

**LONDON BOROUGH OF BRENT****EXECUTIVE – 15 AUGUST 2005****Report from Director of Housing & Customer Services**

For action/information

Wards affected:

**Report Title: Short Lived Properties in Allington Road  
South Kilburn**

Forward Plan Ref: HSG&amp;CS/05-06/-03

**1.0 Summary**

- 1.1 This report outlines the position in respect of a number of properties in Allington Road which has been let under licence to Brent Community Housing (BCH) for a number of years and is now required to be returned to the Council as part of ALMO refurbishment programme being undertaken by Brent Housing Partnership.
- 1.2 It details the background to why the properties were “short lived” and the long term relationship that has existed between the Council and BCH.
- 1.3 It details the fact that the Council as per our normal practice need these properties to be returned to the Council by BCH with vacant possession by October this year, in order to enable BHP to commence the refurbishment works, and the fact that a number of the occupants of these properties have asked that they be re-housed by the Council when the properties are returned, and the fact that as policies currently stand this is not in accordance with Council policy.

**2.0 Recommendations**

- 2.1 Members are asked to note the current position in respect of the redevelopment of Allington Road.
- 2.2 To confirm the Director of Housing and Customer Services decision that no exception is made to current allocation policies and that no

permanent property is offered to Brent Community Housing sub-licensees currently living in Allington Road.

- 2.3 To note that 2.2 in no way effects the Council's obligation to assess any individual who applies for re-housing.
- 2.4 To agree that priority is given to allocating any property suitable for short living to BCH, and that BCH is encouraged to allocate any such properties to the sublicensees currently in Allington Road properties.

### **3.0 Background**

- 3.1 In July 2004 the Executive received a report on the South Kilburn Masterplan. The Executive heard a number of representations on the plan, including from members of BCH who were occupying a number of properties in Allington Road under a short life licence. The Executive noted the concerns and asked for a report back. This report therefore updates members on the current position of those properties let under licence to BCH and asks for confirmation of the action to be taken when those properties are required for refurbishment.
- 3.2 As part of the BHP ALMO refurbishment programme in South Kilburn the Council owned properties in Allington Road are due to be refurbished. Allington Road is also within the South Kilburn New Deal for Communities area (NDC).
- 3.3 In the early 1990's 33 properties in Allington Road were "short lived" and leased to BCH under the standard lease that has operated in the borough for many years. This was standard practice at the time, where council owned properties were in need of refurbishment and the cost exceeded the resources that were available to the council at that time.
- 3.4 The agreement with BCH states that the properties are leased to them at no cost. However, they have responsibility to maintain the properties, although the amount of work they undertake is normally reflected in the likely period of the lease. This is normally not to be longer than a couple of years, whilst the council makes a decision on the longer term future of the property. Options on the long term future could be to include the properties in a refurbishment programme or make other alternative decisions e.g. sell the property. A clear and important condition of the lease to BCH is that when the property is required to be returned to the Council, this must be done with vacant possession. The agreement also makes it clear that there is no obligation on the Council to re-house the BCH licensees, that being the responsibility of BCH. The Council in turn does not have any say in who BCH allocates the property to. BCH membership almost entirely consists of single people or couples, who would not normally be considered as a housing priority under homeless legislation and would have little chance of being given a high priority under the Council's allocation schemes.

3.5 The partnership between BCH and the Council is a very long one having started in 1974. It commenced at a time when there was still a large demolition rebuilding programme in the borough, and properties remained empty for some time and were prone to illegal squatting. At the time many boroughs run similar schemes, but over the years they have dwindled and the arrangement that the Council has with BCH is one of the few to survive. It has recently been cited by the Homeless division in ODPM as an example of good practice. One of the reasons why it has survived for so long is that BCH have always been able to honour that part of the agreement that requires them to give vacant possession to the Council when it is required.

#### 4.0 Current Situation

4.1 A situation has however emerged in respect of the properties leased to BCH in Allington Road. A number of the BCH sub-licensees, independently of BCH, have asked that an exception be made by the Council, so that the Council accepts that it should re-house those sub-licensees on the same basis as if they were tenants of the Council whose properties were required by the Council. In simple terms that they be re-housed by the Council in permanent accommodation. Ideally they have also asked that they either remain in Allington Road whilst the refurbishment takes place, or if this is not technically possible, that they can return to the properties when the renovation is complete.

4.2 The justification for asking for this is as follows:

- That the leasing of the properties to BCH has been much longer than is normal practice and this has resulted in many of the licensees being in occupation of the properties for many years, some for the entire period of the lease to BCH. A detailed breakdown shows the following:

Years in Occupation	Number of Households
1	2
2	8
3	3
4	5
5	3
6	3
7	3
8	2
9	4
Total	33

- That because of the length of time that they have been in occupation, they are now part of the community of Allington Road . That this, coupled with the fact that this is part of the NDC area whose aim is to assist all residents in the area, again means they should be treated as an exception.
- 4.3 This issue has been known for some time and representatives of the residents group have already addressed the Executive when they were considering a report on the Masterplan at South Kilburn. At the time the development plan for South Kilburn suggested that the Council would not need the Allington Road properties until 2007.
- 4.4 Council officers have always maintained that whilst not being unsympathetic to the individuals, the position was clear concerning the Council's legal obligation, and it would require an exception to be made for them to be re-housed by the Council. They however did consider that if the refurbishment of Allington Road coincided with the demolishing and re-building of the main South Kilburn estate , that it should be possible to offer further short life property within South Kilburn which would mean that BCH could offer new licenses for their members moving from Allington Road.
- 4.5 The situation has now changed in two respects. Firstly the timetable for refurbishing the properties has now changed and BHP are now planning to commence the refurbishment of the properties in October 2006 rather than in 2007. This is due to the fact that the scope and specific nature of external works to some of the larger blocks in South Kilburn is yet to be consulted with the residents and finally agreed. In addition, external works at Princess Road will require the involvement of English Heritage, which will add significant time to the process of agreeing the specification and organising works. There is also the issue of the service charge capping which still needs to be resolved. Therefore, in order to make significant progress on the external works programme, Allington Road has been selected as the first stage of works, as the scope of works is clear and agreed ie to refurbish these properties and create larger units. The contract at Allington Road is due to start in October and is scheduled to last 40 weeks. The contract is due to finish in July /August 2006 next year and is therefore only six months before the end of the complete programme.
- 4.6 The second change is that following discussions with the Housing Service it has been agreed that those properties in Allington Road which are vacant should not just be refurbished, but de-converted to produce a number of larger properties. These will be retained under Council ownership and managed by BHP. Currently each property along Allington Road is divided into two flats with two bedrooms each. It is intended to de-convert the two two-bed flats into one four bed house. Members will recall that Brent has a desperate need for large family accommodation and this will produce much needed additional units. This option is considered as better value for money as the

additional cost of de-converting the properties to larger units is more than offset by the ability to re-house families into larger accommodation. This will greatly assist the most pressurised area of housing need. Members will recall that as a borough we have increasing levels of overcrowding in our own Council properties. In addition, and the number of homeless families requiring larger accommodation have the longest wait before being offered permanent accommodation.

- 4.7 The result of having to bring forward the works on Allington Road has two effects. Firstly the earlier refurbishment date means that by October 2005 when the works start we will not be in a position to shortlife properties in South Kilburn as part of the redevelopment. Therefore, we cannot guarantee that we will be able to offer further short life properties to BCH. Currently we have identified a small number of properties which would provide up to 11 beds, but none of these are in the South Kilburn area. Secondly the conversion to larger accommodation removes any option for BCH licensees to move back to Allington Road, should members consider that it was appropriate to make exceptions to these occupants
- 4.8 Notwithstanding these changes, Officers are still of the strong view that the Council has no obligation to re-house the BCH occupants as a direct result of us now requiring the properties back. It is accepted that if there are individuals who due to their personal circumstances do qualify as being in priority need under homeless legislation then the authority would treat them in the same way as any other priority homeless household. All parties however agree that this is only likely to apply to a very small number of the effected persons.
- 4.8 When on 12 July 2004 Members heard from sub-licensees about this issue, they directed Officers to take the issues into consideration and report back – as Officers are doing with this report. It is the Officers' view that during the Master planning process no commitment was made, either by Members or officers, to re-house the sub-licensees of Allington Road. Re-housing commitments in the Masterplan were at all times intended to apply to those to whom the Council has a pre-existing legal obligation, and there was no intention to create new ones.
- 4.9 Officers will continue to explore the possibility of being able to offer further short life accommodation, both Council and other local RSL owned. However, this is unlikely to be in the South Kilburn area. When properties on South Kilburn become available to shortlife, it could be possible to make it a condition of making the property available to BCH that they offered it in first instance to their members currently occupying properties in Allington Road. However, at the time of writing this report it cannot be guaranteed that enough short life properties will be available. BCH's own ability to find properties directly is itself limited due to the fact that they need to acquire further short lived property from other social landlords.

- 4.10 Given the length of time that some of the licensees have been in occupation Officers have considered whether it would be appropriate that exceptions could be made and the Council could make an offer of permanent accommodation. However, it has been concluded that it would be inappropriate to do so, and therefore are making no such recommendation to Members. The reasons for this are as follows:
- As is detailed in the legal implications, a review of the current agreement between BCH and the Council clarifies that the Council does not have any legal obligation to re-house the licensees.
  - To make an exception in this case would mean that the Council would open itself up to individuals in similar circumstances arguing that exceptions should be made in these cases as well. Currently the council has a further 105 properties short lived.
  - There is nothing stopping the existing BCH licensees from registering for accommodation with the Council and being assessed and appropriately prioritised along with the other applicants currently on the list.
  - Any exceptions made to this group will open the Council up to challenges from other individuals who may be losing their homes but not in priority need and which the Council is not assisting by offering direct permanent re-housing.
- 4.10 In summary the present situation is a difficult one and graphically reflects the difficulty facing residents in the borough in getting permanent housing. The borough has an obligation to properly prioritise that scarce resource. This always means having to make tough decisions. In this case Officers can only recommend, when looking at the overall housing crisis in Brent that we look to offer further short life property and not offer any permanent social housing.

## **5.0 Legal Implications**

- 5.1 The licence agreement (“the agreement”) between BCH and the council has been reviewed in detail. By way of explanation: in the agreement BCH is referred to as “the Licensee”, the current occupants are technically “sub-licensees”. Paragraph 13 of the agreement states: “The Licensee shall hand back to the Council all or any part of the premises empty on determination of the licence in accordance with paragraph 16(i) below”.

Paragraph 16 of the Agreement states the three ways the licence to use the properties may be determined in respect of all or any of the properties:

- (i) the Council gives not less than one month’s notice in writing that it requires the premises for its own purposes;

- (ii) the licensee gives one month's notice in writing should it no longer wish to use the premises;
- (iii) Immediately determined by the Council if the licensee fails within a period of fourteen days to remedy any breach of the agreement after being given notice of the breach by the Council.

In the present situation the council will rely on the provisions of section 16 (i) of the agreement and will therefore be required to give one month's notice to BCH.

5.2 The agreement requires BCH, not the council, to re-house the sub-licensees. The agreement states:

"14. In consideration of the rights hereby granted the Licensee shall on termination of this Licence be responsible for finding any alternative accommodation for the occupiers without having recourse to any assistance from the Council that would prejudice the functions of the Council as a Housing Authority."

The way in which the housing functions of the council might be prejudiced has been explained in the body of this report.

5.3 There is no basis on which the sub-licensees have a legal right to be re-housed by the Council merely because they are about to be evicted from Allington Rd. If however individual occupants apply to the council for housing as homeless, HRC will need to assess them in the usual way. If, as required by the terms of the agreement with the council, BCH had replacement housing available at that point the sub-licensee would probably not be technically homeless. It must be remembered however that the agreement between the council and BCH does not change the council's obligations towards the individuals, including assessment of homelessness applications.

5.4 The length of time that some of the sub-licensees have been in occupation does not in any way reduce the council's legal right to regain vacant possession, and the facts do not support any adverse possession claim.

5.5 The commitments and comments made in the South Kilburn Master planning process do not create a legal obligation on the Council to provide permanent, local short-life or indeed any, re-housing for the sub-licensees.

5.6 Providing the council has acted reasonably then it should be able to resist any judicial review application by disgruntled sub-licensees who would prefer to be re-housed permanently into council homes.

5.7 If the council decided to permanently re-house the sub-licensees in council accommodation they would become secure tenants with the usual rights and obligations including payment of rent, potential to purchase their home and to pass it on by way of assignment or succession. If such re-housing was provided despite the lack of a legal

duty, the council could face legal challenge from those who qualify for re-housing under relevant legislation, many of whom are in priority need, and who had been effectively denied housing in favour of the former sub-licensees.

## **6.0 Financial Implications**

- 6.1 The work to be carried out in Allington Road is funded mainly from the Round 4 ALMO resources secured from ODPM, with the aim of bringing councils properties up to the decent homes standard.
- 6.2 If there is any delay in this work commencing then this is likely to increase the overall cost, which in turn will affect the council HRA business plan.

## **7.0 Financial Implications**

- 7.1 The council does not have details of the current ethnic or age profile of the current BCH licensees in Allington Road. Any exception to our current allocation policies would have to be assessed to understand what equality impact would be for any particular groups e.g. ethnic age or gender. Currently people from the ethnic communities are more greatly represented as being in priority housing need when compared with the overall population figures for the borough.

## **Background information**

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