

UPDATE ON LOFTS/LIFTS/BALCONIES

1. This note explains where we are on the lofts/lifts/balconies project. It also sets out an issue which has arisen at a late stage in relation to the sale of one of the lofts, together with some preliminary thoughts on how it might be addressed.

What we agreed

2. At the general meeting on 7 May 2019, shareholders agreed to proceed with the sale of the lofts, subject to certain conditions. We also agreed to install walk-through lifts in structures integrated with the rest of the building, replacing the back balconies with small rooms and preserving separate back doors for those on the ground floor who wish to keep them. The Board gave assurances that there would be opportunities to take stock and review the position at key points as the project proceeded.

Key next steps

3. As explained at the meeting, the key next steps following the 7 May decision are:

- i. The issue of Section 5 notices as required by the Landlord and Tenant Act. The purpose of these notices is to offer the lofts for sale to other leaseholders on the same terms as to the top floor leaseholders.
- ii. Signing legal sale agreements with the purchasers of the lofts.
- iii. Commissioning an architect and other necessary professional advisers to take the project to the next stage. That stage involves the production of more detailed designs and undertaking any necessary ground and other investigations (as discussed at the 7 May meeting). It will allow a quantity surveyor to produce a more robust costing of the project than has been possible before. It will also provide a much better idea of what the lift installations might actually look like. Technically, it is referred to as RIBA Stage 2 (Stage 1 being the preliminary stage we have completed so far).

4. These steps need to be taken in sequence. The sale agreements cannot legally be signed until the Section 5 notices have been issued and recipients given a statutory two-month period in which to respond. The agreements can, however, be drafted during this period and hopefully signed as soon as the two-month period is over. RIBA Stage 2 will involve substantial expenditure (possibly around £50,000 to £60,000). The Board does not wish to commit to this without signed sale agreements committing the loft purchasers.

The Section 5 notices

5. The Section 5 Notices have been drafted by BMFL's solicitors - BDB Pitmans - and are ready to be issued. Leaseholders can expect to receive them shortly. At the time of the 7 May meeting it was thought that the Notices needed to have drafts of the sale agreements attached. Later legal advice is that this is not necessary, if the main conditions of the sale are included in the notices (as they are).

6. When you receive them, leaseholders will see that the notices are necessarily written in formal legal terms. Leaseholders can, of course, take their own legal advice, if they wish. But the Board has been advised that in practice the notices are a legally necessary waste of time. With the exception of one loft (on which see later) the conditions of sale can only be met by the leaseholders of the top floor flats.

The sale agreements

7. The sale agreements, and necessary accompanying lease variations, have not yet been drafted. They have been held up while the top floor purchasers have been deciding which solicitor should represent them. They have now agreed to appoint Osbornes to represent them jointly, which should expedite the process. The agreements will follow the non-binding heads of agreement negotiated some time ago. The cost of the legal agreements, including those incurred on behalf of the freehold, will be met by the top floor leaseholders.

8. The sale agreements, once signed, will be subject to a number of conditions before they can come into effect. The two most significant are:

- i. Obtaining planning permission. We cannot take planning permission for granted. But the advice of our planning consultant is that it is likely to be obtained, though possibly with some conditions (e.g. about the external appearance of the lift structures and loft conversions).
- ii. Confirmation that the proceeds of the sale of the lofts, after tax, together with the cash balances forecast as likely then to be available within the Reserve Fund, are sufficient to pay for the installation of the lifts, the infill around the lifts and the retiling of the roof without any significant additional call on the service charge. Better assurance of that will not be obtained until tenders for the work are received (assuming sufficient allowance is made for contingencies as the work proceeds). But the purpose of RIBA Stage 2 as described in paragraph 3 iii is to give us a much better handle on it. An important decision point for shareholders about whether to proceed will come once RIBA Stage 2 is completed.

9. Mark Ruthven, the architect who drew up the illustrative plans for the lifts, has decided that he does not wish to continue with the project. The Board and the top floor representative have agreed an alternative in his place for the next stage of the project as described in paragraph 3 iii once the sale agreements are signed. We will inform leaseholders of the new architect's name as soon as we have reached agreement with him. His fee will be less than that proposed by Mark Ruthven.

10. As requested at the 7 May meeting, Chris Kelly has been in touch with Sam Price, the structural engineer known to some residents. Price and Myers have provided a fee quote for the structural engineer input to the next stage of the work. We are considering this alongside proposals from other structural engineers.

The new issue and possible solutions

11. The project was put forward on the basis that the top floor leaseholders had indicated that all eight of them wished to buy their lofts – though none are legally committed to that until the sale agreements are signed. We now understand that – disappointingly - one top floor leaseholder (number 47) has decided not to buy his loft.

12. The Board does not think this decision necessitates abandoning the project at this stage. As a precaution, we have, however, begun to consider ways of addressing any funding shortfall which it may cause.

13. It appears to the Board that there are four possible approaches:

- i. The project could prove to be viable financially with only a small addition to the service charge, even without any sale proceeds from the sale of the loft above flat 47. The loft would remain the property of the freehold and would be available for communal storage. It might be possible to sell it at a later stage to a future owner of flat 47.

This would be the most straightforward outcome. But we will not know if it is feasible until RIBA Stage 2 is completed.

- ii. If after RIBA stage 2 is completed it does look likely that the project will cost more than is available from the proceeds of the loft sales and the then forecast balance in the Reserve Fund, any excess could be spread over a period of years, so the effect on the service charge is smoothed.

A number of leaseholders have indicated that they would be prepared to make a loan to the freehold to make this possible. The loan would be repaid out of the service charge over a number of years, possibly index-linked to reflect inflation. If we do not sell the lofts and install lifts, we still have to replace the balconies and retile the roof. At the time of the 7 May meeting it was tentatively estimated that this could require a one-off addition to the service charge of between £29,600 and £35,000 for every leaseholder. This group of leaseholders would prefer to use their money on something which would provide a tangible benefit. It is possible that others might feel the same and be prepared to join the consortium.

The Board is seeking confirmation from our legal advisers that this approach is allowable under the terms of the leases. Further work would be needed to structure the loan appropriately, in consultation with leaseholders.

To give an example of what this might mean: A deficit of, say, £250,000 repaid from the service charge over a 10-year period would require a contribution from each leaseholder of around £800 a year for each of those ten years, plus inflation.

This does not necessarily imply an increase in the current level of the service charge. The project would involve the largest amount of money spent on Brookfield, and the most significant change to the building, for many years. With an old building it is never easy to predict with confidence the future

problems which may arise. But it is possible that completion of the project could be followed by a few years without any substantial additional building work being required. If that were to be the case, it might be possible to absorb the repayment of the loan while still keeping the service charge at broadly the same level as now, apart from inflation.

As in option i, the flat 47 loft would remain the property of the freehold, available for communal storage. In the event that the owner of flat 47 changed his mind about purchasing the loft, or if a subsequent owner of the flat decided to buy the loft, the sale proceeds would be to the benefit of the freehold, thus reducing future calls on the service charge.

- iii. If neither i nor ii proved to be viable, the same consortium of leaseholders have indicated that they might be prepared to consider purchasing the loft collectively.

This would be largely altruistic. Such purchasers would be unlikely to get any revenue or any money back on their investment. Payback would only happen if the leaseholder of the flat below changed his mind about buying the loft (e.g. when he saw what other loft purchasers had been able to do with their additional space) or if a subsequent purchaser of his flat at some indeterminate date in the future decided to do so.

It remains to be seen whether this option is viable. The purchasers would have to take into account not just the purchase price of the loft but also their share of any costs associated with the insertion of dormer windows, the creation of a roof terrace etc. The planners may insist that even unoccupied lofts have to put in such windows to achieve a uniform appearance. A provisional estimate is that such additional costs, including an appropriate share of professional fees, could amount to as much as £75,000.

This option would become more obviously viable if:

- (a) Other leaseholders were prepared to join the flat 47 loft purchasing consortium; and/or
 - (b) Some other way could be found to pay for the supplementary costs associated with purchase (e.g. some or all of the other top floor leaseholders agreeing to take responsibility in return for a charge against any future sale of the loft space); and/or
 - (c) Shareholders were prepared to agree that if nothing else happened the loft concerned could be sold for conversion into a self-contained flat after a fixed period of, say, 10 years.
- iv. If none of these options proved to be viable, and leaseholders still wanted to proceed with the project, the loft could be sold to someone else for conversion into a self-contained flat.

This might be possible. But it would not be without its difficulties, which we have yet fully to explore. It might not receive planning permission and might experience difficulty with fire regulations. If it did receive planning permission, it is unlikely that the lift would be allowed to go beyond the existing third floor level. Access would have to be up stairs from the existing third floor landing; and, unlike (we hope) an existing top floor leaseholder, a developer would probably have to pay Community Infrastructure Levy, which could affect the price paid.

Shareholders overwhelmingly voted against the possibility of allowing all eight lofts to be converted into self-contained flats, not least because of the pressure that would create for parking and other facilities. But it might be worth considering the possibility of one self-contained additional flat if that meant that the project could still go ahead without a significant addition to the service charge. An existing leaseholder has already indicated their willingness to purchase the flat on this basis. If it was decided to adopt this approach, the loft would need to be offered to others (including non-leaseholders) to ensure a competitive price.

On a contingency basis, the Section 5 notice in relation to the loft above flat 47 (and only in relation to this loft) has been drafted to allow the creation of a self-contained flat to happen, should it be agreed.

Action

14. The Board is not asking for any decisions at this point. That will come later. We are asking for:

- i. Any preliminary reactions to the options described in paragraph 13 above.
- ii. Any suggestions for alternative approaches; and
- iii. Any other leaseholders willing to volunteer to contribute to the funding of a loan, or the purchase of the loft above flat 47, should either option prove to be necessary and viable.

15. The statutory two-month period for the responses to the Section 5 notices should give sufficient time to complete the sale agreements and consider the viability and acceptability of different options to replace the funding which would have been provided by the sale of the eighth loft. That will take us to mid-November. Assuming the sale agreements are signed by that point, the Board will then commit to the expenditure necessary to proceed to the next stage of the project as described in paragraph 3 iii (RIBA stage 2). That should take a further two months or so. At the end of those two months there will be a critical decision point requiring collective discussion. It will then be possible for everyone to see if the sale conditions are likely to be met, what the financial implications are likely to be and what the lift installations are likely to look like. If shareholders then decide to go ahead, the next stage will be to produce the more detailed designs needed to seek planning permission. If instead the decision is not to continue with the project, the Board will start the work necessary to replace the balconies and retile the roof without any lifts

or financial contribution from the sale of the lofts. We would also produce an updated estimate of what that will imply for additional contributions to the service charge.

16. Very provisionally, the timetable would therefore look like this:

November 2019	Signing of sale agreements
January 2020	Completion of RIBA stage 2 and decision about whether to continue with the project; depending on that
April 2020	Submission for planning consent

Subsequent stages would depend on how long it takes to get planning consent, potentially several months.

BMFL Board
11 September 2019