

LONDON BOROUGH OF BRENT

**EXECUTIVE
15th November 2004**

FROM THE DIRECTOR OF EDUCATION, ARTS AND LIBRARIES

FOR ACTION

NAME OF WARD
All Wards

REPORT TITLE : SERVICE TENANCIES – POSITION STATEMENT

Forward Plan Ref: EAL-04/05-0064

1.0 SUMMARY

- 1.1 This report follows on from the last report to the Executive on 8th Dec 2003 dealing with Service Tenancies, setting out the latest position and proposed course of action regarding Education, Arts and Libraries caretakers Service Tenancies.

2.0 RECOMMENDATIONS

- 2.1 Members agree that, as from 16th November in respect of any new service tenancies of Council property held by residential caretakers at Community or voluntary-aided schools, governing bodies be requested to charge rents that are in-line with social housing rents charged by the Council to secure tenants.
- 2.2 Members note that, with one exception, all outstanding legal issues with school caretakers have now been resolved.
- 2.3 Members agree that no new service tenancies of Council property be granted to school caretakers without the authority of the Chief Executive.

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. Income cannot be recovered because of the risk that receipt of rent after termination of employment could convert the service tenancy into a protected tenancy, which would make it much more difficult to compel the occupant to leave. 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 by new resident caretakers and avoidance of a situation whereby the Council is incurring a loss on such properties. Any corresponding increase in a caretaker's salary that a school decides to award to cover the market rent will come from the school's delegated budget and will not impact financially on the Council.

4 STAFFING IMPLICATIONS

- 4.1 The Director of Education, Arts and Libraries has held consultation meetings 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. There have been meetings with Unison and the General & Municipal Boiler Makers Union (GMB) where proposals regarding changes to setting of rents have been discussed.
- 4.2 Following meetings with Unison and the GMB, agreement was reached with the two unions that a rental scheme would apply to new tenancies only and would not affect the terms and conditions on the existing caretakers' tenancies. The proposal is that in respect of new service tenancies, school governing bodies should be requested to charge residential caretakers rents that are in-line with social housing rents charged by the Council to secure tenants, rather than subsidise rentals, and to offer salaries accordingly. The proposal for a "Brent supplement" suggested in the December 2003 report is no longer necessary as that related to existing service tenants who will not be affected by this market rent proposal. Also in the December 2003 report officers reported that notice would be given to withdraw from the Provincial Agreement which currently determines rents for residential caretakers. Because the negotiated agreement with the unions has not meant any change to the terms and conditions of existing residential caretakers' employment, notice has not been given to withdraw from the Provincial Agreement. Officers will review membership of the Provincial Agreement in advance of any new service tenancies being granted to ensure that the charging of market rent is not incompatible with that, and will give notice to withdraw if necessary. The proposed change to market rents for new service tenants will be in line with the scheme currently applying in Environmental Services and the rest of the Council.

5. ENVIRONMENTAL IMPLICATIONS

- 5.1 There are no specific environmental implications in this report other than certain properties in schools, 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 para 2). 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 a 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. These provisions extend to employees not only of the Council directly, but also employees of the governors of an aided school (now known as a 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. Foundation schools are in a different position where they, not the Council, own the properties.
- 6.2 As was reported to the Executive Committee on the 8th December 2003, a model form of Service Tenancy Agreement (and, crucially, the appropriate term for inclusion in the employment contract) is available from Legal Services. It is proposed that no new Service Tenancies of Council property be granted to school caretakers without the authority of the Chief Executive, in the same manner as other service tenancies.

- 6.3 Any property occupied by a service tenant needs to be properly managed by the Service Unit granting the tenancy in order to ensure that the service tenancy does not become a secure tenancy. 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 his or her 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 or her duties, the service tenancy should cease. Upon cessation of employment with the Council the service tenancy must also be determined, re-housing in accordance with the appropriate policy pursued, and possession sought where necessary.
- 6.4 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. Members will note that the proposal to charge non-subsidised rents applies only to new service tenants.
- 6.5 The proposal for new service tenants to pay social market rents will mean that residential school caretakers already in post will be on different terms and conditions to their newer counterparts. This is likely to be defensible on the basis that schools have the ability to adjust salaries to take account of higher rent so that new employees are not disadvantaged, the increased rent is justified on sound financial principles, and the relevant unions have agreed the proposal. The same approach has been taken throughout the Council although in some instances, notably Environment, officers have been able to negotiate with some existing service tenants so that they too now pay social market rent.

7 DIVERSITY IMPLICATIONS

- 7.1 There are no diversity implications arising from this report.

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 A report setting out a Position Statement in regard of the council's service tenancies was brought to the Executive Committee of 21 July 2003. Members agreed that Officers, having obtained up to date information regarding school service tenancy properties and arrangements, should undertake the last stage of the review i.e. to consult with schools and Unions in order to develop overall policy.
- 8.3 The Executive in December 2003 received a report on service tenancies for residential caretakers. The Executive agreed a revised policy to ensure that all schools with residential caretakers without tenancy agreements should adopt the Council's model service tenancy and that the model should apply to all future tenancies. Further, residential school caretakers in post prior to 1st August 1990 would retain their existing rehousing rights; residential caretakers employed after 1st August 1990 with at least 5 years service would be rehoused in accordance with the housing assessment of their needs at the time of termination of their employment where the termination is caused by age retirement or retirement on the grounds of ill health or redundancy; former caretakers may be rehoused by Registered Social Landlords if suitable Council properties are not available; residential caretakers with less than 5 years service will be treated as homeless persons i.e. they will be treated in the same way as any other applicant for housing.
- 8.4 This brought the rehousing policy for residential school caretakers into line with Council policy for other residential caretakers. Consultation has been held with Unison and the GMB to bring the policy for residential caretakers fully into line with that of other Council residential caretaker tenancies in that social market rents should be offered for service tenancies rather than subsidised rents, as agreed by General Purposes Committee on 4 December 2003. Any social market rent would be set after consultation with the Director or Housing. The Unions have agreed that for future new service tenancies schools should be requested to offer social market rents. The 16 caretakers with existing subsidised rental agreements should continue with these because to renegotiate them would be very difficult in terms of equal pay legislation and single status implications, in respect of the latter the Unions argued that part of the shift to single-status is phasing out supplements in favour of pay-scales, which the proposal for a Brent supplement was incompatible with. The proposed treatment of existing and new service tenants is consistent with that applied to other Council service tenants, although in Environment some existing service tenants have signed new agreements as part of which they are paying social market rents, albeit with an allowance scheme in place to ensure that they are not materially worse off.
- 8.5 The December 2003 report explained that 6 schools were seeking legal advice to address instances of former school caretakers who continued to occupy accommodation provided by or at the expense of the Council. All but one of those cases has now been resolved and Legal Services is continuing to provide advice in respect of the remaining case.

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 John Christie, Director of Education 020 8937 3130 or email john.christie@brent.gov.uk

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