

Item No. 18.	Classification: Open	Date: 25 January 2011	Meeting Name: Cabinet
Report title:		Disposal of a property in SE1 area	
Ward(s) or groups affected:		-	
Cabinet Member:		Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	

FOREWORD - COUNCILLOR IAN WINGFIELD, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING MANAGEMENT

1. The council are committed to making all homes warm, safe and dry by 2015, this can only be achieved if additional capital resources are generated for recycling into the Housing Investment Programme.
2. This report sets out an opportunity for the generation of a significant sum for the benefit of the wider community, through the sale of a property requiring extensive structural repair.

RECOMMENDATIONS

That the Cabinet:

3. Agree in principle to seek vacant possession of an occupied housing unit in the SE1 area and to dispose of the wider property together with an adjoining property.
4. Authorises the Head of Housing Management to conclude negotiations with the tenant of the occupied housing unit to secure vacant possession of that property.
5. Agrees a payment to the tenant of the occupied housing unit, in order to facilitate disposal of the block if Housing Act powers are not available.
6. Approves re-housing of the tenant of the occupied housing unit with band 1 priority and the housing of authorised occupants who require re-housing separately from the tenant in accordance with their assessed needs under the council's lettings policy.
7. Agrees that the freehold interest in the properties is disposed of as one whole block to maximise the capital receipt, conditional upon the occupied unit being declared surplus by the Head of Property.
8. Authorises the Head of Property to approve the terms upon which the whole block will be sold, including the sale price which must represent the best consideration that can reasonably be obtained.
9. Confirm the capital receipt be earmarked for the Housing Investment Programme

BACKGROUND INFORMATION

10. A report to be dealt with on the closed agenda seeks approval to agree terms with a council tenant for them to be relocated so the property they occupy can be sold along with a neighbouring one. The report sets out why this is the best financial course of action and will generate a significant capital receipt for investment in the Decent homes Programme.
11. It is not possible to reveal the details of the arrangement with the tenant because of confidentiality and privacy issues, however the proposal overall is anticipated to generate a significantly higher return than the benefit that would be gained by keeping the property in the portfolio.
12. If the report is approved, the relevant Heads of Service will be authorised to complete negotiations and secure a major capital receipt. The property concerned will carry significant repairing liabilities if it is retained.
13. The Chief Legal Officer has confirmed that the relevant legal powers exist for the proposal under the Local Government Act 2000 and disposal of the property will be subject to the usual rules requiring the council to secure the best consideration reasonably obtainable.
14. The proposal will enable a currently tenanted property to be disposed of in conjunction with two currently empty properties, thereby securing a much higher capital receipt. It will also transfer the repairing liability for this property which is in poor condition. Officers are advising that the best course of action for this property would be to sell it to raise money which could then be reinvested in the Decent Homes Programme.

KEY ISSUES FOR CONSIDERATION

15. The council has identified an investment gap in the resources required to meet its Decent Homes Standards and other repairing obligations. The recently completed stock condition survey will inform decisions about future investment management plans. This will include the approach to be taken in terms of the investment and management of street properties, particularly as street properties typically cost more per unit to maintain in comparison to flats in blocks. That disparity is likely to increase further in the case of older properties in need of structural repairs.

Policy implications

16. The Corporate Plan 2009/2011 aims to create places where people love to live. In this context, it should be noted that part of the subject property is vacant and are therefore underused. The benefits of this proposal are therefore twofold; disposal would help to ensure that the whole property is brought back into use and bring benefits to the local community in terms of better security and an improved environment. Secondly, the council would gain a substantial capital receipt for recycling into its investment programme for the maintenance of the remainder of its housing stock and in particular the Decent Homes programme.
17. The Housing Strategy 2009-2016 outlines a commitment to create larger family sized units, which is being addressed by new supply in the borough; the deconversion and extension programme being delivered in conjunction with the

major voids refurbishment programme; and to some extent the council's Hidden Homes Programme.

18. On the surface this proposal contradicts this, however, street properties within the major void programme that have high investment needs and are uneconomic to repair are routinely disposed of and the proceeds recycled to create large units. Furthermore, the subject property has an exceptional potential value and the future benefit to the council is outweighed by the liabilities.
19. This proposal meets with the council's key objective of making the borough 'a better place for people' as set out in Southwark 2016 – Sustainable Community Strategy. The anticipated outcome is that the entire building is brought back into use through the injection of private resources leading to increased satisfaction within the local community generally.

Community impact statement

20. The local community will benefit from this disposal through increased investment in the local area and improved security through use.
21. Overall benefit to the wider community will be gained from the recycling of capital receipts to the investment programme.

Resource implications

22. It is in the council's interest to achieve vacant possession and disposal of the property, to generate resources for the Housing Investment programme and avoid high maintenance and repairs costs. Provided the resulting capital receipt is to be recycled into the HIP in line with the housing void disposal strategy, then resources will be made available within approved programme budgets to meet approved up-front costs arising in connection with disposals generating receipts.

Consultation

23. Initial consultation has taken place with the tenant concerned and will recommence in the near future, subject to the outcome of the decision in respect of this proposal.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

24. The closed report recommends the council seeks vacant possession of a property occupied by a council secure tenant and subject to obtaining this, dispose of the property along with properties in the same block. In the absence of the tenant's agreement to relinquish the tenancy, the council can only secure possession by obtaining an order from the court. A possession order can only be made against a secure tenant if one of the grounds set out in the Housing Act 1985 ('the Act') is satisfied. Broadly, grounds for possession under the Housing Act fall into two categories; discretionary and mandatory. Only an outright possession order made under a mandatory ground is likely to meet the council's needs in this situation. The circumstances outlined in the report do not give rise to or indicate the availability of the mandatory grounds for possession under the Act.

25. It is proposed that a negotiated agreement is reached with the tenant to facilitate the tenant's agreement to relinquish their secure tenancy to include a financial payment and re-housing for the tenant and other authorised occupants who currently reside in the property. An agreement may be negotiated by the council under powers provided in local government legislation. However, the council may not be empowered to fully meet the aspirations of the tenant and other authorised occupants as set out in the closed report.
26. Section 2 of the Local Government Act 2000 (the 'well being' power) enables the council to do anything which it considers is likely to achieve one or more of three objectives; the promotion or improvement of the economic, social and environment wellbeing of its area. This includes the power for a local authority to incur expenditure, give financial assistance to any person and provide accommodation to any person. The power is a freestanding one, which means that it does not have to be used in conjunction with another power or duty elsewhere in legislation. It is, however, subject to limitations; the power can't be used to authorise actions that the council is unable to take because of prohibitions, restrictions or limitations contained in other legislation nor where the primary purpose of its use is the raising of money.
27. The provision of alternative accommodation for the tenant and other authorised occupants is subject to the requirements of Part 6 Housing Act 1996. Generally, the council may allocate secure tenancies (or nominate a person to be an assured tenant of accommodation held by a registered social landlord) only in accordance with its scheme of allocation (lettings policy). This provision does not apply, however, to a person who is already a secure tenant moving at the behest of the council. Therefore the council may, if the recommendations in the open report are agreed, re-house the tenant of the subject property by either making the tenant a direct offer or allowing the tenant to bid under the home search scheme with band 1 status. However other members of the household who decide not to be re-housed together with the tenant are subject to the council's scheme of allocation; in this case the council's lettings policy will only allow for a direct offer of accommodation to be made in accordance with the council's assessment of their need.
28. The report indicates that disposal of the subject property with vacant possession together with the two other empty units in the 'block' is something that is likely to promote the wellbeing of the area in relation to economic and environmental objectives.
29. Save for the requirements of Part 6 Housing Act 1996 as to the allocation of secure tenancies, the closed report does not indicate the presence of other limitations or prohibitions that would prevent use of the well being power as a basis for taking forward the recommendations in the report however when using the well being power, regard must be had to the council's community strategy. The report set out policy implications including as they relate to the community strategy.
30. Section 111 of the Local Government Act 1972 enables the council to do anything that facilitates or is conducive or incidental to the discharge of any of its functions. This power is not freestanding; in other words it can only be used in conjunction with a specific power or duty and similar to the well being power it can't be used to raise money.

31. As to the exercise of section 111 LGA 1972, the council has a general power under section 21 Housing Act 1985 that confers the power to manage, control and regulate its housing stock and in section 32 of the Act to dispose of land held for housing purpose. The open report sets out the rationale for the proposed disposal of the 'block' that the subject property forms part. Management and disposal of housing land are legitimate functions of the council under sections 21 and 32 of the Housing Act. Obtaining vacant possession by encouraging the tenant to relinquish the tenancy facilitates, is conducive and incidental to the council's functions under section 21 and section 32.
32. In this case either power could be used as a basis for negotiating the proposed incentive package. However members are advised that in the use of its discretionary powers the council must act lawfully and reasonably having regard to its fiduciary duty to the authority's council tax payers.
33. Cabinet is recommended to approve (i) the disposal of the properties as a whole block and (ii) to authorise the Head of Property to approve the terms of the disposal including the sale price which must be for the best consideration that can reasonably be obtained.
34. Cabinet is advised that the whole block is held by the council as housing land. Disposals of housing land are governed by Section 32 of the Housing Act 1985 (as amended) ("the 1985 Act") and requires consent of the Secretary of State for the Department of Communities and Local Government ("SOS") to any disposal unless it is a disposal that is permitted under the General Disposal Consents 2005 issued by the SOS.
35. General Consent A5.3.1 provides that the council may dispose of a building held as land for housing purposes to any individual for the best consideration that can reasonably be obtained, where:
 - (a) The building was not constructed by or for any local authority for the purposes of providing housing accommodation; and
 - (b) The building consists of residential accommodation and non-residential accommodation; and
 - (c) All or most of the ground floor consists of non-residential accommodation; and
 - (d) The residential accommodation is vacant or let with the non-residential accommodation under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
36. All of the above criteria must be met for the disposal to fall within the General Consent. The report confirms that (a) the council acquired the whole building after it was constructed, (b) the building consists of residential and non-residential accommodation, (c) the non-residential accommodation is situated on the lower ground floor of the building and (d) the report recommends that the council seek vacant possession of the tenanted residential accommodation. Provided that this property is vacant prior to the building being disposed of and that it is declared surplus to housing requirements by the Deputy Chief Executive; and that the consideration to be achieved will be the best that can reasonably be obtained, Cabinet may approve recommendations 7 and 8.

Finance Director

37. The financial implications of this report confirm that the costs identified within this report can be contained within existing budgets. The financial implications confirm that the sale of the entire property will result in a significant capital receipt being generated, and will save the required investment to the property. The decision to earmark this receipt for the Housing Investment Programme needs to be taken in context with the overall capital programme.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	
Lead Officer	Darren Welsh, Head of Housing Strategy and Options	
Report Author	Sonia Esnard, Principal Asset Management Officer	
Version	Final	
Dated	14 January 2011	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Head of Housing Management	Yes	No
Housing Options Manager	Yes	No
Head of Property	Yes	No
Cabinet Member	Yes	Yes
Date final report sent to Constitutional/Community Council/Scrutiny Team	14 January 2011	