considered an improvement rather than part of necessary repair and maintenance. As such, consideration of the benefits to the leaseholders is likely to be important in considering whether recharging of costs is reasonable - see Section 1.
- **Replacement and warranties:** Check when the roof was last replaced or repaired so as not to void any warranties when installing PV.

Appraising Costs and Recharge

Charging leaseholders for Solar PV installation can be complex:

- **Direct benefit**: If the solar electricity generated cannot be supplied directly to individual flats, carefully consider whether it is reasonable to charge leaseholders. If the electricity is used solely for communal areas, then carefully assess what proportion of communal electricity demand can realistically be provided by the panels, the value in the reduction in service charge from lower bills, and any export payments.
- **Maintenance and upkeep costs:** Given the 25-year lifespan of Solar PV and the need for inverter replacement after about 10 years, incorporate this into lifetime cost calculations with consideration to the remaining length of the lease.

Ancillary Measures and Maintenance

- **Maintenance requirements:** Solar PV systems require minimal maintenance, but landlords should plan for periodic checks and potential inverter replacement.
- **Integration with other works:** If roof repairs or replacements are recent, it may be advantageous to schedule Solar PV installation concurrently to reduce costs. With flat roofs in particular check that the installation of solar panels will not invalidate the warranty of the existing roof.

Building Safety

- **Fire safety compliance:** Follow the RC62 Fire Protection Association guidance and MCS standards to ensure that the Solar PV installation does not compromise building safety.
- **Material combustibility:** The materials used in both the roof and Solar PV systems must be non-combustible to meet current safety regulations.

9. Policy recommendations

1. Clarification of Florrie's Law Scope

Local authorities require clear guidance on whether Florrie's Law applies to the cumulative costs of all major works within a five-year period or if it is limited to specific measures. Discussion with lawyers and local authorities in this project has found both interpretations used. The current ambiguity around the interpretation of the £15,000 cap under Florrie's Law creates significant challenges for local authorities planning large-scale retrofitting projects. This clarification will ensure that local authorities can plan and execute retrofitting projects more effectively, without the risk of inadvertently facing legal challenges from leaseholders.

The £15,000 cap imposed by Florrie's Law was established in 2014. There is no provision in the regulations for ongoing upward adjustment to account for inflation. Given the rising costs of construction and the increasing scope of retrofitting projects necessary to meet the UK's carbon reduction targets, an immediate policy revision should increase the cap in line with RPI inflation. As set out in the guidance, adequate access to affordable finance must be in place for leaseholders to manage the financial costs of retrofit. Additionally, the cap should be indexed to inflation to ensure that it remains relevant in the future. This adjustment would provide local authorities with more financial flexibility to undertake necessary retrofitting projects while still offering protection to leaseholders from exorbitant recharges.

2. Updating Section 20 Consultation Regulations

Section 20 of the Landlord and Tenant Act 1985 needs to be updated to reflect modern communication methods and to make the process more efficient and relevant for landlords and tenants. The current threshold of £100 for qualifying long-term agreements and £250 for qualifying works are also outdated and no longer reflect the financial realities of maintaining and improving buildings. These thresholds should be significantly increased to reduce the administrative burden on local authorities and leaseholders alike.

Furthermore, the consultation process should be modernised to allow for digital communications and online platforms, for those that have access to the interent. This would expedite the consultation process and improve transparency. Introducing flexibility in the consultation timelines would also help accommodate the often tight schedules of funding schemes for energy efficiency improvements.

3. *Statutory reform to allow for reasonable retrofit in leases*

Many leases do not allow for improvements at all. This can restrict landlords from installing even basic insulation measures on blocks. Some London councils have thousands of tenancies with these types of leases, effectively excluding large numbers of people from the benefits of retrofit.

To support the UK's carbon reduction goals, a simple and clear legal basis for local authorities and other landlords is needed so they can proceed with retrofitting projects at reduced potential for disputes and legal challenges in mixed tenure settings.

A consistent and fair way for reasonable retrofit measures to be undertaken and charged to leaseholders can be achieved with an 'implied term'[31]. Changes to the existing legal framework around leases would be needed, most likely at primary legislative level to ensure energy efficiency enhancements are more accessible and affordable. Existing and established protections reliant on reasonableness would remain to protect leaseholders.

This would be achieved through an implied right for freeholders to recover reasonable costs associated with qualifying energy efficiency improvements, along with a qualified duty for all lease parties to consent to energy efficiency improvements. These rights would not be absolute and would be limited to *qualified* energy efficiency measures best defined by secondary legislation.

The freeholder's right under any such implied term would be further balanced with the existing requirements that costs are reasonable and proportionate to the benefits gained according to protections provided by the Landlord and Tenant Act 1985.

Additionally, reforming Section 35 of the Landlord and Tenant Act 1987 could make lease variation for retrofit practicable, even where majority agreement between parties is not achievable[32].

4. *Consider leaseholder consultation requirements in funding scheme design*

The timelines of funding schemes aimed at social housing retrofitting often do not align with the legal requirements for leaseholder consultation under Section 20 of the 1985 Landlord and Tenant Act. To avoid conflicts and ensure the successful implementation of retrofit projects, funding schemes should provide sufficient time for the necessary consultation processes. Government should factor in these legal timelines when

[31] See draft bill developed by Prof. Susan Bright (Oxford University), Mark Routely (TLT Solicitors), Future Climate): http://futureclimate.org.uk/wp-content/uploads/2017/07/Leasehold-Reform-BILL-6_07_17.pdf

[32] This is discussed in Bright, S., and P. Morrison. "Varying Long Residential Leases: When, Why and Reform." *Conveyancer and Property Lawyer*, vol. 2019, no. 4, Sweet and Maxwell, 2019, pp. 332–54

designing funding schemes, allowing local authorities the time needed to fulfil their obligations to leaseholders while still taking advantage of available funds.

5. Funding Schemes designed for whole buildings

Historically, funding schemes for retrofitting focus on individual dwellings, rather than considering the building as a whole. This approach is particularly problematic in mixed-tenure buildings. Recent policy and scheme design is more conducive to building-wide approaches however more flexibility and time is required to better consider the actual energy performance and retrofit potential of the building as a whole. Such a shift would streamline the retrofitting process, reduce administrative complexity, and ensure that the benefits of retrofit measures are available to all residents.

Disclaimer

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Glossary of terms

ASHP	Air Source Heat Pump
DESNZ	Department for Energy Security and Net Zero
ECO	Energy Company Obligation
EPC	Energy Performance Certificate
EWI	External Wall Insulation
FSMA	Financial Services and Markets Act 2000
FTT	First-tier Tribunal (Property Chamber)
HIU	Heat Interface Unit
HRAs	Housing Revenue Accounts
LTA	Landlord and Tenant Act
PHPP	Passive House Planning Package
SAP	Standard Assessment Procedure
SHDF	Social Housing Decarbonisation Fund
TPAS	The Tenant Participation Advisory Service

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