

LONDON BOROUGH OF BRENT

**EXECUTIVE COMMITTEE**

**21st July 2003**

FROM THE CHIEF EXECUTIVE

FOR ACTION

NAME OF WARD  
All Wards

**REPORT TITLE : SERVICE TENANCIES – POSITION STATEMENT**

Above  Below   
**Confidential Line**  
**(Except Appendix 2)**

**1.0 SUMMARY**

- 1.1 This report follows on from an earlier report last year to Corporate Deciding Committee dealing with Service Tenancies, setting out the latest position and proposed course of action regarding parks and cemeteries and Education, Arts and Libraries caretakers Service Tenancies.

**2.0 RECOMMENDATIONS**

- 2.1 Members agree to note the progress made on service tenancies in parks and cemeteries.
- 2.2 Members agree to note the progress made on caretaker service tenancies in Education Arts and Libraries.
- 2.3 Members agree the proposed course of action in the further review of caretaker service tenancies in Education, Arts and Libraries.

**3. FINANCIAL IMPLICATIONS**

- 3.1 There are a number of employees and their families occupying accommodation owned by the Council in order to enable them better to perform their duties. Several of these individuals are paying a subsidised rent or occupancy fee.

- 3.2 In the past, certain occupants have ceased employment with the Council yet continued to reside in the accommodation provided by the Council. There is obviously a cost to the Council in not recovering rental income from such properties and, furthermore, there may be capital costs to the Council in the inability to dispose of properties which it would not otherwise wish to maintain, and, of course, it could potentially dispose of such properties and obtain a useful capital receipt.
- 3.3 The actions put forward by officers in this report involve the proposed payment of a full rent and avoidance of a situation whereby the Council is incurring a loss on such properties.

#### **4. STAFFING IMPLICATIONS**

- 4.1 Consultation was carried out last year with Unison and the General & Municipal Boiler Makers Union and there were no objections in connection with environment area tenancies and recent changes in policy.
- 4.2 In relation to school based staff, the General & Municipal Boiler Makers Union's view was that those staff should not be subjected to a change of policy until the Council has consulted with the staff, head teachers and governors in relation to their contracts of employment and service tenancies.
- 4.3 Clearly, the Council is not in a position unilaterally to vary such tenancies or related contracts of employment because of the complexities surrounding employment of school staff and the ability of governors to impose terms and conditions.
- 4.4 The Director of Education, Arts and Libraries and the Director of Human Resources and Diversity will be taking forward a consultation process in respect of the Education Arts and Libraries properties with a view to agreeing a policy similar to that in respect of other service tenancies.
- 4.5 Where there are no service tenancy agreements available in Community Schools model agreements are being sent to schools for governing bodies to agree with their caretakers. These agreements will be completed by Legal Services.
- 4.6 The school governing bodies of Voluntary Aided and Foundation Schools have responsibility for caretakers and their premises. Where these schools do not have agreements available the model agreement is being offered to their governing bodies.

## **5. ENVIRONMENTAL IMPLICATIONS**

- 5.1 There are no specific environmental implications in this report other than certain properties in parks and cemeteries are used to provide accommodation for individuals working in those areas in order to maintain a level of security within such parks and premises and hopefully reduce vandalism.

## **6. LEGAL IMPLICATIONS**

- 6.1. Service tenancies, if properly granted and documented, are not secure tenancies under the Housing Act 1985 (Schedule 1 para2). This means that a person occupying Council premises whose contract of employment with the Council expressly requires him/her to occupy those premises for the better performance of his or her duties does not have security of tenure against the Council. This is important as it means the property will not be bought under the Right to Buy and thus lost for caretakers' use and it gives flexibility as the tenant does not have the right to remain in the property. Certain properties within the curtilage of the school cannot be sold under the Right to Buy legislation in any event, but it is still essential to ensure they are occupied by service tenants to enable them to be used by caretakers. It is important to note that occupation must in some way actually assist better performance of the employee's duties – mere convenience is not sufficient. A service tenant can be required to vacate the premises at the end of that contract of employment without the Council being under any specific obligation to re-house that person, although the Council has previously agreed policies relating to rehousing which would bind it in certain individual circumstances, for example agreeing to rehouse a service tenant according to his/her needs at the time of termination of the contract of employment.
- 6.2. These provisions extend to employees not only of the Council directly, but also employees of the governors of an aided school (as then defined – this corresponds to a current voluntary-aided school). The effect is that school caretakers employed by both community schools and voluntary-aided schools can, if occupying Brent Council accommodation, be service tenants; it seems however that caretakers of foundation schools (generally formerly “grant-maintained”, not “aided”, schools) occupying Brent property will be secure tenants so the Council should not allow such occupation under a service tenancy arrangement.

- 6.3 A model form of Service Tenancy Agreement (and appropriate term for inclusion in the employment contract) is now available and should be drafted with advice from Legal Services. A copy is attached to this report as Appendix 3. It is proposed that no new Service Tenancies be granted without the authority of the Chief Executive in a similar manner to other service tenancies granted by other departments, although this proposal will have to be consulted upon as the employment arrangements for caretakers is complicated by the involvement of the school governors.
- 6.4 The property needs to be properly managed by the Service Unit granting the tenancy in order to ensure that the arrangement does not cease becoming a secure tenancy arrangement. There needs to be a link between the contract of employment and the service tenancy. Specifically, the model contractual term expressly requires the employee to live at the premises for the better performance of duties. Upon any promotion or reassignment of the employee either within or outside the Council that requirement must be reconsidered. If occupation no longer has the effect of assisting the employee better to perform his duties, the service tenancy should cease. Upon cessation of employment with the Council the tenancy must also be determined, resettlement under the appropriate paragraphs of the policy pursued, and possession sought if properties offered by way of resettlement are refused.
- 6.5 Currently service tenancy rents are set by the Director of Housing and Assistant Director of Environment, based on housing rents. This may not be possible in the case of caretakers as there may be a local agreement capping the rent charged. If this is the case then there is little incentive for a service tenant to move from the premises as any move will incur an increase in rent. Any attempt to increase the rent at the end of the term could give rise to the creation of a secure tenancy.
- 6.6 The Council is at liberty to set such policies as it would wish in respect of new tenancies but there are employment issues that need to be addressed in respect of existing agreements. If the council acts unreasonably in setting policy it can be challenged in the courts. If it acts unreasonably in varying contracts of employment it could find itself facing tribunal claims.

## **7 HOUSING IMPLICATIONS**

- 7.1 As members are aware the borough currently has a problem accommodating those in priority need and it is essential not to burden the current system with ex employees who do not have as high a priority needs as others in the system, so any policy must reflect the fact they do not have a priority need. The proposal is for an ex service tenant to be offered a nomination to a Registered Social Landlord taking into account his/her needs at the time.

- 7.2 There may be some scope for using Education Arts and Libraries accommodation for caretakers which is not required by the relevant school for use as housing accommodation although there may be security problems and of course the consent of the school would be required.

## **8 DETAIL**

- 8.1 A previous report regarding Service Tenancies Policy and Procedure was brought to the Corporate Deciding Committee in February 2002. Members agreed to a change in policy proposed in respect of service tenancies in departments other than the Education, Arts and Libraries Department. Also, Members instructed officers to review the position regarding caretaker service tenancies in the Education Arts and Libraries Department and implement similar policies and procedures.
- 8.2 The procedures and guidance in respect of new service tenancies are annexed to this report (refer to Appendix 4).

### Service Tenancies – Environmental Services

- 8.3 The current position in respect of the environment service properties is attached as Appendix 1, and members will see that almost all service tenancies have now been regularised with three properties continuing to need further action to ensure an appropriate tenancy is in place.
- 8.4 Members need to note the position in respect of the tenancies at Vale Farm and Willesden Sports Centre which have implications for the proposed PFI project at Willesden and the LIFT project at Vale Farm.
- 8.5 It was agreed by members that the rents for service tenancies would be reviewed annually so that they were in line with rents charged to Secure Tenants. The review for this year will be undertaken shortly.

### Service Tenancies - Education, Arts and Libraries

- 8.6 The position within Education, Arts and Libraries is somewhat complicated by the fact that little documentation appears to exist in relation to the Agreements under which service tenants are occupying properties, and there is effectively a joint responsibility for employment of such caretakers as the governors of the local authority maintained schools can set the terms and conditions of ancillary staff.
- 8.7 As a first stage of the review, an exercise was undertaken whereby all

schools were sent a questionnaire where they were asked to provide up-to-date information regarding caretaker properties and arrangements for any service tenancies. The results of this exercise are set out in Appendix 2, which also identifies actions, appropriate to each school, that officers will be undertaking to ensure that proper tenancy agreements and arrangements are in place. The exercise has shown that out of 80 schools,

- 35 schools do not have a caretaker who has a service tenancy as part of their terms and conditions of service
- 37 schools have service tenancy arrangements of which 18 schools having copies of service tenancy agreements
- 8 schools presently employ a caretaker without a service tenancy as part their terms and conditions of service

8.8 In seven instances legal advice has been sought either by the school direct or through the LEA for action to rectify the position of previous caretakers still occupying caretaker accommodation following their resignation. In 3 of those instances, possession has already been obtained; in another case, further information is required. Another two cases have recently been notified to Legal Services, but full instructions are still awaited from the relevant schools. One further school (Fryent Infant & Junior) was advised as to its position prior to the resignation of its caretaker – no further advice has been requested.

8.9 For the 19 schools which cannot provide a tenancy agreement, officers have drawn up a model service tenancy agreement which will form the basis of the agreement between the schools' governing bodies and their caretakers. Letters and model service tenancy agreements are being sent to

- 6 Community School governing bodies which do not have agreements in place. Governing bodies are being encouraged to put the agreement in place so as to safeguard the school and the Council.
- 3 Voluntary Aided schools where the accommodation is owned by the Council. Governing bodies are being encouraged to put the agreement in place so as to safeguard the school and the Council.
- 10 Voluntary Aided schools where the accommodation is not owned by the Council are being sent the model tenancy agreements, so as to achieve consistency.

8.10 With Foundation Schools, where no contract is in place, model agreements are being offered to them for their use, although the Council does not own the property.

8.11 Officers are ensuring that any new service tenancies are granted according to similar guidance and procedure agreed for Service Tenancies in relation to non-schools based staff, so far as practicable.

- 8.12 Rents are fixed under a Provincial Agreement which dates back at least as far as 1996. When contacted, the Association of London Government was not able to provide a copy of the original Provincial Agreement, although it had copies of variations to certain of its provisions which were agreed in 1979 and 1990. Each year Caretakers' rents are reviewed provincially in the same manner that salaries are reviewed annually. Likewise the newly agreed rent levels are circulated to Authorities in the same way that the new national pay scales are.
- 8.13 Officers, having obtained up to date information regarding school service tenancy properties and arrangements, will now undertake the last stage of the review which is to consult with schools and Unions in order to develop overall policy.

Anyone wishing to obtain further information on service tenancies or other aspects of this report, other than confidential information relating to the Council's employees should contact Tim Flint, Principal Projects Officer, Human Resources & Consultancy Services on 0208937 6181, or e-mail him at [tim.flint@brent.gov.uk](mailto:tim.flint@brent.gov.uk)

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