

Council retained liability for external repairs, although no budgets were specifically allocated for this purpose.

3.1.2 The “outsourcing/transfer of management” policy was set by Education Services in 1995, which at the time had responsibility for the Youth & Community Service and the centres. On 1st August 1996, the Youth and Community Continuing Education Sub-Committee agreed the new direction in this area, the main points of which were:

- Reduce the direct management of buildings down to 4 Centres of Excellence.
- “Dispose” of all remaining buildings by 31st March 1997 so that they cease to bear any revenue costs to the Council from 1st April 1997.
- Develop outreach work to supplement the core work undertaken in the Centres of Excellence.

3.1.3 The 14th October 1996 meeting of the Education, Arts and Libraries Committee identified a list of 17 buildings to which such a “disposals” approach would be applied.

3.1.4 Of these seventeen centres, four were sold in 1997, the site of the Barham Centre reverted to open space, so leaving twelve centres to be transferred under “transfer of management arrangements”. Under the transfer arrangements in 1996, the twelve centres were offered to a lead tenant. During the years since lead tenants first took on this role, the physical condition of most of the centres deteriorated due to a lack of expenditure on general maintenance.

3.1.5 In hindsight, the Council overestimated the ability of the lead tenants to maintain the centres, and given that the Council’s resources at the time were targeted elsewhere such that budgets were not provided for maintenance or external repairs. Tenants who could not afford to pay market rents were encouraged to apply for grants from Brent’s Voluntary Sector towards the rent payable for their premises.

3.1.6 When Community Development was established as a Directorate some two years later the Youth Service and leased centres were transferred over to this new Directorate.

3.1.7 When the Community Development Directorate was disbanded on 30 September 2002 responsibility for the community managed centres transferred to Corporate Property Services, but without any revenue or capital budgets to manage and maintain the centres or to provide any support to the occupying groups. In essence during the period up to 2002 there was little if any estate management or overall strategic approach to these assets.

3.1.8 Between September 2002 and October 2003 the property unit undertook a thorough review of the premises transferred to its control. This culminated in a report to the Executive which set out options for members ranging from freehold disposal, long lease, or short term lettings. The report dealt with different assets in turn and members decided the appropriate option, based on officer advice, for each individual property.

3.2 Current Policy

3.2.1 The new policy agreed in 2003, which related to 16 Youth and Community Centres owned by the Council was presented and passed at a Special Meeting of the Executive on the 18th August 2003.

3.2.2 The policy that was agreed is as follows:

- When a concessionary rent is agreed the Lead Tenant will enter into a Collateral Grant Agreement (C.G.A), with the Council setting out the required outputs that will be needed from that Organisation in order for them to receive the rental subsidy.
- If a 7 year lease is granted then it shall be subject to a mutual break clause after 3 years at their, or the Council's discretion.
- When a 7 year lease is granted, in practice the actual lease granted will be 7 years less 3 days. Anything over 7 years would constitute a disposal which would mean that such lease agreements could not be agreed and sanctioned on the best terms reasonably obtainable under Delegated Authority
- Any other terms not set out in the report for each centre can be agreed by the Manager of Corporate Property Services under delegation.
- Wherever possible, all leases are to be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954.

3.2.3 Therefore there is no overall blanket policy that applies to the Council's Y&CC. and the approach above is specific to each Y&CC. This has meant however that this approach has not met with universal approval over time and has led to a certain amount of friction, on occasions, with the third sector and indeed has been challenged by members in support of individual organisations.

3.3 Current Position of Third Sector Occupied property

3.3.1 The decisions made by the Special Executive Meeting of 18th August 2003 did not cover all the properties that were owned or occupied by the Council which are leased, or used by community groups. It also did not cover properties rented by the Council and which are being used by certain community groups.

3.3.2 The following schedule attempts to give members of this Committee an overall view of the number of council properties let to youth and community groups and the nature of this letting. Thus:

7 properties are occupied under a 99 year lease;

2 properties are occupied under a 7 year lease;

4 properties were to be occupied under 7 year lease terms but which are as yet, unsigned for various reasons, including negotiation breakdown;

11 properties are being occupied without any formal agreement, although some are in the process of starting to negotiate terms with the Council;

3 properties have either had their occupants evicted; the occupiers have voluntarily vacated or are in the process of being evicted;

1 property has a tenant occupying under a 12 year lease;

1 property is occupied under a 30 year lease;

3 properties are occupied under a 125 year lease;

2 properties are occupied under licence;

1 property is occupied under a 120 year lease;

2 properties are leased by the Council from a landlord and community groups use the premises under no formal documentation.

1 property is occupied under a 20 year lease;

3.3.3 Where leases are subsidised by Collateral Grants.

The council has leased much of its remaining property to community organisations to enable the delivery of corporate objectives, with the use of a Collateral Grant Agreements, in many cases. The Council is generally required to grant leases at a market rent, but most Y&C Organisations cannot afford to pay market rents hence the introduction of the collateral grant regime.

3.3.4 A Collateral Grant Agreement is granted to subsidise the market rent that the Council deems appropriate for the property taking into account the proposed use and other factors. In return the Council sets out the required outputs that will be needed from that Organisation in order for them to receive the Grant i.e. the rental subsidy. In theory these outputs are monitored and assessed as to whether the organisation should continue to receive a rent abatement.

4.0 LEGAL IMPLICATIONS

4.1 At the previous meeting Members requested a note on the Landlord and Tenant Act 1954 Part II, as it impacts on leases granted to the third sector by Brent Council.

4.1.2 The Landlord and Tenant Act 1954

This Act is the overriding piece of legislation that sets out the terms for the leasing of commercial property. It sets out the parameters for the legal relationship between the landlord and the tenant; provides the tenant with a level of protection both during the lease period and beyond. It sets the grounds under which a tenancy can be brought to an end.

Comment [J1]:

Committee specifically requested an explanation of what this act means for us in the context of the task group

Need to word any points with politicians and public in mind – point, 5 and 6 may be relevant here once legal have provided input

Would only include the context of what council can and cannot do

4.1.3 In general terms, except in specific circumstances e.g. for external grant purposes the council has adopted the line that any leases granted to voluntary or community organisations should be of a relatively short term nature and contracted out of the provisions of the Landlord and Tenant Act 1954. This “Contracting Out” enables the Council to recover possession at the end of the term. In seeking to exert a certain amount of control, the Council, similar to a number of commercial landlords, generally seeks to contract out of the automatic renewal provisions of this Act. We also do this for a variety of good estate management, operational and strategic reasons.

4.2 Disposal of Council Property

4.2.1 S.123 Local Government Act 1972 allows the Council to dispose of land on a freehold basis, or on the grant of a lease of 7 years or more, provided that it obtains the best consideration that is reasonably obtainable.

4.2.2 The council has disposed of some of its assets in the past, including 10 properties on a long leasehold basis, ranging from 99 year terms to terms of 120 and 125 year terms. (In property terms a lease for 99 years can be considered to be akin to a freehold transfer).

4.3 Potential Future Policy

4.3.1 Community use of public buildings has recently moved up the national agenda. The Quirk Review considers the benefits to councils of transferring assets to local communities. It looks at how councils can realise the benefits of transferring the ownership of assets to a community organisation without risking wider public interests and concerns.

4.3.2 The review argues that transferring community assets to the community can help to unleash the potential of the asset. It can help to engender greater involvement of the community in running the organisation. It also enables them to access funding streams which are

not available to councils such as lottery funding. However this needs to be balanced with the finite availability of Council premises and should be looked at from a wider regeneration perspective rather than a property driven agenda.

- 4.3.3 Officers recently considered the Quirke review and compiled a report on our potential response. The following summarises the initial viewpoint:

Brent is currently already undertaking asset transfer in practice, as leases are intermittently granted for 25 or 99 years. The longer leases already provide the community organisations with the type of tenure that is often required in order to successfully apply for funding grants. Further, the Council has disposed of property to other bodies for less than market value when it is deemed that there are benefits to the Council and/or community in doing so.

Brent's response to the Quirk report is that the qualitative, one-off examples provided in the report do not provide concrete evidence of the suitability of asset transfer. Therefore Brent is undertaking actions to institute guidelines as to where asset transfer will be considered. The presumption is against asset transfer at this stage, until after this has been completed.

Firstly, it is carrying out a full audit of the properties, which will enable the council to identify which properties could be considered for asset transfer. This will also provide useful information on the long-term maintenance and running costs, as well as fixed property costs, that the Council and community associations could access. Requests or proposals for asset transfer are to be considered once the property audit is completed, although in certain cases requests or proposals may need to be considered in advance of this.

Following the property audit, the next step will be to develop a clear and transparent method of evaluating property in order to make a choice whether to dispose of it. This will involve the Council assessing the value that it will forego if it sells the property at less than market value, and then weighing this loss against the community benefits that will be derived from such disposal. Proposals must also be considered within the context of broader regeneration of Brent, as outlined in *A Regeneration Strategy for Brent 2001-2021* and *Brent's Regeneration Action Plan 2007-2009*.

- 4.3.4 It is proposed that FPSC will consider the Quirke Review in more detail in a future meeting when the Assistant Director, Policy and Regeneration will attend the Panel meeting in February 2009.

4.4 New Initiatives

- 4.4.1 Brent Council together with Brent Association for Voluntary Action (BRAVA) is looking at the possibility of a voluntary sector resource centre which would be run and managed by the voluntary sector. The project is in the very early stages. It would bring together a range of voluntary sector organisations and although the council may not ultimately be involved in the management of the property, it will have a role in ensuring that the organisations that occupy it operate for the benefit of the wider community.
- 4.4.2 In addition since 2006/07 the council has allocated a sum of capital to work with the Third Sector to address some of the critical and compliance backlog maintenance issues which have built up over the years.

5.0 Next Step

- 5.1 Prior to the next meeting it is intended to:
- (i) Undertaken a questionnaire of the voluntary Sector in regard to their relationship with the Council specifically with respect to occupied premises.
 - (ii) Attend a voluntary sector forum meeting to give feedback from the above and elicit further comments.
- 5.1.2 The above will be summarised for the next FPSC meeting in December.
- 5.1.3 In addition it is intended to undertake a proposed survey of other certain local authority to garner data on their approach to the asset management of similar properties and their response to the Quirke Review. It is intended this will provide the core data to establish best practice on which to base any future Brent Policy
- 5.2.4 To consider the Council's approach to 3rd sector occupied property in the context of the Council's Community and Regeneration Strategies.
- 5.2.5 To request the Borough Solicitor to provide a legal context to the powers available to the Council when considering leasing or disposing of Assets to the 3rd sector.

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