

Item No.	Classification: Open	Date: February 8 2005	MEETING NAME Executive
Report title:		Elephant & Castle Leaseholder Policy	
Ward(s) or groups affected:		East Walworth Heygate Estate Leaseholders	
From:		Strategic Director of Regeneration Strategic Director of Housing	

RECOMMENDATION(S)

1. That the Council adopt the policy set out within this report in relation to Leaseholders on the Heygate Estate subject to the terms outlined in paragraphs 18 to 27 of this report.
2. That Officers put the policy into effect with leaseholders on the Heygate Estate; in the case of the comparative value scheme outlined in paragraph 27, further Executive approval to be sought if more than 20 transactions are required.

BACKGROUND INFORMATION

3. The proposals outlined in this report are in support of the regeneration of the Elephant and Castle. The proposed policy is a new approach to Leaseholder issues and relates only to the Heygate Estate, which is central to the regeneration scheme.
4. The proposals follow a series of Council decisions in support of the overall programme which was initiated by the Executive decision of 23rd July 2002 "A fresh start for the Elephant and Castle". In summary the Council has since that date approved the following matters;
 - An initial survey of public attitudes towards the Elephant and Castle and the prospects for its regeneration.
 - Publication of initial framework for development establishing the Council's general objectives for achieving comprehensive and sustainable redevelopment of the core area.
 - An extensive programme of in depth consultation and opinion testing accompanied by an intensive technical testing and development of the framework.
 - Initial scoping of the early housing programme including identification and consultation upon possible sites.
 - Adoption in February 2004 of the revised, detailed framework as Supplementary Planning Guidance.
 - Approval in July 2004 to proceed with procurement of RSL partners to develop the early housing sites.
 - Approval of commencement of Commercial Partner Selection process.

5. In October 2004 the Council issued an invitation to Housing Associations to tender for the development in two or three packages of the early housing sites identified to meet the immediate re-housing needs of the Heygate. The second stage of this selection (due to commence in February 2005) will ask Housing Associations to provide detailed proposals to assist leaseholders affected by the demolition of the Heygate. It is therefore essential that the Council is in a position to include a leaseholder re-housing policy within the stage 2 pack.
6. It follows from this that the policy proposals agreed now by the Executive may have to be varied in light of the responses received from the Housing Associations but the intention is to negotiate an arrangement as close as possible to the terms proposed herein.

KEY ISSUES FOR CONSIDERATION

7. In order to progress the development of the Elephant and Castle, the Council needs to provide vacant possession of the Heygate Estate. This will require the decanting of all secure tenants and the acquisition of all leasehold interests on the estate. As at 13th December 2004 there are 155 leaseholders on the estate. In addition there are some 57 outstanding Right to Buy applications. Members will note that the Housing Act 2004 has introduced new provisions in relation to Right to Buy applications. No final guidance has been produced by ODPM at present but Officers' interpretation is that under these provisions new Right to Buy applications received after 18th January 2005 can be prevented from completing. As is set out in paragraph 19 of this report this will not impact on the operation of this proposed policy as new applicants would be excluded, however it may serve to limit the number of leasehold acquisitions that eventually have to be made. The total number of leasehold properties does not include the 16 acquired by the council as a result of the Executive decision of 18th May 2004.
8. On 18 May 2004, Executive approved the decant policy for Heygate. The referencing process to determine tenant's housing needs commenced in November 2004.
9. As well as identifying tenant's chosen housing route of new RSL or Council relet, the referencing process will inform the unit mix required for the early housing sites. The decant policy makes provision for leaseholders who are demonstrably unable to secure alternative accommodation on the basis of the compensation due to be paid by the Council, in which case they will be offered re-housing. Under these circumstances, leaseholders will receive the same treatment as tenants. The leaseholder re-housing options and the tenure options outlined in this report will also create a demand for new units to be developed on these sites and hence it is necessary to adopt a policy at this juncture to enable the completion of the early housing sites procurement.

The Statutory Framework

10. The issues surrounding the acquisition of leasehold properties are controlled by statute.

11. Section 17 of the Housing Act 1985 empowers a local authority to acquire such units on the basis that they represent value for money. For the purposes of a major regeneration programme when all interests must be acquired to a timetable, it is likely to be necessary for the Council to make a Compulsory Purchase Order in due course.
12. A report to Executive is in preparation and will shortly be submitted with a recommendation to make a CPO resolution although Executive has previously acknowledged that CPOs will have to be made in order to advance the overall project. Members will be aware that, pursuant to the decision of the Executive on 18th May 2004, the Council is currently acquiring leasehold interests on the estate where those leaseholders have expressed an interest to move early. As stated, up to the end of 2004, 16 such units have been acquired.
13. Acquisitions of leasehold interests will, as mentioned above, operate under the basis of a CPO. This means that where a property is acquired by agreement, the compensation matches that which would be payable under the compensation code. For individual leaseholders this means the market value of their property, a home loss payment and a disturbance payment (representing payment of the all of the reasonable costs incurred by the acquired party in the transaction). The powers, procedure and compensation code is set out in various Acts of Parliament primarily, amongst others, the Land Compensation Act 1961, Compulsory Purchase Act 1965, Land Compensation Act 1973, Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.
14. Under Section 39 of the Land Compensation Act 1973 the local housing authority has a duty to secure that the dispossessed person (i.e. the leaseholder must be in residence) will be provided with such other accommodation where suitable alternative accommodation on reasonable terms is not otherwise available to that person. The legal duty does not require the housing authority to give priority over others on the housing waiting list but in regeneration schemes Southwark's approach is to apply the decant policy as explained in paragraph 9.

The Practical Effect on Leaseholders.

15. Using the statutory basis, as has happened on previous schemes including the Peckham Partnership there can be hardship even where the Council's legal obligations have been met. This is especially the case where leaseholders need to stay in the area but may find it difficult to do so.
16. Following the decision of Executive on 18th May 2004 to fund early leasehold acquisitions from the Housing Investment programme several units on the Heygate Estate have already been acquired from leaseholders the majority of whom have been professionally represented. These acquisitions have been at market value, and the exercise has demonstrated that values on the estate on the whole are significantly lower than other properties in the area, meaning that a dispossessed leaseholder could not transfer the equity in one property to a new one without the need to supplement that sum with further resources.

17. This impact may be particularly felt by retired persons who may have paid off a mortgage, and have no means to raise further finance. It is clear that some provision should be made for leaseholders in pursuit of the policy aim that people in the area should benefit from the regeneration scheme

Options for Leaseholders

18. The following options have been considered in respect of the re-housing of leaseholders with provision either through the private sector, RSLs or the Council:-
- a) Buying a property on the open market
 - b) Buying a shared ownership unit
 - c) Buying a retained equity unit
 - d) Comparative value transaction
 - e) Becoming a tenant within one of the new early housing site properties or within the Council's existing stock

These options are explained in more detail in paragraphs 24-27.

19. All of the foregoing with the exception of (a) would be over and above the statutory minimum requirement on the Council as acquiring/housing authority. Option (e) is the default position within the decant policy for resident leaseholders who cannot afford to buy an alternative property. Options (b) and (c) are intended to meet the aspirations of Heygate leaseholders who wish to remain in the area with a property ownership interest. Option (d) would make provision for leaseholders who wish to stay in owner occupation in an equivalent value property in the borough. Therefore it is recommended that options b) to d) should only normally be provided to leaseholders who meet the following criteria:-
- a) That the lessee acquired the property either by way of Right to Buy or on the open market prior to 19th February 2004 (this being the date that SPG for the Elephant & Castle was adopted by the Council)
 - b) That a party who is in the process of acquiring by Right to Buy submitted their application prior to 19th February 2004 but complete after that date.
 - c) That the leaseholder must be in actual occupation of the property for at least 1 year prior to the acquisition of the property.
20. It is considered that the introduction of these conditions is justifiable as it would prevent re-housing assistance from being directed to persons who have sought to benefit from the Council's intention to proceed with the decant of the Heygate Estate. The Council's intentions to develop the estate have been widely advertised through leaflets, newssheets and letters as well as more exposure in the local and national press and comprehensive consultation exercises. It would mean assistance, if made available, would be properly directed towards residents of the local area who have opted to hold a stake in the area before the regeneration was formally declared.

As detailed in paragraph 16 above, acquisitions of leasehold interests have been made where leaseholders have expressed an interest to move in advance of a formal programme of acquisitions. It is proposed that such Voluntary Acquisitions will be excluded from the policy contained within this report. Voluntary Acquisitions are defined as those that fall outside the formal, phased, decant and acquisition programme.

Operation of Referencing and Option Selection

21. The principle behind the options is that leaseholders are put in a position where they can find suitable alternative accommodation on reasonable terms. This means that the options available to them through the proposed policy matches with their ability to obtain suitable alternative accommodation. It is assumed that Option (a) leaseholders, with sufficient means to buy alternative property in the borough will do so. However if they are unable to buy in Southwark or more specifically, unable to buy in the Elephant and Castle area because of higher property values, leaseholders can be considered for the intermediate ownership options (b) and (c) above. If these options are not viable, leaseholders will then be considered for the comparative value option or for rehousing by the Council under the management needs process.
22. The option process will require a series of specific thresholds to be set to enable it to operate efficiently and equitably. It is a reasonable expectation that leaseholders meet their own needs (e.g. if a party has a large amount of savings then they should be expected to use this to provide their own rehousing, but see below).

Specific Considerations

23. The following have been key items within this area for consideration: -

- a) General Financial Standing of the Leaseholder Household

The Council will require a full disclosure of the financial position of each household seeking assistance above the statutory minimum. This would involve confidential disclosure on an utmost good faith basis of the income/savings/assets/liabilities and outgoings of each household. A failure to comply with this will make it impossible for the Council to offer the package of assistance outlined in this report.

- b) Housing Needs

To determine the financial circumstances and housing needs of a leaseholder seeking the offer of a tenancy or a comparative value option, the Council will undertake a referencing exercise similar in form to that already developed for tenants, for referral to Housing's Management Needs panel.

In respect of shared ownership and retained equity arrangements, the housing needs/financial assessment will be carried out in a similar arrangement to that carried out for existing shared ownership schemes operating in the borough for example by Tower Housing and Metropolitan Housing Trust. These schemes incorporate the use of affordability criteria, which is a prerequisite of the use of Social Housing Grant by the Housing Corporation.

The factors at issue will include: the value of reasonable alternative properties in the borough, the availability of capital, other assets and borrowing capacity

c) Borrowing Arrangements

Having undertaken market based research, the Council is recommended to set a base line expectation in respect of households where the principle mortgagor is in paid employment. It is therefore proposed that a household be expected to borrow up to 3.7 times the principle income or 3.1 times the joint income where more than one potential mortgagor in qualifying employment. These multipliers are the mean of rates offered by 5 leading lenders

It is not proposed that mortgages should stretch beyond the relevant statutory retirement age and adjustments will have to be made where the borrowing period is less than 25 years. In practice this will mean that affordability considerations in the same manner as a lender would judge the terms of approval of a loan.

d) Allowance for Savings

This has been an area of considerable debate with leaseholders. It is reasonable that households should not be expected to denude themselves of all savings but there must also be an expectation that the purchase of a home is of sufficient domestic priority to warrant a shift in investment from other sources, i.e. a second home or premium bond holdings. It is therefore proposed that savings of up to £16,000 be disregarded which is the same as the limit in respect of Housing and Council Tax benefit. This £16,000 limit does not include monies received in the disposal of their Heygate property.

Pensions or Child Trust Funds would be specific exclusions from the operation of this calculation.

e) Holiday Homes

Where leaseholders own a second property it is defined as a holiday home if it is not available to the leaseholder for their normal residence, and that can only be occupied for less than 13 weeks per year. This includes time-shares, caravans, mobile homes and chalets. These properties will not normally be taken into account in the assessment for additional assistance. Otherwise it will be classed as a second home and will need to be taken into account by the assessment panel, on the issue such as whether it is suitable as a reasonable replacement property.

(f) Exclusions

This policy will only apply to persons with a direct lease with the Council. The following parties would not normally qualify for consideration for re-housing: - absentee landlords, property companies, persons who applied for the Right to Buy after 19th February 2004 and those persons who acquired their property other than by Right to Buy (i.e. on the open market) after 19th February 2004.

Qualification

24. Under the provisions set out in this report, a leaseholder household is considered to be able to look after its own needs through the options proposed ie owner occupation, shared ownership, retained equity scheme, or comparative value scheme. The Council has no legal duty to offer assistance in the form of tenanted accommodation beyond the normal obligation to re-house under Section 39 of the Land Compensation Act 1973 (i.e. non-priority re-housing as discussed above). In the context of a regeneration scheme however, the effect of the Council's approach is that any rehousing will normally be undertaken on a priority basis to enable vacant possession to be delivered in accordance with the programme.
25. It is considered highly likely that the value of new build properties in the Elephant and Castle will be significantly in excess of the market value of the leaseholders existing property. Option (b) - shared ownership - would involve the Council acquiring the leaseholder's current property for market value plus a loss payment plus other disturbance items. The compensation paid would be transferred wholly into a percentage equity ownership (typically around 50%) of a shared ownership unit provided by a Housing Association with rent being paid on the balance equating to about 3% of the outstanding equity. In order to qualify for this ownership option the leaseholder household would have to meet certain earnings criteria. The leaseholder would be able to increase the equity held in the property by, for example, taking on a mortgage in the future which could eventually bring the leaseholder back into full owner occupation.
26. Option (c) – retained equity - would involve the transfer of the compensation into a share of the equity in a new property being built as part of the scheme. No rent would be payable on the outstanding equity, rather a charge would be put on the property so that at the time of a future sale the percentage of outstanding equity would be recovered by the housing provider. The percentage that would have to be acquired will be the subject of negotiation with the RSLs throughout the early housing sites procurement process, but unlike the shared ownership option the percentage that would have to be acquired is likely to be above 80% as no rent would be received by the RSL in respect of the equity it retains. The ability of a leaseholder to be able to qualify for this route is dependant on the outcome of the affordability assessment as set out in this report.
27. Option (d) – a comparative value transaction which would involve the Council buying the existing leasehold interest at Heygate, and then selling the leaseholder a leasehold interest in an existing void property. Clear criteria will need to be established operate the process based on the following principles:
- The leaseholder has first explored options a, b and c.
 - The transactions are on a like-for-like basis ie the two properties are of equivalent value.
 - The council will determine which property is suitable with regard to the needs information provided by the leaseholder. The value comparison work will only be undertaken for one alternative property.
 - A leaseholder may be considered for an alternative property up to one bedroom more than their assessed housing need subject to valuation considerations.

- Properties that are particularly useful for meeting lettings needs, for example ground floor properties will not normally be used as alternatives.
- Only general needs properties will normally be used as alternatives.
- Lease will be in the form currently used for new leasehold disposals but of equivalent term as the lease being surrendered at Heygate.
- The Council's obligations in respect of best consideration are met.
- The council's assessment of the alternative property will include the production of information to explain future liabilities in the same way to the s125 notice for RTB applicants.
- All outstanding sums owed to the Council to be cleared as part of the transaction.

Re-Housing

28. As summarised at paragraph 7, at 13th December 2004 there were 155 leaseholders on the Heygate Estate and a further 57 live RTB applications. Of these 57, a minimum of 3 would be disbarred from consideration on the basis of the date the RTB application was made. A further minimum of 20 would not be considered at present on the basis that they are presumed owned by absentee landlords/business concerns.
29. It is therefore possible that as a consequence of the policy outlined in this report and depending on the circumstances of individual leaseholders, the Council would need to make a maximum provision for 189 units for leaseholders, provided that absentee landlords do not revert back to occupation of their units. On completion of the initial referencing exercise this number will be firmed up and can be used to feed unit types/numbers into the early housing sites procurement process. For the comparative value option, it is proposed that provision is made for 20 such transactions without further recourse to Executive.

Resource Implications

30. The adoption of this proposed policy will be subject to a further report on viability to be brought to Executive setting out the full impact of the policy on the Heygate Estate early housing sites as identified in the Supplementary Planning Guidance adopted by the Council on 19th February 2004.
31. The scheme will have to meet the cost of all acquisition and accompanying loss and disturbance payments in order to make the site of the Heygate Estate available for the development. At this stage there is no formal arrangement as to the allocation of early costs between the Council and the commercial development partner but the Executive will be considering detailed reports of this during the course of the year. In the meantime, the only likely cost difference as between strict compliance with the minimum CPO provisions and the measures recommended within this report might be in relation to the RSLs approach to pricing the shared ownership and retained equity measures that the early sites procurement process has encouraged them to include. However it is considered that in relation to the overall acquisition costs these will be very small sums and unlikely to have any significant impact on viability.

32. In revenue terms, most of the proposed options for leaseholders do not have a direct effect. The equivalent value transaction does however create a loss of rental income for the units used as the alternative properties

Equalities Implications

33. The proposals contained within this report will have a direct effect on the owner occupiers of residential leasehold properties on the Heygate Estate. There are no implications in regards to business premises. The proposals intend to provide these leaseholders with housing options over and above the re-housing provisions set out within Compulsory Purchase Legislation.
34. Whilst CPO procedure is not within the scope of this report, an order will only be confirmed (by central government) where there is a compelling case in the public interest. Circular 02/03 gives guidance on this and states that an acquiring authority should also “be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected, having regard, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.”
35. (Article 1 of the First Protocol to the Convention provides that: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest....”)
36. In confirming a CPO the Deputy Prime Minister “has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose land is being expropriated”.
37. The Circular goes on to state, “Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss”
38. The proposals within this report concentrate on households who occupy their premises by a particular tenure type and are therefore likely to represent a cross-section of the community as a whole. As the basis for the acquisition of these properties, and flowing from that the re-housing of leaseholders, is by the CPO framework it is considered that the rights of all individuals have been considered within the guidance of Circular 02/03.

Consultation

39. At the request of the Heygate T&RA, officers have convened meetings to deal with issues relating to leaseholders. Six meetings have been held since the end of 2002 (the last being in October 2004) to which all leaseholders on the Estate were invited (this is in addition to the four meetings referred to in paragraph 41 below). Meetings have been attended by officers from both the Regeneration and Housing departments, and by Ward Councillors. As a result of a request made by leaseholders, Executive agreed the early acquisition of leasehold interests on Heygate on 18th May 2004.

40. The key message from leaseholders was that they needed to be presented with a number of workable options that would help to meet a range of needs of leaseholders in differing circumstances. At the leaseholder meeting in April 2004, officers asked for volunteers to come forward to form a smaller working group whereby ideas could be examined in more detail than was possible at the larger meetings. The objective was to focus on the range of needs that leaseholders would have when the scheme commenced and to work up possible options.
41. A member of the Leaseholder Council has been involved in the development of proposals for discussion at the leaseholder working group. The group has met 4 times and has helped to crystallise the particular issues for Heygate leaseholders and to develop the proposed policy and assessment criteria. At the meetings Housing's Divisional Leasehold Manager has been present and has advised on the wider leasehold context and regulatory framework. There has also been Ward Councillor attendance at the meetings.
42. Information for leaseholders has also been made available at the general exhibition sessions for Heygate residents over the last two years.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Comments of the Borough Solicitor – Legal Issues

43. The principal legal issues and implications are set out in the body of the report which contains details of the statutory scheme for compensation in the event of compulsory purchase. In advance of any scheme for compulsory acquisition the Council can use its general power under the Local Government Act 1972 to acquire land, including leasehold interests, by agreement in connection with its statutory functions.
44. The Heygate estate decant policy agreed by the Executive in May 2004 envisages that the Council will offer housing in the case of leaseholders who are demonstrably unable to secure alternative accommodation on the basis of the compensation due to be paid by the Council. The proposals outlined in the report would increase the options available to leaseholders who are not able to buy on the open market and are consistent with the Council's powers as a local housing authority.

Comments of Finance Director

45. This report details the options proposed for leaseholders on the Heygate Estate to put them into a position whereby they can find suitable accommodation on reasonable terms. It does not cover the acquisition of leasehold properties within the Heygate Estate, nor the costs associated therewith. The early leasehold acquisitions have been covered by the decision of Executive on 18th May 2004, and further reports will be brought to Executive detailing costs and allocations between the Council and the commercial development partner. There are no significant additional capital costs relating to the proposals in this report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
<i>Open Reports & Minutes of the Executive as detailed within the body of the report. Housing Policy Guide</i>	<i>Coburg House, 63-67 Newington Causeway, SE1. 9 Larcom Street SE17</i>	<i>Paul Scaplehorn - 7525 4909 Maurice Soden - 7525 7810</i>

Audit Trail

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Key Decision?	<i>Yes</i>	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	Yes	Yes
Divisional Leasehold Manager	Yes	Yes
Housing Options Manager	Yes	Yes
Executive Members		
Deputy Leader of the Council	Yes	Yes
Executive Member for Housing	Yes	No
Date final report sent to Constitutional Support Services		