



Executive
15 March 2010

**Report from the Director of
Housing and Community Care**

Wards affected:
ALL

Disposal of HRA freehold blocks/buildings (where the long-leasehold interest of all the individual dwellings has been sold)

Forward Plan Ref: H&CC-09/10-10

1.0 Summary

- 1.1 This report addresses those freehold buildings owned by the Council where the long-leasehold interest for individual dwellings that comprise the freehold has been sold, in the main through Right to Buy. In most instances these dwellings are street properties that have been converted into flats. The Council's Housing Revenue Account receives an income stream for these dwellings through the ground rent and recovers a proportion of management costs through service charges.
- 1.2 The Council's managing agent, Brent Housing Partnership (BHP) has concerns that the risks to the Council and the net costs of managing these properties far outweigh the benefits of ownership through the ground rent.
- 1.3 It is becoming apparent that the obligations on landlords and indeed their managing agents for health and safety matters is becoming extremely onerous and thus BHP is recommending to the Council that they should consider freehold disposals.

2.0 Recommendations

- 2.1 That Members agree to dispose of the freehold of buildings that are accounted for in the Council's statutory Housing Revenue Account (HRA) where 100% of the long-leasehold interest of the flats in those buildings have been disposed of, as set out in Appendix 1 to this report.

- 2.2 That Members agree that the net capital receipt from the disposal be allocated within the Housing Revenue Account (HRA) to fund Health and Safety works for dwellings in the HRA.
- 2.3 That the Head of Property and Asset Management and the Director of Housing and Community Care, be delegated authority to approve future disposals of the freehold interest of buildings accounted for in the HRA, once the leasehold interest of 100% of those particular blocks has been disposed of.
- 2.4 That the Head of Property and Asset Management and the Director of Housing and Community Care (in consultation with the Lead Member for Housing) are authorised to initially offer the freehold interest of the properties set out in Appendix 1 to the existing leaseholders who are occupying housing accommodation in those properties and such disposals are dependent upon the best price that can be reasonably obtained.
- 2.5 If no disposal is made to existing leaseholders as set out in paragraph 2,4, then the Head of Property and Asset Management and the Director of Housing and Community Care are delegated authority to make arrangements for the disposal of such properties and to obtain the best price that can be reasonably obtained, subject to consent from the Secretary of State for those disposals.
- 2.6 The Director of Housing and Community Care is delegated the authority to apply to the Secretary of State under section 32 of the Housing Act 1985 to dispose of the freehold interest of the properties set out in Appendix 1 when it is necessary to do so.

3.0 Detail

- 3.1 BHP currently manages approximately 194 blocks/converted houses where all the dwellings have been sold on long-lease. The Council maintains a freehold interest in these properties and thus receives a ground rent and recovers a proportion of the costs associated with the management.
- 3.2 As freeholder the Council remains liable for Health and Safety matters. Health and Safety is becoming an increasingly onerous obligation for landlords and their managing agents and it is the view of BHP, the Council's managing agent that the risks associated from retaining the freehold title to these buildings far outweigh the income received by way of ground rent. These properties are generally street properties that have been converted into flats. The communal areas are generally very small and in the main the only charges levied via service charges are buildings insurance and communal electricity. Often gaining access to these small communal areas is difficult and time consuming. Furthermore whilst the Council remains responsible for major works and recovers costs through billing the leaseholders there is no guarantee that all the costs can be recovered and any residual costs falls upon the HRA and are thus borne by council tenants.

- 3.3 A formal valuation of these properties have not been carried out but indicative sample values have been obtained that indicate freehold titles to these blocks average around £1,500 per unit and therefore the entire portfolio currently comprising buildings sold on long lease is likely to be about £300K. Although individual blocks may offer scope for income generation and/or development opportunity and an assessment of potential future value will be undertaken prior to each disposal. There is a standard methodology for valuing leases that takes into account the discounted rental income from the remaining years of the lease and the current open market value of the dwellings. Ultimately a true market value would best be determined at auction, and as the leases are local authority ones there are no obligations on the Council as landlord to offer the freehold interest of those properties to leaseholders. However it is considered correct and proper for Brent as a local authority and also 'best practice' to regardless initially offer the freehold interest to existing leaseholders.
- 3.4 Ultimately those leaseholders who acquire their freehold titles would take on the responsibility for the upkeep, insurance and management of the building and thus the Council would no longer have any responsibility for the building.

Health and Safety Implications

- 3.5 Members will be aware of the very significant increase and awareness of the Health and Safety/Fire Safety regulations which are becoming increasingly onerous for the landlord/managing agents. Responsible officers and corporate bodies, and in this instance includes both the Council and BHP are becoming at risk, if serious and material failures and/or omissions are identified that could result in criminal proceedings. Whilst BHP will take all reasonable precautions/actions to avoid such situations occurring, there nevertheless exist the conclusions that the rewards of holding leases through the ground rent are insufficient in commercial terms to justify maintaining freehold ownership.
- 3.6 This is particularly significant as Brent Housing Partnership has recently reviewed the existing measures in place to address Fire Safety following the fire at Larkanal House, in Camberwell and is currently introducing further measures and undertaking works to reduce the risk of Fire in view of the recent corporate manslaughter legislation. Moreover BHP, in line with most other managing agents/social landlords is reviewing their operational structures to ensure that Health and Safety is addressed appropriately. These resources are best directed towards those areas where BHP has a continuing statutory obligation on behalf of the Council and should divest itself of responsibilities through freehold disposals where appropriate.
- 3.7 It is likely over the next few years that Health and Safety implications for these small blocks will result in the possibility of major works being undertaken. The administrative costs are such that the full cost of these works is unlikely to be recovered and thus costs being borne by the HRA. It is also likely, from experience, that the recovery of these costs will be burdensome and will also involve defending a number of applications to the Leasehold Valuation Tribunal (LVT) regarding the extent of these costs.

Best Value

- 3.8 The consideration of the use and possible disposal of the property discussed in this report will assist in BHP's and the Council's aim of providing best value in the use of its assets.
- 3.9 As set out in the Legal Implications in section 5 below, in the event where it is proposed that the freehold interest of the blocks are not disposed to all the leaseholders occupying housing accommodation in these blocks, it will be necessary to obtain the consent of the Secretary of State under section 32 of the Housing Act 1985 to dispose of the freehold interest of the properties in a manner which is not covered by the General Housing Consents 2005.

4.0 Financial Implications

- 4.1 The Local Authority (Capital Finance and Accounting) (England) Regulations 2003 states that capital receipts a local authority derives from the disposal of an interest in other housing land (non Right to Buy) must be "pooled" at a rate of 50%. However, the regulations also state that a local authority can treat such receipts as reduced by an amount up to the value of its available capital allowance at the time the specified amount is calculated. For the purposes of these regulations the Capital Allowance is a provision that reflects the authority's past and current forecast investment in regeneration schemes and the provision of Affordable Housing. Currently the council is maintaining a capital allowance significantly in excess of the forecast capital receipt and there will be no requirement to pool any of the derived income if Members elect to dispose of the Freehold of blocks and Buildings as set out in this report.
- 4.2 The disposal is estimated to generate a useable capital receipt of £300k. The Council will incur disposal costs which will include legal, valuation and auction fees and it is suggested that £100K is an appropriate estimate of these costs. It is anticipated that these costs will be able to be offset against the disposal receipt thus ensuring that these costs will not be borne directly by the HRA. The disposal is therefore likely to generate a net capital receipt in the region of £200K.
- 4.3 The estimated revenue from these leases in 2009/10 is £80K and it is estimated that £60K of this is insurance premiums and the majority of the residual is ground rent and block repairs. BHP Officers have confirmed that they will be able to identify budget reductions associated with this activity and therefore there will be no net impact on the HRA budget in this or future years.
- 4.4 A Management Fee of 15% can only be levied on non-insurance services provided.

5.0 Legal Implications

- 5.1. Where the Council holds a block of flats for housing purposes it cannot dispose of the freehold or any other reversionary interest save in accordance with:
 - 5.1.1 a statutory collective enfranchisement claim by qualifying leaseholders in accordance with the Leasehold Reform, Housing and Urban Development Act 1993; or
 - 5.1.2 a consent issued by the Secretary of State for Communities and Local Government under Section 32-34 of Housing Act 1985.
- 5.2 There is a General Consent issued in March 2005 under the Housing Act 1985 which sets out different categories of disposals which are deemed to have the Secretary of State's consent.
- 5.3 It may however be necessary to obtain a Special Consent to the disposal of blocks of flats depending on the proposed manner and terms of disposal.
- 5.4 A disposal of the reversionary interest of a block of flats for best consideration to all of the leaseholders occupying housing accommodation jointly as individuals or to the leaseholders' wholly owned company would have deemed consent under the General Housing Consents 2005, under Category F relating to section 32 of the Housing Act 1985. This means that if the leasehold interest of a flat is owned by a company, the Council would need Special Consent from the Secretary of State. A Special Consent would also be required if one or more leaseholders do not live at the flats in the block/converted house as they would not be occupying the flats as housing accommodation.
- 5.5 Any other method of disposal would require a Special Consent. This would include a sale at less than best consideration to all of the leaseholders.
- 5.6 If one or more leaseholder did not wish to join in the purchase or the Council proposed to dispose of a block of flats on the open market by auction or otherwise, the Council is required to consult with all leaseholders on its proposals and submit an application to the Secretary of State for Special Consent together with the consultation documentation.
- 5.7 It is not possible to indicate how the Department for Communities and Local Government ("DCLG") would respond to a request for a Special consent in respect of a block of flats as there is no guidance available from the DCLG in its circulars.
- 5.8 Section 123 of the Local Government Act 1972 requires a Local Authority to secure the best consideration reasonably obtainable when it disposes of land (other than on a lease of 7 years or less) unless it has the benefit of an

express or general consent of the Secretary of State Surplus property is usually advertised on the open market to secure compliance with this provision with the acceptance of the best price or by disposal at auction.

5.9 In the event that the Council did decide to dispose of blocks of flats on the open market, subject to consent from the Secretary of State, the right of first refusal which leaseholders have under the Landlord and Tenant Act 1987 where their landlords are in the private sector do not apply in circumstances where they are leaseholders of Local Authorities.

5.10 If leaseholders who purchased their flats under the Right to Buy after 2005 wish to dispose of their flats within the first 10 years a local authority landlord has the statutory right of first refusal to buy or nominate housing associations to buy flats. However the Council will no longer have this right of first refusal if they cease to be the freehold owner of a block of flats.

6.0 Diversity Implications

There are no direct implications although the additional income for repairs and improvements will benefit all residents living in Council housing stock.

7.0 Staffing/Accommodation Implications

There are no staffing/accommodation implications.

8.0 Background Information

None

Any person wishing to inspect the above papers should contact:

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