

Cheltenham Borough Council

Council – 13 May 2010

Proposed granting of lease to Cheltenham Borough Homes for warden service in James Donovan Court

Report of the Head of Property & Asset Management

1. Executive Summary and recommendation

1.1 The issue

1.2 Cheltenham Borough Homes provides a live-in warden service at James Donovan Court on Hewlett Road. In the block, there are 27 flats for people aged over 60, which are all part of a shared ownership scheme. They are disposed of via long leasehold interests under terms which require the Council to buy back the flats on a cyclical basis when an occupier dies or wishes to move.

1.3 CBH has recently appointed a new warden and wishes to let one of the flats to her by way of a service tenancy. However, CBH cannot do so without having a legal interest in the flat (see the legal implications for more details). The solution is for CBC to grant a commercial lease to CBH, for it in turn, to grant a service tenancy to the new warden.

1.4 The grant of the lease to CBH would be a disposal under section 32 of the Housing Act 1985 and this requires Secretary of State consent. The decision to allow the Council to make an application to the Secretary of State is a matter that is reserved to full council under Part 3A of the Constitution.

1.5 This report seeks authority to allow the Council to make the application to the Secretary of State to lease the flat to CBH on these grounds. If consent is granted, the AD Built Environment will arrange for the lease to be granted using the powers delegated to him by the Constitution.

1.6 I therefore recommend that Council:-

1.6.1 **Authorises application to the Secretary of State under Section 32 of the Housing Act 1985, for consent to grant a lease of a flat at James Donovan Court to Cheltenham Borough Homes, to enable it to grant service tenancies to the wardens from time to time residing at James Donovan Court.**

Summary of implications

1.6.1 Financial

The lease of the flat will be granted at best consideration.

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1.6.2 Legal

A service tenancy is a type of residential tenancy granted when an employer requires a person to live in a particular property in order to carry out their role.

For a service tenancy to be granted, the employee's landlord and employer need to be the same body. Therefore it is proposed to grant CBH a commercial lease of a flat at James Donovan Court so that it can in turn grant a service tenancy to its resident warden.

As James Donovan Court is housing land, the appropriate power to dispose is Section 32 of the Housing Act 1985. This requires consent from the Secretary of State to the disposal. The general consents issued do not apply to disposals to ALMOs so a specific consent is required. The authority to allow the Council to make an application to the Secretary of State under these provisions is a matter reserved to Full Council and cannot be exercised by an officer of the Council

Clause 7.10 of the 2004 edition of the Guidance on Arms Length Management of Local Authority Housing, allows for the Secretary of State to consider applications under sections 32-34 of the Housing Act 1985 should a Local Authority wish to grant a leasehold interest in a property to its ALMO, for the provision of a residential warden. The warden provision must aid the better management of the dwellings concerned and maintain the quality of service to tenants. The application needs to confirm that the relevant lease enables the dwelling to be used only as a service occupancy dwelling and requires the ALMO to give the lease back to the council when it no longer requires the dwelling for that purpose

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1.6.3 Other

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1.7 Implications on corporate and community plan priorities

1.7.1 People have access to decent and affordable housing

- Increasing the supply of affordable and appropriate housing;
- Increasing the quality and choice of housing;
- Supporting people that need housing related support.

1.8 Statement on Risk

- If there is no longer a requirement for a live-in warden at James Donovan, or should CBH no longer manage the building, CBC will have an option to terminate the lease arrangement and if necessary, obtain vacant possession of the flat. The lease provisions will ensure that the Council is protected in any such scenario.
 - Should the Council delay a decision on this matter, there is a risk of damage to the council's reputation: The James Donovan Court residents' have been without a warden since October 2009 and are keen for the replacement to start as soon as possible.
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2. Background

- 2.1** The previous live-in warden at James Donovan Court retired in October 2009. A new warden has now been appointed and the plan is to locate her in one of the empty flats, under a service tenancy.
- 2.2** So that CBH can grant a service tenancy to the new warden, it is necessary to first grant a lease to Cheltenham Borough Homes, who will in turn grant a service tenancy to the warden.
- 2.3** The granting of such a lease to CBH will require the dwelling to be used only as a service occupancy dwelling. The lease will require CBH to surrender its leasehold interest back to the Council, in the event that it is no longer required for this purpose, or if CBH no longer manage the property.

3. Consultation

- 3.1** Consultation has been carried out with the Cabinet Members for the Built Environment and for Housing and Safety; there were no objections to the proposal.

4. Conclusions

- 4.1** The proposal to lease a flat in James Donovan Court to Cheltenham Borough Homes will enable the on-going provision of a live-in warden.
- 4.2** The Assistant Director Built Environment will arrange for the terms of the lease to be agreed and for the lease to be granted using the powers delegated to him by the Constitution. The rent will be at best consideration and paid by Cheltenham Borough Homes to Cheltenham Borough Council.

Background Papers

None.

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Accountability

Cabinet Member Built Environment

Scrutiny Function

Environment