



Cabinet

18 JULY 2011

LEADER

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**DEPUTY LEADER
(+ENVIRONMENT
AND ASSET
MANAGEMENT)**

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**CABINET MEMBER
FOR RESIDENTS
SERVICES**

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**CABINET MEMBER
FOR CHILDREN'S
SERVICES**

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CONTRIBUTORS

AD BPM
D RSD
D CHS
AD HR
D H&R
DFCS
ADLDS

**HAS A EIA BEEN
COMPLETED?
YES**

**HAS THE REPORT
CONTENT BEEN
RISK ASSESSED?
YES**

TIED ACCOMMODATION AND DISPOSALS

This report provides a synopsis of the current situation with regard to the Council's tied accommodation, namely School Keepers Houses and certain properties managed by Resident Services and Children's Services Departments.

Authority is sought to dispose of properties as and when identified in accordance with the procedure detailed in Section 5 of this report and to pay compensation in accordance with the scheme as detailed in Section 7 of the exempt report to existing employees and former employees of 'tied accommodation'.

A separate report on the exempt part of the agenda provides exempt information about the framework of the proposed compensation scheme.

Recommendations:

- 1. That officers be authorised to agree and pay compensation payments to the tenants occupying the tied properties and to schools based on the scheme detailed in the separate report on the exempt Cabinet agenda.**
- 2. That in the circumstances where the compensation payment exceeds the budget for disposal (4% of the capital receipt), this will be met from a revenue budget.**
- 3. That authority be delegated to the Cabinet Member for Children's Services, in consultation with the Director for Children's Services, the Assistant Director Building and Property**

**Wards:
All Wards**

Outside LBHF

Management and the Assistant Director (Legal and Democratic Services,) to declare the school keepers' houses referred to in this report and additional school keepers houses' as surplus to requirements and available for sale (subject to any requisite Secretary of State consent) as and when these properties are identified.

- 4. That authority is delegated to the Cabinet Member for Residents Services, in consultation with the Director of Residents Services, the Assistant Director Building and Property Management and the Assistant Director (Legal and Democratic Services), to declare the tied properties referred to in this report and additional tied properties held by Residents Services as surplus to requirements and (subject to statutory public notice) available for sale as and when these properties are identified (authority to include consideration of any objections duly received in response to any such notice).**
- 5. That subject to the approval of recommendations 3 and 4 above, the Assistant Director (Legal and Democratic Services) and the Assistant Director of Building and Property Management are authorised to dispose of the properties in the open market for the best price reasonably obtainable and otherwise on such terms and conditions as they consider appropriate.**
- 6. To confirm the policy outlined in paragraph 13 that sets out the process for communicating with occupants of tied accommodation liable to be displaced or re-housed.**

1. BACKGROUND

1.1 The Council has undertaken a review of each Service's property portfolio to identify land and buildings which are potentially surplus to requirements.

1.2 This report details the review of the Council's tied accommodation.

Each department has undertaken a comprehensive review of its tied accommodation. As a result of these reviews, Residents Services and Children Services departments have identified properties where the employees are or were originally required by his/her contract to occupy that specified accommodation for the better performance of his/her duties.

2. DESCRIPTION OF TIED ACCOMMODATION

2.1 For the purposes of this report 'tied accommodation' is a property located in or close to parks, cemeteries and school grounds; they are each occupied by a Council employee or ex-employee and family members. The large majority of these properties are detached period houses of between two and four bedrooms and due to their age and construction they are expensive to maintain. In most cases the utility costs and the general maintenance for the property is being paid for by the Department.

3. RESIDENTS SERVICES (RSD) TIED ACCOMMODATION

3.1 Resident Services undertook a review of their Tied Accommodation in 2010. The portfolio consists of 10 Tied Accommodation located in or adjacent to parks or cemeteries. Each Tied Accommodation has been assessed in terms of service requirements to the park or cemetery.

3.2 The occupiers of four of these properties have been notified of the Council's intention to seek possession of the property by the service of a 'notice to quit' and they have been informed of their re-housing rights.

3.3 In the remaining properties, occupiers will be served a 'notice to quit', informed of their re-housing rights and subsequently placed on the re-housing list to await a suitable offer, unless they decide to relinquish their re-housing right by taking 'option 2' of the compensation scheme as detailed in the exempt report.

3.4 A total of six of the tied properties have been identified for disposal. There will be an on going review of the Tied Accommodation within RSD's portfolio to identify further properties for disposal.

4. CHILDREN SERVICE'S (CHS) TIED ACCOMMODATION (SCHOOL KEEPERS' HOUSES)

- 4.1 A review was carried out in 2009 of all of Children's Services assets including tied accommodation. The portfolio consists of 25 community school keepers' houses which are located on the edge of School boundaries or on nearby roads.
- 4.2 The school keepers' houses are managed by their respective schools; however the Council owns the freehold of the buildings and retain final control over them.
- 4.3 Where school keepers no longer need to be accommodated on the school site for the better performance of their duties, the Local Authority will review local priorities and needs to determine which sites may be considered surplus. This will be done on a school by school basis
- 4.4 Where the school keepers' houses that have been identified for disposal are occupied, the occupiers will be informed of their re-housing rights and will be put on the re-housing list to await a suitable offer.
- 4.5 The School Keepers portfolio is continuously being re-assessed and authority is being sought to allow the department to identify further buildings on the same basis for disposal, as written in the recommendations.

5. DISPOSAL PROCEDURE

- 5.1 Once vacant possession of these properties is obtained, they will be surplus to requirements and if Cabinet approves this report, they can be sold on the open market to obtain best consideration reasonably obtainable.
- 5.2 Due to the houses being situated within a cemetery, park and school ground boundaries, the Building and Property Management division will work with RSD and CHS to advise on the best solution for separating the properties from communal grounds. Planning permission will be necessary to create separate planning units; this will include boundary walls and gates to be designed for screening from the public and to blend with the surrounding environment.
- 5.3 A method of disposal will be identified for each property owing to the unique characteristics of each property. Regard will be had to obtaining the best consideration reasonably obtainable when deciding the method of disposal.

6. ESTIMATED CAPITAL RECEIPT

- 6.1 Should the properties identified in this report be approved by Cabinet as being surplus to requirements and authority is given to dispose of the buildings the total net capital receipt is estimated to be £7.55 million over 3 years.

7. COMPENSATION

- 7.1 See the report on the exempt Cabinet agenda.

8. RISK MANAGEMENT

- 8.1 The subject of this report is included on the departmental risk register and relates to achieving capital receipts to assist in reducing the Council's debt and supporting the savings target. Performance monitoring and action to address controllable and non-controllable risk factors (including market risk) have been implemented. This includes reporting to Corporate Asset Delivery Team, and the Department of Finance and Corporate Services so that financial risk / implications can be managed corporately and an effective strategy is implemented.

9. EQUALITY IMPLICATIONS

- 9.1 The Initial Screening Equality Impact Analysis concludes that there is little evidence that some groups may be differently affected by the subject of this report.

10. COMMENTS OF DIRECTOR OF RESIDENT SERVICES (RSD)

- 10.1 RSD has 139 assets including 53 parks, cemeteries and open spaces, 6 utilities substations, 4 libraries, 5 leisure centres, 1 athletics centre (Linford Christie Stadium), 1 coroner's/mortuary facility and depots shared by Serco/Quadron and in-house parks teams. Assets have been categorised in line with the corporate categories and a number of properties have been identified for disposal. 5 properties that were previously in tied accommodation have been disposed of but RSD has a further 10 buildings in occupancy. RSD has already identified potential capital receipts of at least £4 million from disposal plans with further valuations underway and will be pursuing the release of tied accommodation during 2011/12.

11. COMMENTS OF DIRECTOR OF CHILDREN SERVICES

11.1 These are included in the main body of the report.

12. COMMENTS OF ASSISTANT DIRECTOR OF HUMAN RESOURCES

12.1 The trades unions were formally informed on 12 April 2011 as part of the consultation process that the Council would be commencing consultation with the occupiers of the RSD premises. In addition they were advised that further consultation is planned when the Council has made a determination on those properties in Children Services.

12.2 The Council will follow due process in consulting with the individual occupants of the premises and will ensure that proper notice arrangements are put in place at the appropriate stage of the consultation process.

13. COMMENTS OF THE DIRECTOR OF HOUSING AND REGENERATION

13.1 The requirement in this report to provide housing options advice and potentially a social housing letting can be addressed within the Council's existing Scheme of Allocation (SoA) and service specification. It is understood that a number of permanent offers of accommodation may be generated by the policy. The timing and nature of the service provided to qualifying applicants under these proposals is set out in the Scheme of Allocation. The key requirements of the SoA in relation to these applicants is that they will be subject to one reasonable offer of accommodation.

14. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

14.1 These are in the exempt report.

15. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

15.1 Employment Law implications:

15.1.1 Where there is a term in the employee's contract of employment that they occupy Council property for the better performance of their duties, this term cannot be changed without the consent of the employee. The employee will have a contractual right to occupy Council property, unless the term is no longer fulfilled. Consenting employees will need to sign a new contract of employment that does not contain the better performance of duties term. If it is necessary to change this term without the employee's consent, it would

require the employee to be dismissed and re-engaged under a new contract of employment without the term providing tied accommodation. This process requires consultation with the employee and unions over an average period of 12 weeks to explore alternatives to dismissal and re-engagement.

- 15.1.2 Tied accommodation is viewed as benefit in kind for tax purposes. Furthermore, most or all the employees and ex employees who currently have tied accommodation pay no rent or pay a substantially reduced amount in rent to the Council for the accommodation compared to market rates. This clearly represents a substantial saving to that employee as to rent on the open market would require a significant increase in rent. The same applies to the payment of Council Tax. It is also the case for those employees who are members of the local government pension scheme, the value of their tied accommodation is added to their final salary giving them an increase in pension benefits on retirement. Thus to remove the benefit of tied accommodation from an employee regardless of whether they are employed by the Council or Quadron where those employees still reside in Council property for the better performance of their duties may be a breach of contract and this could result in a successful constructive unfair dismissal claim as the employee may argue that the removal of the accommodation was a fundamental breach of their contract of employment.
- 15.1.3 Even for those employees who no longer or never resided for the better performance of their duties, they may still have a tangible benefit for tax purposes and/ or pension purposes.
- 15.1.5 To avoid possible legal action the Council should consider negotiating a compromise agreement with the affected employees. To have a valid compromise agreement, the employee signing the agreement must have independent legal advice from a "legal advisor". This means that an employee can choose their own legal advisor who is not employed by the Council and the normal cost for this advice is £250 plus VAT and should not normally exceed £350 plus VAT. The effect of the compromise agreement is to prevent an employee from bringing a claim in the employment tribunal and county court in relation to the removal of their tied accommodation.

15.1.6 – 15.1.8 - See the exempt report

15.2 Property Implications

- 15.2.1 The consent of the Secretary of State for Education may be needed to dispose of school keepers' houses. This will be so where the house has been used for the purposes of a community school within the last 8 years or where it is decided to include in the sale any part of a school playground (in order to separate off the house or give it a sufficient garden or access).
- 15.2.2 Where a house in a park or public open space forms part of that park or open space, it may only be disposed of if the Council has first given public notice under Section 123(2A) Local Government Act 1972 (for two

consecutive weeks in a local newspaper) and considered any objections received.

15.2.3 Tied properties which are integral parts of schools, parks and cemeteries may form part of the larger planning unit and require planning permission to be used as independent dwelling houses. It will also be necessary to address questions of access where the only or principal access would require a right of way through a park, cemetery or school, either outside of opening hours or such as might prejudice satisfactory security.

15.3 Housing implications

See the exempt report

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Property Case Files	Manjit Gahir x 4886	Environment
2.	Scheme of Allocation	Asif Rashid x 2485	Housing & Regeneration
3.	Legal Files on H & F Homes Caretakers changes to terms and conditions	Jennifer Owusu-Akyaw x 2399	Legal
CONTACT OFFICER:		NAME: Manjit Gahir EXT. x4886	