



OVERVIEW & SCRUTINY COMMITTEE

MINUTES of the OPEN section of the meeting of the OVERVIEW & SCRUTINY COMMITTEE held on 28TH JANUARY 2004 at 5.00 P.M. at the Town Hall, Peckham Road, London SE5 8UB

PRESENT: Councillor Kim HUMPHREYS (Chair)
Councillor Linda MANCHESTER (Vice-Chair)
Councillors John FRIARY, Eliza MANN, Andy SIMMONS, Anne YATES [Reserve] and Ian WINGFIELD [Reserve].

ALSO PRESENT: Councillor Beverley BASSOM [Executive Member for Housing]
Piers Corbyn
Gary Glover
Nancy Horwood [Chair, Southwark Group of Tenants Organisations]
Daniella Nunez [Resident Heygate Estate]
Jennifer Quinton-Chelly
Althea Smith [Chair, Tenants Council]
Stephen Hedger [Chair, East Dulwich Estate T&RA]

OFFICER Chris Brown [Head of Housing Management]
SUPPORT: Keith Broxup [Strategic Director of Housing]
Shelley Burke [Head of Scrutiny]
Glen Egan [Assistant Borough Solicitor]
Deborah Holmes [Borough Solicitor]
Lucas Lundgren [Scrutiny Team]
Harry Marshall [Divisional Housing Manager]

APOLOGIES FOR ABSENCE

Apologies for absence were received on behalf of Councillors Barrie Hargrove, Gavin O'Brien and Neil Watson.

CONFIRMATION OF VOTING MEMBERS

The Members listed as being present were confirmed as the Voting Members.

NOTIFICATION OF ANY OTHER ITEMS WHICH THE CHAIR DEEMS AS URGENT

The Chair agreed to the circulation of the following documents in relation to the item for consideration, which had not been available at the time the main agenda was circulated, i.e.

Appendix E: Submission from Southwark Group of Tenants Organisation [pages 16-17]

Appendix F: Report from Strategic Director of Housing “Review of Secure Tenancy Agreement” [pages 18-21]

Appendix G: Message from Library Street Neighbourhood Forum to Overview & Scrutiny Committee [page 22]

DISCLOSURE OF INTERESTS AND DISPENSATIONS

Councillors Mann, Yates and Bassom each declared a personal interests in the item under discussion, being tenants of Southwark Council.

RECORDING OF MEMBERS' VOTES

Council Procedure Rule 1.17(5) allows a Member to record her/his vote in respect of any motions and amendments. Such requests are detailed in the following Minutes. Should a Member's vote be recorded in respect to an amendment, a copy of the amendment may be found in the Minute File and is available for public inspection.

The Committee considered the items set out on the agenda, a copy of which has been incorporated in the Minute File. Each of the following paragraphs relates to the item bearing the same number on the agenda.

1. **CALL-IN: REVIEW OF SECURE TENANCY AGREEMENT** [see pages 1-22]

The decision had been called in following a request in accordance with Scrutiny Procedure Rule 18.6 to review the decision on the grounds of alleged lack of consultation and legal advice, lack of consultation in scrutiny – with the request that the Executive decision be delayed pending further consultation and agreement.

The Chair invited Councillor Friary to set out the concerns behind the call-in request. In summary the Members were concerned that the Executive decision had not been taken after full and rigorous consultation with tenants.

Firstly, he explained to the meeting that “*circulation of the draft proposals to each secure tenant*” referred to at page 4, paragraph 9 of the Agenda had not taken place, circulation having consisted of un-enveloped copies of the proposals being delivered to properties rather than documents having been addressed to each tenant. Furthermore, some sections of the borough reportedly received no copies at all.

Secondly, although tenants had been promised independent legal advice, legal advice had been received solely from the Assistant Borough Solicitor, who was bound to act in the Council's interest and therefore not independent.

Finally, detailed clause by clause information in respect of responses to the proposed changes had been requested by Housing Scrutiny Sub-Committee but not subsequently provided by Housing Department.

At this point the Borough Solicitor advised that in the light of concerns expressed about legal advice, the Assistant Borough Solicitor should be considered a witness to the scrutiny review.

The Committee agreed to receive a deputation from Nancy Horwood [Chair, Southwark Group of Tenants Organisations]. Nancy Horwood explained that whilst she disagreed with the Executive decision itself, the overriding concern was the way in which the decision was reached. The full facts, including details of the concerns raised at Tenants Council about consultation, had not been made available to the Executive on 13 January 2004. She believed this rendered the subsequent Executive decision unenforceable and placed the Council in a difficult legal position.

She reported some confusion amongst Tenant Council members as to whether the legal advice given to the meeting held on 1 September 2003 was independent. In addition, she stated that no "detailed debate" about the matter had taken place at the meeting as stated at page 9, paragraph 7 of the officer report. She did not dispute the motion, however, but the consultation process was flawed and the alleged refusal to allow tenants to get independent legal advice had not helped the situation.

She confirmed that on 6 October 2003 Tenant Council had agreed that a group of ten representatives from Tenant Council would form a discrete group to consider the proposals - this group subsequently met on 16 October 2003, but with no legal advice. Piers Corbyn asserted that tenants remained concerned about this.

Nancy Horwood confirmed that the consultation document had not been individually circulated to tenants.

She stated that a column setting out the differences between the old and proposed new clauses in the tenancy agreement had been removed from the comparative document produced by Housing Department and was not included in the revised handbook.

Resident Daniella Nunez told the Committee she had submitted correspondence to the department in which she outlined her objections to the proposed changes to the tenancy agreement, but had received no consultation documents. At Tenant Council on 15 December 2003 she stated it appeared that the Chair and officers had spoken privately to reinstate Clause 27.

Althea Smith, Tenant Council Chair at the time of the decision, spoke to the meeting. She believed the item had not been flawed. Tenant Council had received legal advice prior to composing the item, the issue had been properly debated and consultation far beyond previous consultation 10 years earlier had been carried out. The process had been sound and she was prepared to state this in a court of law. She felt it was time to move forward, and was concerned that tenants themselves might destroy the tenant movement. Further delay to the Executive decision of 13 January 2004 would negatively impact on tenants currently suffering anti-social behaviour, she believed.

Althea Smith stated that no "secret" meetings had taken place between herself and the Executive Member, as had been suggested – the Vice-Chair always having been present for discussions. In respect of Clause 27 of the unamended Secure Tenancy Agreement [concerning major works], the Chair had received emails on the matter that were subsequently passed to officers for negotiation.

In respect of the motion agreed at Tenant Council on 15 December 2004 set out at page 20, paragraph 11 of the agenda, Althea Smith confirmed she understood the motion to refer to the issue of Clause 27, although it was acknowledged that in respect of Clause 3, tenants had expressed concern that no draft handbook had been available for discussion.

In respect of legal advice, Althea Smith reported that eight of the ten people present at the meeting on 16 October 2003 had been content that independent advice had been given by the Assistant Borough Solicitor at that meeting. The Tenancy Working Party had previously received independent advice on the Tenancy Agreement from the Borough Solicitor. AS noted that some individuals felt that East Dulwich Estate Tenant & Resident Association's independent legal advisor should have been engaged to provide such advice. She noted the consistency in housing law, and that accordingly believed different housing lawyers were likely to give the same advice on certain matters.

Executive Member for Housing Councillor Bassom expressed her surprise at the suggestion that the handbook should have been posted rather than hand-delivered, asking whether this would have represented a good use of Council resources.

Councillor Bassom acknowledged Grosvenor Terrace Tenants & Residents Association's report of non-receipt of the consultation documents, and confirmed that residents had subsequently received the second copy circulated.

The Executive Member asked why Tenant Council had requested legal advice at the time delegates were nominated to the Working Party or subsequently at the first meeting of the Working Party itself. Tenants could have received legal advice at any of the previous stages of the process, but did not. At meetings of Tenant Council some delegates were not even aware that legal advice was available at every meeting. Some Neighbourhood Forums had held meetings solely to discuss the tenancy agreement.

Divisional Housing Manager Harry Marshall was asked to outline the series of events from July 2002 to the present [see Agenda page 18].

He stated that the Tenancy Working Party [TWP] had met on eleven occasions, considering examples from other authorities, and identifying best practice. Meetings included detailed analyses of requirements. At the start of the TWP process members were advised that legal advice could be offered in-house or independently. The TWP decided to seek advice as and when it was needed. In April 2003 the TWP met for the last time prior to Tenant Council on 14 April 2003. TC accepted the report of the TWP and asked that the matter be referred to Neighbourhood Forums [NHF], which bodies subsequently considered the proposals. All NHFs were sent a copy of the proposals for local consultation. Comments from individual NHFs were summarised for TC in October 2003 and made available. Appendices to the report included summarised minutes of NHF meetings and gave a clause by clause breakdown of recommendations made to TC.

He recalled the issue of independent legal advice first having been raised on 6 October 2003 at TC, which responded by establishing a Sub-Group to work through the clauses of the agreement with the Assistant Borough Solicitor and Divisional Housing Manager.

Tenant Council on 27 October 2003 received feedback from the TWP meeting on 16 October 2003, considering the proposals clause by clause, this consideration informing the basis of the statutory requirement for consultation with tenants. Officers felt the proposals should go back to TC for final information, before going to the Executive.

Harry Marshall stated that the agenda for Tenant Council on 15 December 2003 was originally to consider the Secure Tenancy Agreement, but in the event, an item on Face to Face Services dominated the agenda. The issue of independent legal advice was mentioned, but he recalled the Chair and Vice-Chair felt this had already been resolved. The motion set out at Agenda page 20, paragraph 11 was agreed. Subsequently, Harry Marshall met with the Chair and who decided to take the matter back to Tenant Council on 12 January 2004 [Agenda page 20, paragraph 12 refers]. On 12 January 2004 Tenant Council considered two motions, the second being agreed and referred to the Executive on 13 January 2004.

Information and deputations having been received, discussion ensued, which included the following points, i.e.

- Tenant Council's original request for independent legal advice would seem not to have been met [officers responded that the Chair and Vice-Chair had subsequently agreed the method to be used, the majority of the meeting having agreed on this];
- Members asked officers whether the Executive might have influenced the decision not to have independent legal advice ? [officers responded that as far as they were aware the Executive had not influenced Tenant Council's decision];
- At Ward level, general consultation with individual tenants was felt not to have been adequate [officers responded that it was impractical to individually address documents, but staff were asked to ensure that each tenant receive a copy. Documents were not sent out in envelopes. The department was concerned about the non-delivery reports from Grosvenor Terrace T&RA and staff telephoned residents to clarify the situation and then delivered further copies. Each Neighbourhood Manager was briefed on the legal need to consult and had responsibility for delivery of the documents. Two weeks after delivery, these officers were asked to verify delivery, and one complaint from Grosvenor T&RA was received. Harry Marshall reported that he expected Neighbourhood Managers to satisfy themselves that delivery had taken place.
- In respect of the accessibility of the document, Members asked whether the Council's Communications Unit had input into the document preparation or whether the approach had been to satisfy legal minimum requirements? [officers responded that Housing Department's communication staff had assisted in formatting the documents. In addition, taped versions were produced and where possible the document was emailed. Harry Marshall spoke to many residents who reported not having found the document inaccessible. The document was self-explanatory and therefore did not require a covering letter];
- Members asked why the explanatory column included in the version of the clause-by-clause comparative document to Tenant Council also sent to tenants ? [officers responded that Tenant Council on 27 October 2003 had expressed the view that the column was confusing];
- Members expressed surprise at the low response rate [128 responses against 46,000 documents circulated] to the consultation document;

- The Borough Solicitor confirmed that the proposed changes to the Secure Tenancy Agreement were in accordance with statutory provision, and in line with statutory provision, law and practice of consultation;
- Althea Smith reported that Tenant Council agendas were compiled formally at agenda planning meetings, although the Chair retained final discretion. Althea Smith confirmed she had taken the decision to include discussion of the TC resolution of 15 December 2003 on the 12 January 2004 TC agenda as she believed it had not been adequately discussed.

The Chair then invited the Assistant Borough Solicitor [ABS] to respond to points raised about the independence of legal advice given to tenants during the consultation process.

The ABS confirmed that he was asked to arrange independent legal advice following the October 2003 meeting of Tenant Council, but had not been advised of the nature of concerns about the clauses at that point. At the next meeting it was agreed that if concerns remained by the close of the meeting, the ABS should seek independent advice. However, at the close of that meeting no advice was requested in relation to any clause in the Secure Tenancy Agreement, he stated. The ABS confirmed he had clearly explained his legal role to Tenant Council. He had yet to be advised of the matters on which legal advice was thought necessary, however.

Some individuals present felt it inappropriate that requests for independent advice should have to be made through the authority's own solicitor. Another present referred to Southwark Group of Tenants Organisations commonly engaging pro-bono advice when it was needed, and asked why tenants had waited so long to raise the issue as a problem.

Whilst not wishing to impute the ABS's advice or integrity, Members agreed it was vital that the process remain transparent, given the STA would remain as the main agreement between 46,000 residents and the authority for the foreseeable future.

Councillor Friary noted that Housing Scrutiny Sub-Committee had requested that the draft STA be brought back to scrutiny before its consideration by the Executive, but that this had not taken place. The minutes of the Housing Scrutiny Sub-Committee confirmed this request.

Councillor Simmons suggested that Housing Scrutiny consult with the Head of Marketing and Communications in respect of how the authority might consult better in the future.

The Chair noted that he would be supporting the motion to Council Assembly in respect of this matter and would seek to ensure that Overview and Scrutiny Committee's recommendations were taken into account in the process.

The Chair noted that Tenant Council acted in line with its own process. He emphasized that Overview & Scrutiny Committee should not be considered a "Court of Appeal" for Tenant Council decisions. The Executive's decision was within the budget and policy framework and could not therefore be referred to Council Assembly.

On being put to the vote it was

AGREED: That the decision of the Executive Committee of 13 January 2004 in respect of the review of the Secure Tenancy Agreement not be referred back to the Executive, but shall remain and take effect on 28 January 2004, that being the date of Overview & Scrutiny Committee's consideration of the original decision.

The meeting ended at 6.45 p.m.

CHAIR:

DATED: