

LONDON BOROUGH OF CAMDEN	WARDS: All
REPORT TITLE: Leaseholder Access Options	
REPORT OF: Director of Housing	
FOR SUBMISSION TO: Housing & Fire Safety Advisory Panel	DATE: 29 January 2025
<p>SUMMARY OF REPORT: This report provides an overview of the options available to the Council for gaining access to Leasehold properties in order to carry fire and other safety compliance inspections and works.</p> <p>Local Government Act 1972 – Access to information No documents that require listing were used in the preparation of this report.</p> <p>Contact Officer: Maria Jacobs, Head of Neighbourhoods, Housing Services, 5 Pancras Square, N1C 4AG, maria.jacobs@camden.gov.uk</p>	
<p>RECOMMENDATIONS:</p> <p>The Panel is asked to note the report.</p>	

Signed:



Director of Property Management

Date: 17 January 2025

1. INTRODUCTION

- 1.1 As the landlord/freeholder of c. 33,000 Council homes, Camden has a range of statutory duties for fire and building safety compliance checks, repairs and capital works. This suite of responsibilities is sometimes referred to as 'FLAGEL' and covers fire, Legionella (water hygiene), asbestos, gas, electrics and lifts.
- 1.2 Details of the responsibilities for safety checks and where necessary installing safety measures can be found on the Council website at - [Safety checks in your council home - Camden Council](#).

2. London Borough of Camden's Leaseholders

- 2.1 Camden leaseholders have a long leasehold interest (typically 99 years plus) in their property and the terms of leases can vary depending on the type of property or when they were issued. In all cases there will be an obligation in the lease for the leaseholder to provide access upon reasonable notice from the freeholder along with their appointed agents.
- 2.2 When attempting to access to any Council homes whether rented or leasehold, the Council must be mindful of the interpretation of 'reasonableness'. Following extensive case law in the matter the Council follows the protocol for requesting access summarised in the table below:

First Access Attempt	<ul style="list-style-type: none">• Appointment letter• 14 day notice letter• 7 day notice letter• 3 days before access contractor calls with reminder
2nd Access Attempt	<ul style="list-style-type: none">• 14 day notice letter• 7 day notice letter• 3 days before access contractor calls with reminder• 1 day before access contractor calls with reminder
3rd Access Attempt	<ul style="list-style-type: none">• Appointment letter• 7 day notice letter• 3 day notice letter• 1 day before access contractor calls with reminder

The detailed Access Protocol is attached as an appendix to the report.

- 2.3 If, after following the protocol, the Council is unable to obtain access to a property it must consider how to approach the breach of the lease terms as follows:
- a) A 'legal' Warning letter as a final notice
 - b) First Tier Tribunal Application – if there is any dispute over the terms of the lease and interpretation.
 - c) An injunction – this would (if granted) compel the leaseholder to provide access with consequences such as committal to prison or forced entry if they fail to comply

d) Forfeiture of the lease – this is a rather draconian remedy for breach of lease. If the court finds that the breach is sufficient then the lease will fall with no financial compensation for the leaseholder. Therefore, courts are reluctant to apply this in all but the most severe breaches and procedurally it must be done correctly.

2.4 There are other challenges when dealing with access to leasehold homes e.g. they may be sub-let or the Council may not have up to date information on the leaseholder as would be the case for a tenant.

2.5 Where the Council has a capital programme of work, the team requiring access will engage the services of a Resident Liaison Officer (RLO) who works with residents to facilitate access. This has proved very successful, and Camden will continue to review how to best support residents to provide access for the works to undertaken.

Conclusion

2.6 Legal action is costly and reliant on the availability of court time and Camden must be confident that the evidence presented is to a sufficient standard for a Judge to decide in the Council's favour. Currently, courts are experiencing a significant backlog and waiting times have increased; the Council needs to take a balanced approach on a case-by-case basis and consider to how to escalate any action to ensure the best chance of success.

3. COMMENTS OF THE BOROUGH SOLICITOR

3.1 Legal Services have been consulted in the preparation of the report and have no specific comments.

4. COMMENTS OF THE EXECUTIVE DIRECTOR OF CORPORATE SERVICES

4.1 The purpose of this report is to provide an overview of the options available to the Council for gaining access to Leasehold properties in order to carry fire and other safety compliance inspections and works. There are currently no financial implications arising from this report. Finance will work with the service to monitor and ensure as much as possible that associated costs are funded from existing resources.

5. ENVIRONMENTAL IMPLICATIONS

5.1 There are none.

6. APPENDICES

6.1 Property Management access protocol

ENDS

APPENDIX: PROPERTY MANAGEMENT ACCESS PROTOCOL

No Access Procedure for Leaseholder Property

Purpose and Scope

This document sets out an operational procedure governing the process to be followed to obtain access LB Camden leasehold properties to undertake inspections, repairs and compliance checks for our leaseholders. There is also a separate but similar procedure for Council secure tenants. The objective is that having gone through this process the vast majority of Leaseholders will give access. Should they not then legal proceedings will be required before access is achieved.

Please note that it is open to officers / contractors to take extra steps over those specified in this procedure, such as visits or phone calls to the leaseholder / resident. Please record those additional steps for evidential purposes and add them to any statement that may be required should this reach the stage of beginning legal proceedings.

Who is this policy for?

Council officers and contractors

Legal framework

For Leaseholders there are provisions in the leases which allow the Council to enter the premises to undertake repairs. Should you be in any doubt whether the proposed works fall within those for which the Council has the right to enter the Camden Project Manager should seek advice from the LB Camden Legal Services.

Vulnerable Leaseholders

The Council recognises that there may be several reasons why a leaseholder does not wish us to be in their home. If we become aware that a leaseholder is vulnerable for any reason, we will work with them to understand their concerns and the reasons why they may not provide access to their home. If flagged as a vulnerable customer and/or there is third party contact in place, we will work with all the relevant parties and use all available and appropriate channels.

If the Council is unable to contact the customer directly e.g., third party authority, NOK or statutory agency. The Council aims to make the process simple and not stressful for our residents. For all cases before the Council takes proceedings we will have completed a proportionality (vulnerability) assessment for which there is a specific template.

The Camden Project Manager will work with the relevant housing officer to agree an approach on how to deal with vulnerable residents and to ensure the proportionality assessment is completed.

Access to council Leasehold properties

The following process will be followed to gain access. All letters must be appropriately addressed to the leaseholder by name (please note that the Leaseholder may not be the same as the person resident at the property if for example the property is sub-let but it is important that correspondence is sent to the named Leaseholder(s)) and sent by first class

post except where otherwise required to be delivered by hand. If the leaseholder is absent from the property, then the correspondence must be sent to both the leaseholder and the person residing in the property who will need to provide access for the works.

All transactions/dealings with the leaseholders and residents of the property if the leaseholder is not residing at the property must be documented including any additional steps taken over and above those specified below. Contractors will be required to provide an engagement tracker to the project manager, including notes of any dealings with the leaseholder and / or resident and copies of all letters sent as outlined below.

Action	Days from previous stage	Total Days
1. LBC writes to the Leaseholder / resident to let them know that Contractor will be contacting them regarding works at the property. LET 0	0	0
2. Contractor issues first access letter- please contact us to arrange an appointment or these are the appointments available to you. LET 1	7	7
3. No access – contractor tries to contact the Leaseholder / resident by door knocking or phone / email. Contractor to leave card if non access on attendance at the property.	7	14
4. Contractor Second access letter issued highlighting that the Leaseholder / resident didn't get in touch to book their appointment and asking them to contact us to arrange an appointment. LET 2	7	21
5. No access – contractor tries to contact the Leaseholder / resident by door knocking or phone / email. Contractor to leave card if non access on attendance at the property.	7	28
6. Contractors 3 rd letter – a fixed date for access as well as client contact for access and highlighting that this will be referred to legal if they don't provide access. LET 3	7	35
7. No access – contractor tries to contact the Leaseholder / resident by door knocking or phone / email Contractor to leave card if non access on attendance at the property.	7	42
Attempt phase over		

<p>8. Contactor to confirm to the Project Manager that all the attempts outlined have taken place and then they agree with the Project Manager next steps. At this point the Project Manager will confirm if this project will progress to the next steps of the process and arrange for Vulnerability/Mental Health Checks by the relevant Neighbourhood Housing Manager and completion of the proportionality assessment.</p>	3	45
<p>Should the case be progressed – so either no concerns or the professional meeting agrees appropriate to proceed</p>		
<p>9. Housing team or the Project Manager to issue pre-agreed Legal letter to include a paragraph asking if the Leaseholder / resident has any particular circumstances they wish to be considered and a fixed date for access as well as client contact for access. To be personally delivered by a Camden Council officer</p>		
<p>10. Lead Officer/contractor to attend on the fixed date and if no access a calling card is to be left</p>		
<p>Check back that all steps taken and no further response from leaseholders Housing Officer and Manager to agree next step</p>		
<p>Instruct Legal or 3rd party Solicitors</p> <p>Legal letter 2 – being a formal letter before action to be drafted by LB Camden legal services, sent by first class post for breach of lease and failure to grant access. Will include specific details of the lease etc. This letter puts the onus on the leaseholder to contact the Council to arrange the works and if that is not done within 21 days the Council will issue forfeiture proceedings (explain what they are) with not further notice and seek costs</p>		

Guidelines for contractors

Contractors will ensure that they:-

- Offer appointments during the agreed Camden working hours. We can only carry out noisy works Monday to Friday from 8am to 6pm & Saturday from 8am to 1pm. Builders carrying out noisy building works outside of these hours may be liable for prosecution under the Control of Pollution Act. We can apply for prior consent to work outside of the permitted hours under Section 61 of the Control of Pollution Act 1974.
- Keep appointments and arrive on time
- Give the resident enough time to get to the door
- Introduce themselves and provide proof of identity or use any special passwords that may have been set up by the resident
- Be polite and respect the resident and their home
- Listen carefully and be helpful
- Leave a calling card if the nobody is present, providing contact details

All relevant documents relating to the attempts for access should be logged and saved. Therefore:

1. Copies of all three letters informing of visits should be kept and attached to the witness statement.
2. A note taken at the time the cards are pushed through the door confirming that this happened, the address and who delivered the card. The note signed by the individual.
3. A record taken at the times of anything relevant said by the tenants
4. Details of any other steps taken, calls made etc
5. If the leaseholder is absent from the property and they have notified Camden of an alternative address then Camden can write to the leaseholder's alternative address. However, the process recommends for another letter to be sent to leasehold property address in the name of the occupier. We would not necessarily know the name of the occupants. In this case the letter should be addressed to the 'resident' rather than a name person.

Contractors will be provided the relevant template letters for their projects at the prestart meeting. The Camden Project Manager will be responsible for confirming whether the works require for the procedure to progress to the vulnerability assessment stage and will support the contractor with obtaining the information to enable this stage of the process to be completed and will advise if the contractor needs to support in this stage onwards.

If at any stage in the above process a resident is not inclined to allow works to their property (internally or externally), it is to be noted that the above process must still be adhered to.

Failure by the Contractor to adhere and be able to demonstrate this process will result in this property not being accepted by LBC (Client) as a non-access property and will remain the responsibility of the Contractor to obtain access or provide the demonstrable information as set out above.

The only exception to this is if a resident is abusive in any way towards the Contractor. In this instance, contracts must ensure LBC (Client) is informed of such instances and given a full incident report for LBC usage. This is to ensure that all parties, including the resident are safeguarded. This applies to whether it be the first, second or third visit.