

LONDON BOROUGH OF BRENT

EXECUTIVE
8th December 2003

FROM THE CHIEF EXECUTIVE

FOR ACTION

NAME OF WARD
All Wards

REPORT TITLE : SERVICE TENANCIES – POSITION STATEMENT

Above ☒

Below ☐

**Confidential Line
with the exception of
Appendix 3 only**

1.0 SUMMARY

- 1.1 This report follows on from an earlier report to the Executive on 21 July 2003 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 final stage for the review of caretaker service tenancies in Education, Arts and Libraries, in particular:
- a) re-housing on basis of need (either option **a** or option **b**– **refer to para 8.11**)
 - b) re-housing with a Registered Social Landlord (**refer to para 8.13**)

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 and avoidance of a situation whereby the Council is incurring a loss on such properties.
- 3.4 The issue of a Council supplement is discussed in the confidential Appendix 3.

4 STAFFING IMPLICATIONS

- 4.1 The Director of Education, Arts and Libraries and the Director of Human Resources and Diversity are currently progressing 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. There have been two recent meetings with Unison and the General & Municipal Boiler Makers Union (GMB) where proposals regarding changes to current re-housing practices and setting of rents were discussed.
- 4.2 The GMB's view is that school based 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 Paragraph 3.2 above gives information about the financial costs to the Council where an occupant continues to reside in the accommodation after termination of employment. There are also staffing implications in that, where the outgoing occupant is slow to leave, a newly appointed successor is compelled to wait for an excessively long time after appointment before being able to move into the accommodation.

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 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.
- 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 available to be drafted with advice from Legal Services. It is proposed that no new Service Tenancies in respect of caretakers be granted without the authority of the Chief Executive in a similar manner to other service tenancies granted by other departments, although this proposal is currently being 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 is a local agreement capping the rent charged. It is possible for the Council to withdraw from this agreement, but such withdrawal would be a variation of the terms and conditions of employment and require negotiation with the existing employees and/or their representatives.
- 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.
- 6.7 There have been 3 Committee Decisions affecting re-housing for residential caretakers. These were taken at Housing Committee on 31 July 1990, Housing and Environmental Services Committee 8 May 1991 and Ad Hoc Allocations Sub Committee 22 February 1995. The current policy is set out at 8.9 below.

- 6.8 The decision to offer caretakers accommodation post employment is both a policy decision within the remit of the Executive and it affects their terms and conditions of employment, which are matters for the Council side of the decision-making process. Therefore the Executive needs to decide on the change of policy and the decisions relating to the proposed alteration to the terms of employment of caretakers have been referred to the General Purposes Committee.

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 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.

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 been regularised with three properties continuing to need further action to ensure an appropriate tenancy is in place.

Service Tenancies - Education, Arts and Libraries

- 8.4 As reported to members in July 2003, for six schools legal advice was being 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 retirement or resignation.
There is now only one school with an outstanding issue, Mitchell Brook, and this is being dealt with by Legal Services.
- 8.5 As reported in July 2003, letters and model service tenancy agreements were sent to schools without tenancy agreements in place. The position with those schools is:
- Of 8 Community School governing bodies that did not have agreements in place, three schools have contacted Legal Services for advice and are putting new agreements in place. Officers are actively chasing the remaining five schools for action.
 - Of 3 Voluntary Aided schools where the accommodation is owned by the Council, one school has an agreement in place and the two other schools are putting the new agreement in place with legal advice.
 - The 10 Voluntary Aided schools where the accommodation is not owned by the Council were sent the model tenancy agreements, so as to achieve consistency.
- 8.6 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.
- 8.7 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.

Consultation & Proposals – Education, Arts and Libraries

- 8.8 There have been two recent meetings with Unison and the GMB where the following proposals regarding changes to current re-housing practices and setting of rents were discussed:

Re-Housing Proposals

- 8.9 The Council's current policy as regards the re-housing of Residential Caretakers offers 3 levels of entitlement, dependent on length of service.
- a) Residential Caretakers who have been in post prior to 1 August 1990 will be entitled to up to 3 offers of alternative accommodation on a like for like basis in an area of the borough of their choice in the following circumstances:
- where they retire owing to old age
 - where they retire on grounds of ill-health

- where they are made redundant
- where they terminate their employment by their own choice (however, they are only entitled to re-housing in accordance with their needs in this circumstance)

b) Residential Caretakers who commenced employment on or after 1 August 1990 (so long as they have 5 years service) will be re-housed in accordance with the re-housing policy operating at the time of termination of employment with the Council.

c) Residential Caretakers who leave the employ of the Council without accruing 5 years service will be dealt with simply as homeless persons i.e. in particular cases they might receive advice and assistance from the Council as opposed to re-housing.

8.10 In view of the fact that Residential Caretakers have been re-housed on the above basis, they have had access to the Council's most attractive and rarely available housing stock to a degree which is inequitable to other Council tenants and prospective tenants.

8.11 It is therefore proposed that from 1 September 2004 either:

- a) all Residential Caretakers with at least 5 years service will be re-housed in accordance with a Housing assessment of their needs at the time of termination of employment, where this termination is covered by age retirement, retirement on the grounds of ill-health or redundancy. Or:
- b) all Residential Caretakers employed after 1 August 1990 with at least 5 years service will be re-housed in accordance with a Housing assessment of their needs at the time of termination of employment, where this termination is covered by age retirement, retirement on the grounds of ill-health or redundancy. Residential Caretakers who have been in post prior to 1 August 1990 will retain their existing re-housing rights.

8.12 There are 10 Residential Caretakers who have been in post since before 1 August 1990. The number employed from 1 August 1990 with 5 years service is 11.

8.13 It is also proposed that re-housing will be with a Registered Social Landlord if a suitable Council property is not available.

8.14 It is not proposed to change the re-housing position of Residential Caretakers who leave the employ of the Council without having accrued 5 years service.

8.15 Further advice on these proposals regarding re-housing is contained in a confidential Appendix 3 to this report.

Rent Proposals

- 8.16 All Residential Caretakers pay rents substantially lower than those paid by the generality of Council tenants. They are fixed by a Provincial Agreement which is reviewed from time to time. Under this Provincial Agreement the majority of the Council's Residential Caretakers are paying rents in the range of £6 to £8 per week.
- 8.17 It is proposed that notice be given that the Council will withdraw from the Provincial Agreement by 1 September 2004 and thereafter charge Residential Caretakers the same level of rent for the same type of property as other Council tenants.
- 8.18 If this were to happen it would lead to a reduction in Residential Caretakers contracted terms and conditions. It is therefore proposed that Residential Caretakers be paid a Brent Supplement to compensate them for the Council's withdrawal from the Provincial Agreement.
- 8.19 Further advice on these proposals regarding rent levels is contained in a confidential Appendix 3 to this report.

Conclusion

- 8.20 The proposals to re-house on the basis of an assessment of needs at the time of termination of employment and to introduce parity of rents with those paid by other Council tenants for the same type of property would have the effect of putting Residential Caretakers in Education in the same position that now governs Residential Caretakers in Parks and Cemeteries.
- 8.21 Officers will contact the two Unions again to arrange a meeting when the decision of this committee is known.

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 & Diversity on 0208937 6181, or e-mail him at tim.flint@brent.gov.uk

Gareth Daniel
Chief Executive